

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 2005

EFTA SURVEILLANCE
AUTHORITY

INTERNAL MARKET SCOREBOARD No. 15

EFTA STATES

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1. INTRODUCTION

The Authority's 15th **Internal Market Scoreboard for the EFTA States** shows that, for the first time since 2001, the EFTA States together fail to meet the interim target of a transposition deficit of less than 1.5%. This is due first of all to **Liechtenstein**, which now has a transposition deficit of 2.7%, its worst performance since 2000. **Iceland** has improved slightly, with a transposition deficit of 1.4%. **Norway** has fallen back to a 1% percent deficit, but is still at the top of the league of the 28 EEA States.

All three EFTA States are increasing their backlog of directives to be transposed.

The average transposition delays for the three EFTA States lie between four and a half and five months.

Technical barriers to trade with regard to dangerous substances is the sector with the highest number of directives not transposed on time.

The number of infringement proceedings initiated by the Authority against the EFTA States remains stable, and is low compared to similar figures for proceedings by the European Commission against the EU States.

The Internal Market of the European Community ensures the right for businesses and citizens of the European Union to trade their goods and services, to work, invest and establish wherever they want within the Union. The purpose of the EEA Agreement¹ is to extend this Internal Market to cover the three EFTA States Iceland, Liechtenstein and Norway², thus ensuring the same possibilities for business and individuals in those countries. A prerequisite for the Internal Market to function is equal conditions for competition, based on common, homogenous rules across the 28 States that are party to the EEA Agreement.

The 28-State EEA makes up an Internal Market of more than 455 million people. This makes it one of the largest common markets 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 State is in breach of its obligations under the EEA Agreement. The Commission of the European Community has a parallel task towards the EU States.

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.

Failure to transpose EEA legislation timely and correctly is not merely a question of living up to international obligations. Citizens and businesses are deprived of the rights under the EEA Agreement, and the Internal Market will not function as intended.

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 co-operates 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.

On 15 November 2004, 1526 Internal Market directives were part of the EEA Agreement.

What the Internal Market Scoreboard tells us

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

The EFTA Internal Market Scoreboard measures:

- to what extent the EFTA States notify transposition of new EEA legislation on time;
- transposition backlog and average delays in transposition;
- in which areas the EFTA States face problems with transposition; and
- the number of infringement proceedings initiated against the EFTA States for failure to transpose EEA legislation correctly and on time, and failure in applying these rules correctly.

The findings in this Scoreboard are based on the Authority's statistics from November 2004.

What the Internal Market Scoreboard does not tell us

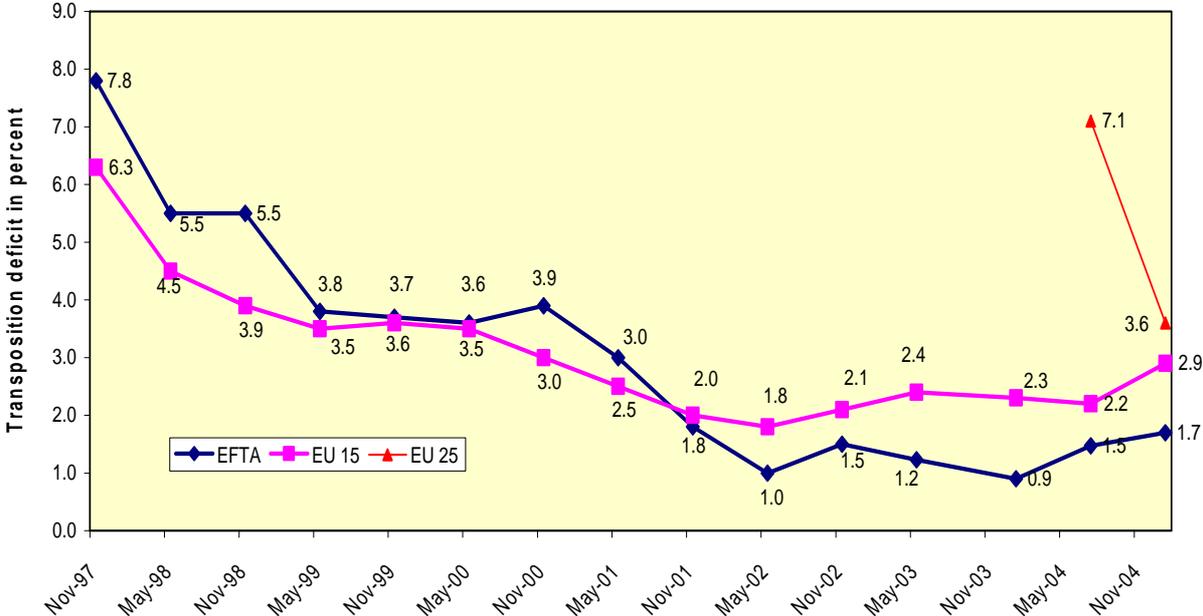
The Internal Market Scoreboard gives an overview over whether the EFTA States notify transposition on time. The Scoreboard does not measure the quality of the implementing measures notified by the EFTA States, nor does it measure problems with the application of the EEA Agreement itself or the *acquis communautaire*. The Scoreboard does not, therefore, provide the full picture on how the EFTA States adhere to its obligations under the EEA Agreement.

