

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

July 2005

EFTA SURVEILLANCE
AUTHORITY

INTERNAL MARKET SCOREBOARD No. 16

EFTA STATES

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EFTA SURVEILLANCE AUTHORITY

MAIN CONCLUSIONS FROM THE 16TH EFTA INTERNAL MARKET SCOREBOARD

- The average transposition deficit for the EFTA States has decreased to 1.4%, down from 1.7% in the January 2005 Scoreboard.

- The transposition deficits of the three EFTA States have converged, with Norway increasing its backlog to 1.2%, Iceland remaining unchanged at 1.4%, and Liechtenstein decreasing its backlog to 1.7%. Both Norway and Iceland meet the interim target of a transposition deficit of no more than 1.5%. Liechtenstein has reduced its deficit by 1% since the January Scoreboard.

- When comparing all 28 EEA States in order of best performance, Norway is ranked sixth, Iceland eight and Liechtenstein 16th.

- The average transposition delay for the EFTA States is 5.9 months, compared with 10.7 months for the EU States.

- The number of open infringement proceedings initiated by the Authority against the EFTA States is now 115. This figure has increased over the last half year, but the number of infringement proceedings against the EFTA States is still low when compared with similar figures for the EU States.

- The Scoreboard shows that, overall, the EFTA States are performing well with regard to implementation of EEA rules (*acquis communautaire*).

INTRODUCTION

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 Norway,² thus ensuring, by and large, the same possibilities for business and individuals in those countries.

The benefits of the Internal Market include:

- free trade on equal terms within the EEA, leading to more competition and lower prices for consumers;
- the right to seek work and establish yourself in 28 States across Europe;
- competition between service providers, and hence more innovation and better services; and
- more cross-border investment within the EEA.

The Internal Market does not deliver benefits automatically. A prerequisite for the Internal Market to function is to have equal conditions for competition, based on common, homogenous rules across the 28 States that are parties to the EEA Agreement. These rules have to be adopted, transposed into national law and properly enforced.

Directives are an essential instrument in the regulation of the Internal Market

An essential 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.³ 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 made by the EEA Joint Committee. The obligation on the EFTA States to transpose a directive into national law is triggered by such decisions.

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 and correct 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.

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.

³ Another type of legal instrument used when regulating the Internal Market is a regulation. Regulations have to be made part of the internal legal order of the EEA States as such, *i.e.* they do not leave room for the EFTA States to choose the method of implementation. Regulations, therefore, are not part of the implementation statistics in the Scoreboard. At present, 779 regulations have been incorporated into the EEA Agreement. Furthermore, the Agreement includes 958 decisions.

The findings in this Scoreboard are based on the situation on 30 April 2005. On this date, 1559 Internal Market directives were part of the EEA Agreement.⁴

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;
- the 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.

What the Internal Market Scoreboard does not tell us

The Internal Market Scoreboard gives an overview of whether the EFTA States notify transposition on time. The Scoreboard transposition figures do 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 their obligations under the EEA Agreement.