2. TRANSPOSITION OF INTERNAL MARKET DIRECTIVES

2.1 EEA Directives must be transposed into national legislation by deadline

The transposition deficit measures how many directives containing Internal Market rules and principles the EU and EFTA States have failed to transpose on time³. While the ideal transposition target is a 0% deficit, the European Council has set an interim target of 1.5% as the highest acceptable transposition deficit. This interim target has been endorsed by the EFTA Surveillance Authority.

Figure 1: EFTA States’ average transposition deficit continues its way up



Transposition deficit for the EFTA States, the EU 15 and EU 25, situation as at 15 November 2005.
Source EU figures: European Commission's Implementation Report Scoreboard No 15.

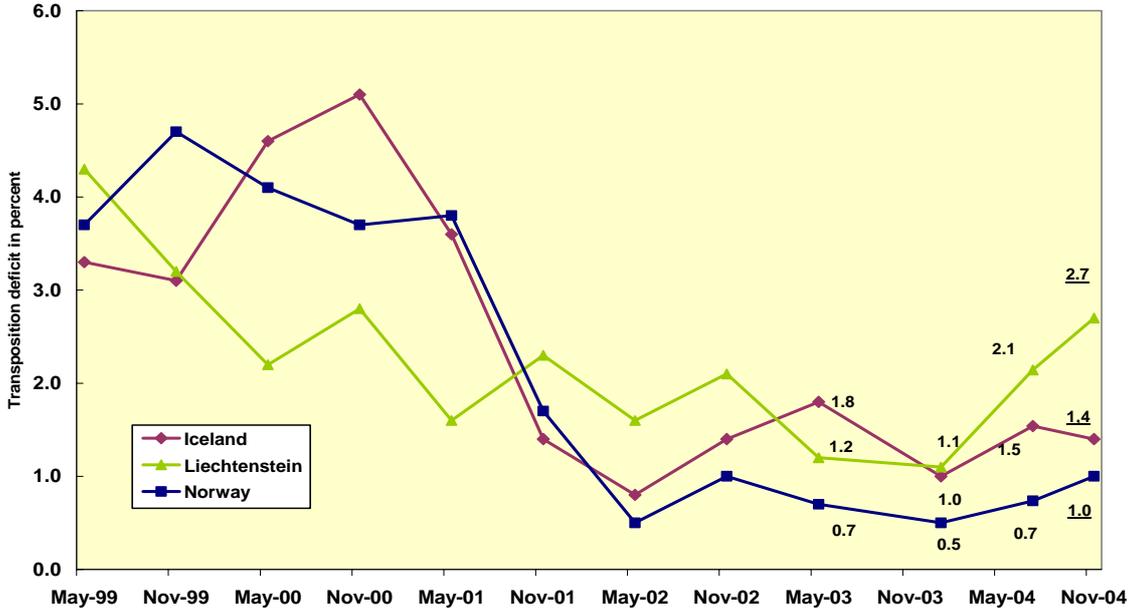
The average transposition deficit of the EFTA States now stands at 1.7% (**figure 1**). This is the second consecutive increase since the January 2004 Scoreboard. For the first time since 2001, the average transposition deficit for the EFTA States is above the interim target of 1.5%.

The EU 15⁴ transposition deficit is also increasing. The new EU Member States have, however, succeeded in transposing a vast number of directives during the last six months. Hence, the EU 25 average has dropped by half.

³ The transposition deficit shows the proportion of Internal Market directives not yet notified to the EFTA Surveillance Authority as fully transposed.

⁴ The EU 15 refers to the 15 EU Member States prior to 1 May 2004. The EU 25 includes the 10 new EU Member States.