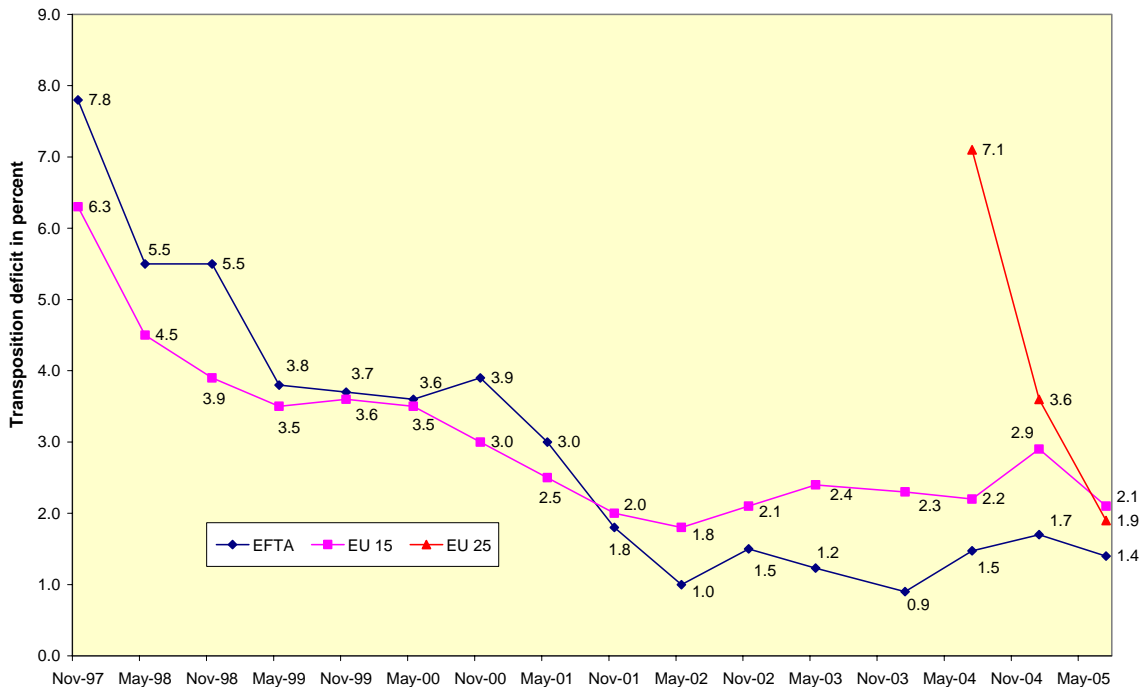
⁴ The corresponding figure for the EU is 1604 Internal Market directives.

TRANSPOSITION OF INTERNAL MARKET DIRECTIVES

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 time.⁵ 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: The EFTA States' average transposition deficit is back on track



Note: Transposition deficit for the EFTA States, the EU 15 and EU 25, situation as per 30 April 2005. Source EU figures: Internal Market Scoreboard N°14 - July 2005.

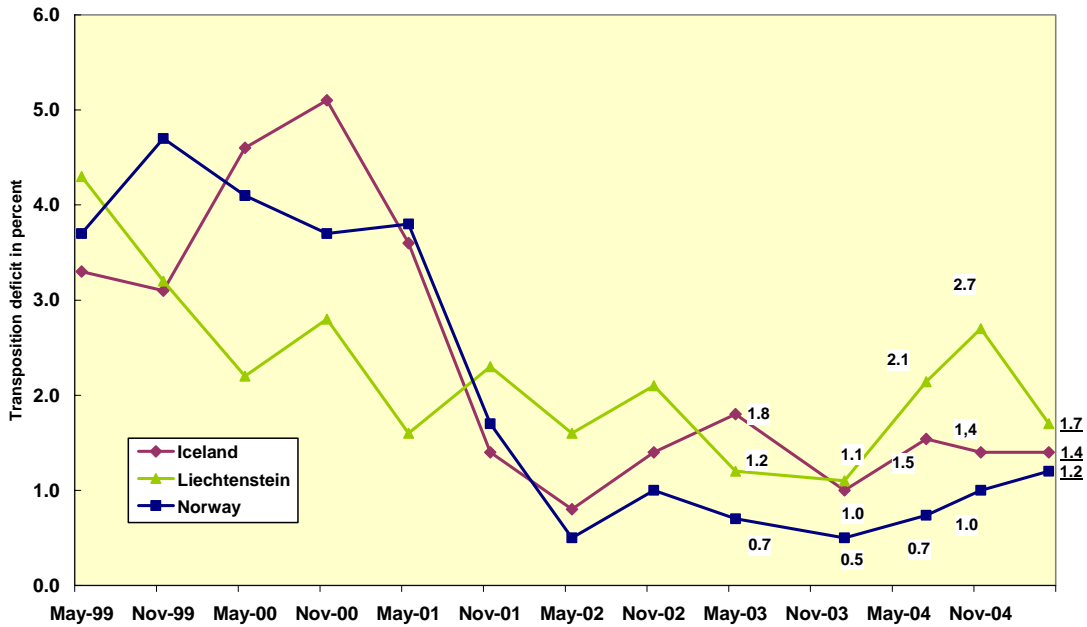
The average transposition deficit for the EFTA States seen together now stands at 1.4% (**figure 1**). Thus, the EFTA States have managed to turn the past year's negative trend and are now within the 1.5% interim target. In absolute figures, the 1.4% deficit implies that the EFTA States are late with 67 notifications of national transposing measures.