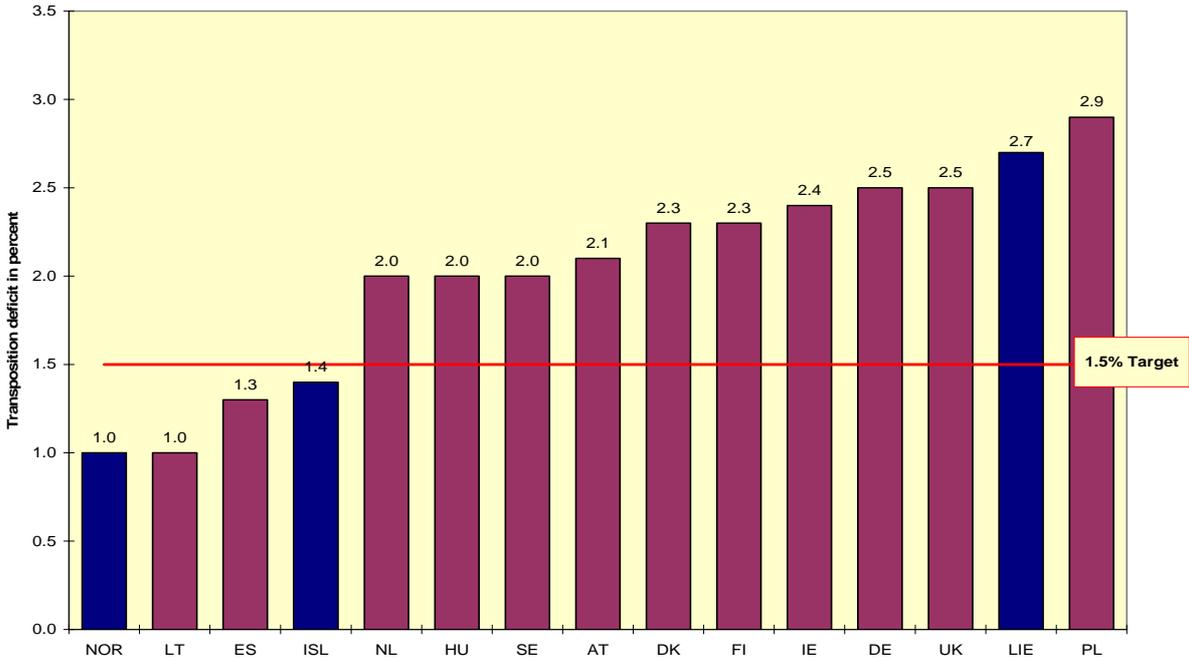
Figure 2: Development of the EFTA States' transposition deficits



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

Figure 2 shows that the increase in the EFTA States' average transposition deficit is due to increased transposition deficits in Liechtenstein and Norway. Liechtenstein's increasing backlog is particularly disappointing.

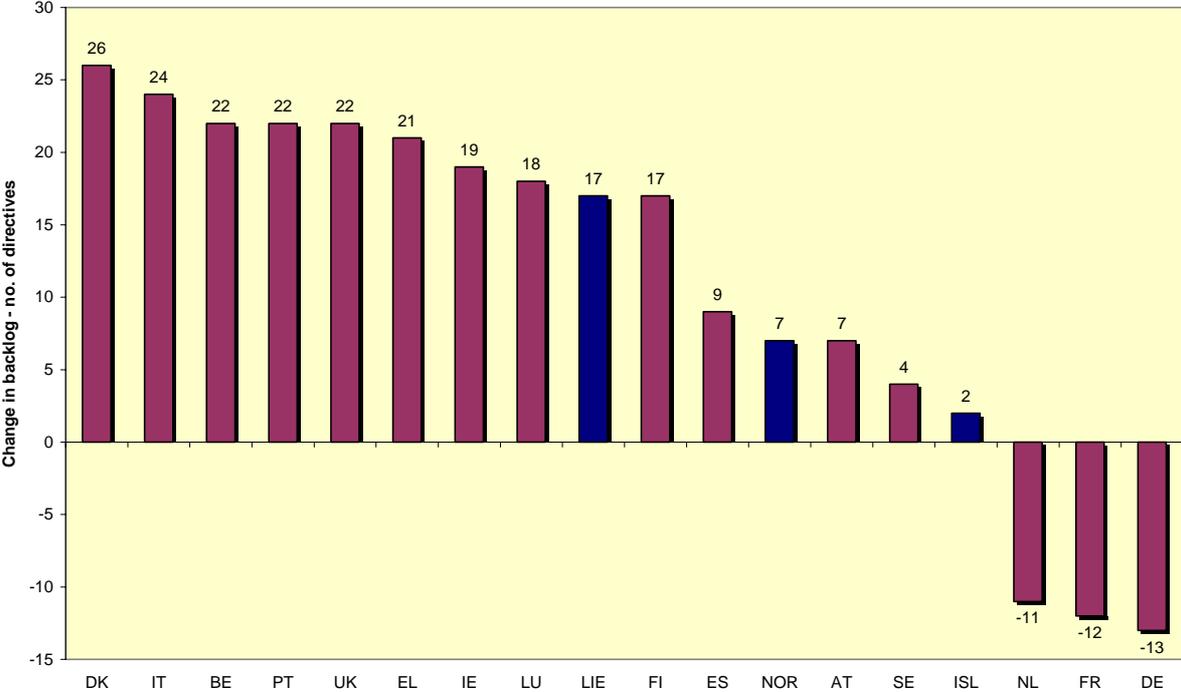
Figure 3: Norway at top with Lithuania, Iceland is no. 4 and Liechtenstein no. 14 out of EEA 28



Source EU figures: European Commission's Implementation Report Scoreboard No 15.

Of the 28 EEA States, Norway, together with Lithuania, have the lowest transposition deficit, despite Norway's drop from 0.7% to 1% (figure 3). Iceland is also one of four countries meeting the 1.5% interim target. At number 14, Liechtenstein stays right in the middle when comparing the EEA States.

Figure 4: The EFTA States' backlog is increasing



Source EU figures: European Commission's Implementation Report Scoreboard No 15.
Note: Change in the transposition performance (number of directives overdue) since the last Scoreboard in July 2004 (backlog)

Among the three EFTA States and the EU 15, only three States have succeeded in reducing their backlog of directives to be transposed compared to six months ago (figure 4). All three EFTA States add to their backlog of directives to be transposed: Norway almost doubled its backlog, while Liechtenstein and Iceland added to the number of overdue directives with 71% and 10% respectively.

In November 2004, Liechtenstein had failed to transpose 41 directives within the time limit. The corresponding figures for Iceland and Norway were 22 and 15, respectively.

None of the EFTA States had transposed the *Environmental Noise Directive* (2002/49/EC) or the *Directive on Distance Marketing of Financial Services* (2002/65/EC) on 15 November 2004.

2.2 How late are the EFTA States in transposing EEA Directives?

Ensuring timely and correct transposition of directives is a continuous process. It requires a steady effort by the EFTA States' national administrations in order to keep pace with the incorporation of new acts into the EEA Agreement. Failure to do so undermines the functioning of the Internal Market.

The Barcelona European Council of March 2002 set a "zero tolerance" target for directives whose transposition is two or more years overdue. As was the case in July 2004, none of the EFTA States have any directives overdue by more than two years.

Figure 5: Breakdown of the EFTA States' transposition delay

Length of delay	Number of directives delayed :		
	ISL	LIE	NOR
Less than 6 months	11	23	9
6 to 12 months	7	10	3
12 to 24 months	0	3	1

Note: Number of overdue Internal Market directives that had not been notified by 15 November 2004, broken down by length of delay. Directives for which a partial notification has been submitted are not included, i.e. where a State has indicated that some, but not all of the provisions in a directive, have been transposed.

The average transposition delays for the three EFTA States lie between four and a half and five months. Norway has the oldest outstanding Directive (*Directive relating to restrictions on the marketing and use of arsenic (2003/2/EC)*), which should have been transposed by 12 July 2003.

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 may indicate unwillingness on the part of the State concerned to take the measures necessary to ensure that the Internal Market is functioning.

60 to 70% of the EFTA States' outstanding directives are less than six months old, indicating that the transposition delays are caused by delays in legislative processes rather than political unwillingness to transpose directives into national law (**figure 5**).

2.3 Which sectors cause particular problems for the EFTA States?

Certain sectors of EEA legislation cause particular problems for the EFTA States with regard to transposition. Legislation relating to the *marketing and use of dangerous substances (technical barriers to trade)* is one such sector. In November 2004, Liechtenstein had failed to transpose within the time limit eight directives in this field. Corresponding figures for Iceland and Norway were five and four directives, respectively.

Liechtenstein also has problems ensuring timely transposition of legislation in the *financial services sector* (9 directives outstanding) and the *audiovisual and electronic communications services sectors* (three and five directives outstanding).

Iceland's transposition deficit relates mainly to technical barriers to trade of various goods and maritime transport (two directives).