The EU average transposition deficit is 1.9%, down from almost the double in November last year. This decrease is due not least to the fact that the ten new EU Member States (EU

⁵ The transposition deficit shows the proportion of Internal Market directives not yet notified to the EFTA Surveillance Authority as fully transposed.

10) now have an average transposition deficit as low as 1.7%, which is lower than that of the 15 “old” Member States (EU 15).

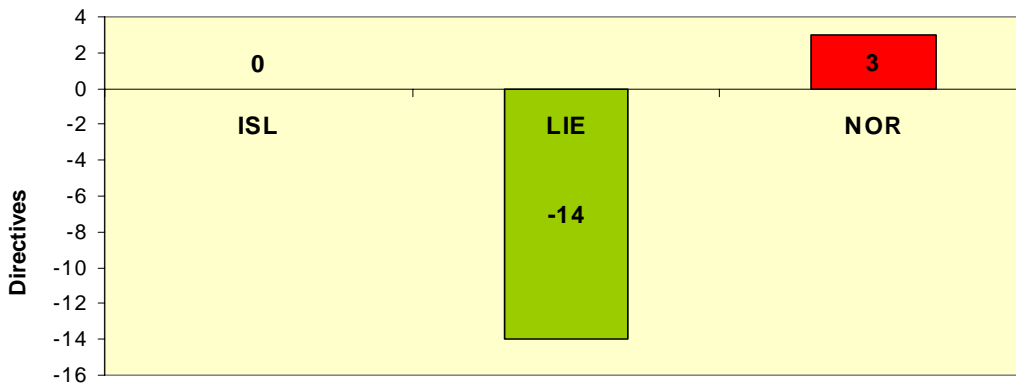
Figure 2: Liechtenstein succeeds in reducing its transposition deficit



Note: Comparison of rates of failure to implement EEA Internal Market directives (transposition deficit) between May 1999 and April 2005.

Figure 2 shows that the decrease in the EFTA States’ average transposition deficit is due to Liechtenstein’s decrease from 2.7% to 1.7%, *i.e.* not far above the 1.5% target. With a transposition deficit of 1.4%, Iceland still lives up to the interim target of 1.5%. Norway’s deficit is increasing for the third time since November 2003. With a deficit of 1.2%, Norway, nevertheless, is still the best performing EFTA State in this respect.

Figure 3: EFTA States’ development of transposition backlog since the previous Scoreboard

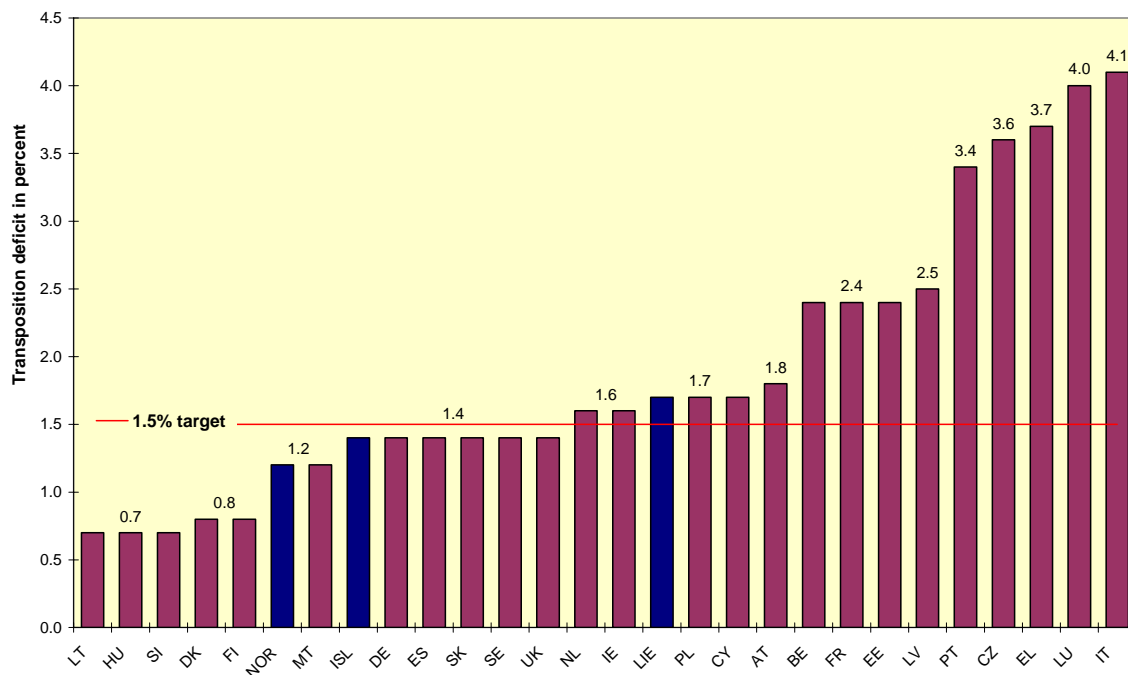


Norway’s backlog of the number of directives not transposed has increased by three (20%), while Liechtenstein’s backlog has decreased by 14 (34%) (**figure 3**). Iceland’s backlog remains unchanged compared to January this year.

Within the EU, 16 Member States perform at least as well as in the previous Scoreboard, with Malta having managed to reduce its backlog of overdue directives by 598. Nine EU Member States have increased their backlog - most of these are “old” Members States.

Comparing the 28 EEA States

Figure 4: Norway sixth in the EEA class of 28, Iceland eight and Liechtenstein 16th



Source EU figures: The European Commission’s Internal Market Scoreboard N°14 - July 2005.

Among the 28 EEA States, Norway now ranks no. six (**figure 4**). In the last two Scoreboards, Norway has ranked no. one. Iceland falls back to no. eight (from fourth place) and Liechtenstein is ranked no. 16 (down from no. 14). The new EU Member States Lithuania, Hungary and Slovenia are at the top, all with a 0.7% deficit.

How late are the EFTA States in transposing EEA directives?

Ensuring timely and correct transposition of directives is a continuous process. It requires a constant 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 potentially undermines the functioning of the Internal Market.

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 particular 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.

Iceland and Liechtenstein still live up to the “zero tolerance” target set by the Barcelona European Council for directives whose transposition is two or more years overdue. Norway has one such case. The compliance date for *Directive 2001/83/EC on medicinal products for human use* was in June 2002. On 31 May 2005, almost three years later, the directive had still not been transposed into Norwegian law.

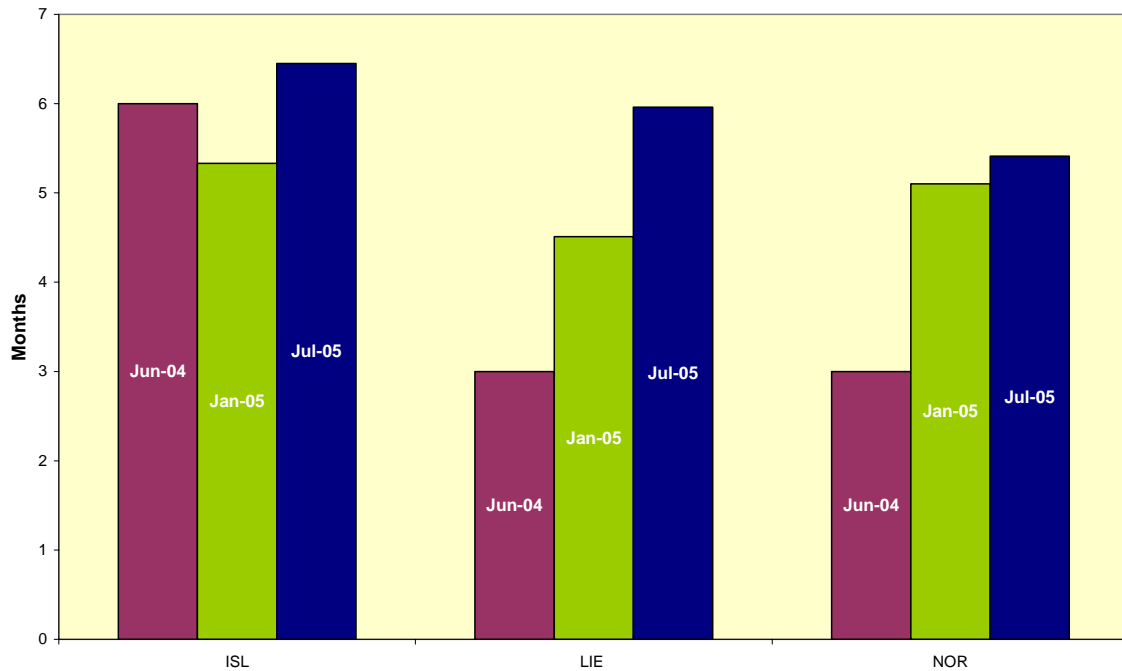
For Liechtenstein and Norway, 68 and 65%, respectively, of the non-transposed directives have a transposition delay of less than six months, indicating that the transposition delays are caused by delays in legislative processes rather than political unwillingness to transpose directives into national law (**figure 5**). For Iceland, the corresponding figure is 53%.