In November 2004, Norway had failed to transpose on time three directives relating to *veterinary matters*.

The Scoreboard does not report on the quality of legislation

It is important to bear in mind that the implementation deficit figures measure the failure by the EFTA States to notify implementation of directives into national law at a given point in time. The quality of the national implementing legislation is only assessed at a later stage. Later conformity assessments may prompt the EFTA Surveillance Authority to take further action if it finds that the notified measures do not ensure full and correct implementation.

Furthermore, failure to comply with the basic principles of the EEA Agreement, such as the free movement of goods, persons, services and capital will impair the functioning of the Internal Market. The next chapter of the Scoreboard highlights the infringement proceedings initiated by the Authority, many of which relate to the incorrect transposition of directives or incorrect application of the EEA Agreement itself.

3. INFRINGEMENT PROCEEDINGS

If the EFTA Surveillance Authority considers that an EFTA State has failed to fulfill 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.

3.1 All infringement proceedings

Figure 6: All open infringement cases against the EFTA States on 15 November 2004

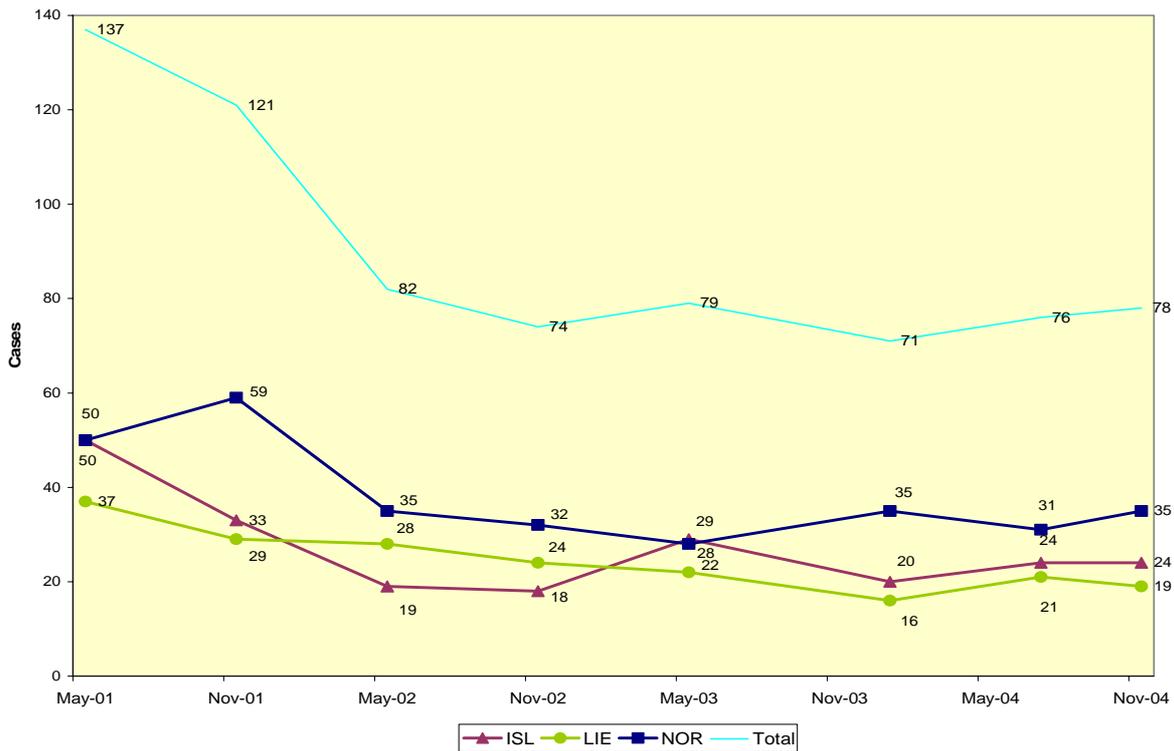
	ISL	LIE	NOR	Total EFTA
Letters of formal notice	23	10	29	62
Reasoned opinions	1	8	5	14
Cases referred to the EFTA Court	0	1	1	2
Total open cases	24	19	35	78

Since May 2004, the number of open infringement cases against the EFTA States has risen slightly from 76 to 78 (**figures 6 and 7**). With four additional cases, now 35, Norway is responsible for the increase. The number of cases against Liechtenstein has gone down to 19 from 21, whereas Iceland still has 24 open cases to resolve.