Figure 5: Breakdown of the EFTA States' transposition delay

| Length of delay | Number of directives delayed | | | | | |
|---------------------|------------------------------|----------|-------|-----------|-------|-----------|
| | ISL | | LIE | | NOR | |
| | 01/05 | 07/05 | 01/05 | 07/05 | 01/05 | 07/05 |
| Less than 6 months | 11 | 9 | 23 | 15 | 9 | 11 |
| 6 to 12 months | 7 | 6 | 10 | 5 | 3 | 5 |
| 12 to 24 months | 0 | 2 | 3 | 2 | 1 | 0 |
| More than 24 months | 0 | 0 | 0 | 0 | 1 | 1 |

Note: Number of overdue Internal Market directives for which no notification had been received by 31 May 2005, broken down by length of delay.

Figure 6: Transposition delays have increased for the three EFTA States



Note: Development of the EFTA States' transposition delay.

Figure 6 shows the average delay in the transposition of those directives that are not transposed on time. The average transposition delays for the three EFTA States are: Norway 5.4 months, Liechtenstein 5.9 months, and Iceland 6.5 months. The overall delay for the three countries seen together is 5.9 months. In the EU 25, the overall average for directives which are not transposed on time is 10.7 months.

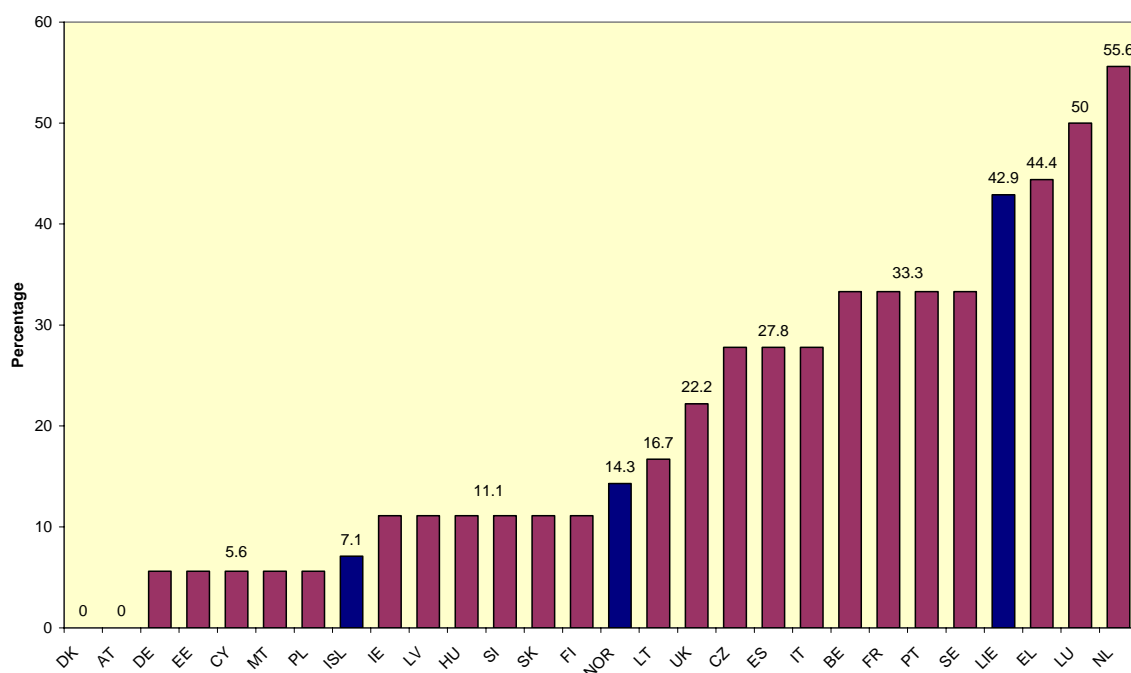
WHICH SECTORS CAUSE PARTICULAR PROBLEMS FOR THE EFTA STATES?

Certain sectors of EEA legislation cause more problems for the three EFTA States than others.

The financial services sector

The Financial Services Action Plan (FSAP), presented by the European Commission in 1999⁶, sets out more than 40 measures – legislative and non-legislative – to be adopted by 2005. One of the aims of the FSAP is to ensure the continued stability and competitiveness of the EU financial markets. Of the 42 measures, 23 are directives, of which 14 should already have been transposed by the EFTA States.

Figure 7: Financial services law transposition deficit – Liechtenstein needs to improve



Note: Comparison of rates of failure to implement EEA Internal Market directives (transposition deficit) included in the Financial Services Action Plan. The number of directives counted in the statistics is 18 for the EU States and 14 for the EFTA States.

Source EU figures: The European Commission's Internal Market Scoreboard N°14 - July 2005.

Liechtenstein has failed to implement six of the 14 FSAP directives for which the transposition deadline has already passed (**figure 7**). This transposition backlog represents 43%, and places Liechtenstein among the poorer performers, together with Greece, Luxembourg and the Netherlands. Among the directives that remain to be implemented by

⁶ COM (1999)232, 11 May 1999.

Liechtenstein are *Directive 2002/92/EC on Insurance mediation*, and *Directive 2002/86/EC on Employees' involvement in European companies*. *Directive 2002/13/EC on Solvency margins for non-life insurance undertakings* and *Directive 2002/83/EC on Life assurance* have been notified as only partially implemented.

Norway is late with the transposition of two FSAP directives, while the figure for Iceland is one. Hence, Iceland is among the countries that have the best FSAP transposition rate. *Directive 2002/65/EC on Distance Marketing of Financial Services* and *Directive 2002/65/EC on Insurance mediation* have not been notified as transposed by Norway. The latter directive has been notified as only partially transposed by Iceland.

Technical barriers to trade, information society services, transport and veterinary regulation are other areas which need attention

Iceland's transposition deficit relates first of all to legislation aimed at removing technical barriers to trade (11 directives) and the transport sector (four directives).

In addition to lagging behind in implementing the Financial Services Action Plan (six directives), Liechtenstein has problems in particular with the transposition of measures regulating audiovisual and electronic communications services (seven directives).

Norway is also late with transposition of rules relating to technical barriers to trade (eight directives) as well as rules concerning veterinary control (six directives).

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 itself, 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.