Norway accounts for 45% of the cases, Iceland for 31%, and Liechtenstein for 24%. The higher number of cases against Norway is explained by the fact that around 90% of the complaints received by the EFTA Surveillance Authority concern that country.

As was the case in the July 2004 Scoreboard, the increase in the number of letters of formal notice reflects the increase in the transposition deficit. The resolution of a number of cases during the last half year has resulted in the number of reasoned opinions having decreased.

Figure 7: All open infringement 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 latest Internal Market Scoreboards.

In November 2004, two cases referred by the Authority were before the EFTA Court. One case concerns Liechtenstein requirements that at least one member of the management board and the executive management of banks must be resident in that country. The other case relates to Norwegian legislation requiring up-front payment of contract completion costs for the establishment of life assurance contracts⁵.

3.2 Infringement cases - 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

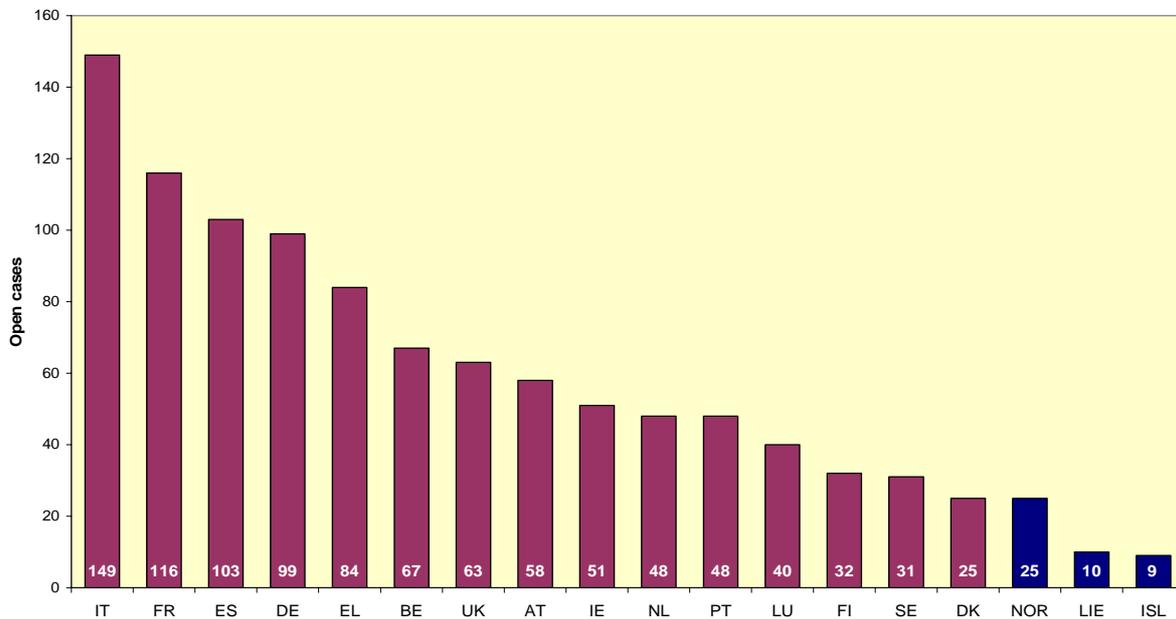
⁵ The decision to refer this case to the EFTA Court had been taken on 15 November 2004. The submission had, however, not yet been lodged at that date.

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.

The figure below focuses on the second category. Both the EFTA Surveillance Authority and the European Commission include this figure in their Scoreboards to indicate the infringement problems faced by the EEA States in addition to mere non-transposition.⁶

When directives are not applied correctly in practice, citizens and businesses are often deprived of their rights. This was pointed out by the Internal Market Strategy 2003-2006⁷ in which EU Member States were called upon to reduce the number of infringements against them by 50% by 2006.

Figure 8: Infringement cases due to non-conformity or incorrect application



Source EU figures: European Commission's Implementation Report Scoreboard No 15.

Note: Open infringement cases due to non-conformity or incorrect application on 15 November 2004.

The total number of cases against the EFTA States due to non-conformity or incorrect application now stands at 44 (figure 8), two more than in July 2004.

Out of the total number of infringement cases, those initiated due to non-conformity or incorrect application make up 38% for Iceland, 53% for Liechtenstein and 71 % for Norway.

The number of infringement cases for the three EFTA States remains low compared to similar figures for the EU Member States.

⁶ Figures in EFTA Scoreboards prior to No 9 do not show this distinction and are therefore not fully comparable.

⁷ COM(2003)238 final of 7.5.2003.

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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