INFRINGEMENT PROCEEDINGS

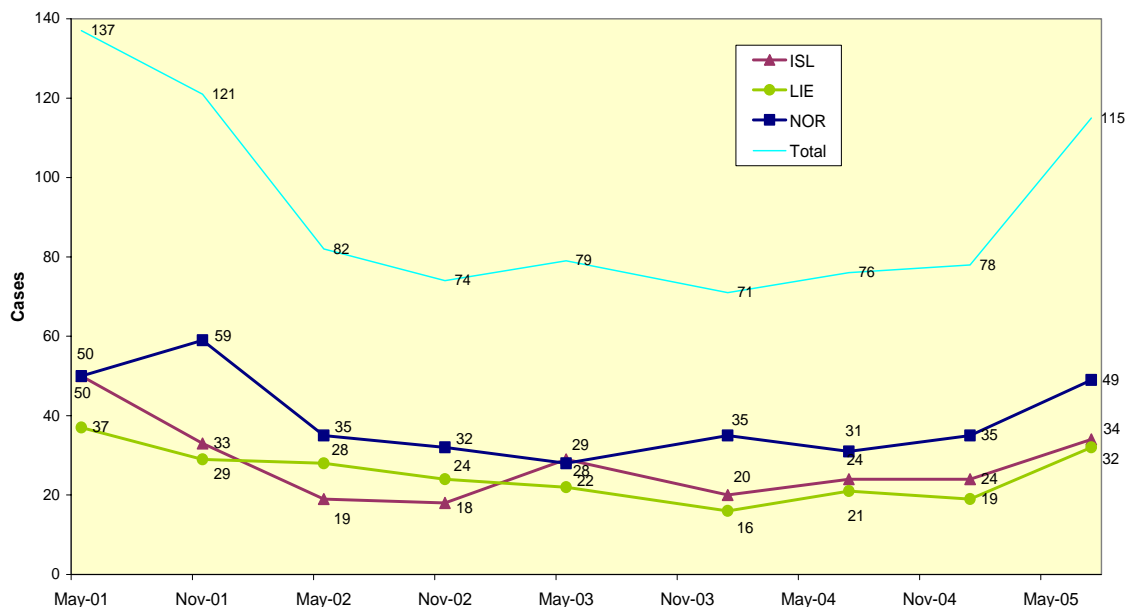
If the EFTA Surveillance Authority considers that an EFTA State has failed to fulfil an obligation under the EEA Agreement, it may initiate formal infringement proceedings. Such infringement proceedings are identical to those initiated by the European Commission.

To the extent possible, the Authority endeavours to solve all matters by informal means, through contact with the national administrations concerned. Formal infringement proceedings will be opened only where an informal exchange of views fails to solve the problem at hand.

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 the matter is not resolved 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.

All infringement cases

Figure 8: 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 seven latest Internal Market Scoreboards.

On 30 April, 115 infringement cases against the EFTA States were open with the Authority (**figure 8**).⁷ This represents an increase of more than 47% since November 2004. The increase concerns all three EFTA States. The number of cases against Liechtenstein rose by 68%. For Iceland and Norway the figures were 42 and 40% respectively.

Figure 9: All open infringement cases against the EFTA States on 30 April 2005

| | ISL | | LIE | | NOR | | EFTA | |
|----------------------------------|-----------|-----------|-----------|-----------|-----------|-----------|-----------|------------|
| | 01/05 | 07/05 | 01/05 | 07/05 | 01/05 | 07/05 | 01/05 | 07/05 |
| Letters of formal notice | 23 | 27 | 10 | 22 | 29 | 41 | 62 | 90 |
| Reasoned opinions | 1 | 7 | 8 | 9 | 5 | 6 | 14 | 22 |
| Cases referred to the EFTA Court | 0 | 0 | 1 | 1 | 1 | 2 | 2 | 3 |
| Total open cases | 24 | 34 | 19 | 32 | 35 | 49 | 78 | 115 |

Whereas Iceland’s increase is mainly made up of reasoned opinions (up six from November 2004), Norway’s and Liechtenstein’s increases are due to a higher number of letters of formal notice (both up 12) (**figure 9**).

Of all open cases, 30% concern Iceland, 28% Liechtenstein and 43% Norway.

Undertakings and citizens may submit a complaint to the EFTA Surveillance Authority if they believe that their rights under the EEA Agreement are infringed upon by an EFTA State. The number of complaints has increased over the last years and, on 30 April 2005, represented 37% of the 115 open cases.

The vast majority of the complaints received by the Authority concern Norway. Of the complaints cases open on 30 April, 90% related to that country, with the remaining 10% equally divided between Iceland and Liechtenstein.

In April 2005, three cases referred by the Authority and relating to the Internal Market were pending before the EFTA Court⁸. These cases concern:

- Liechtenstein requirements that at least one member of the management board and of the executive management must reside in the territory of that country⁹;
- Norwegian provisions requiring up-front payment of certain costs in relation to insurance contracts; and
- Norwegian rules requiring residence in Finnmark or parts of northern Troms counties in order to qualify for the “Finnmark supplement” to family allowances.

⁷ An open infringement case is defined as a case in which a letter of formal notice has been sent and which has not yet been resolved.

⁸ This figure does not include state aid cases or competition cases.

⁹ The EFTA Court delivered its ruling in this case ([E-8/04](#)) on 1 July 2005.

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

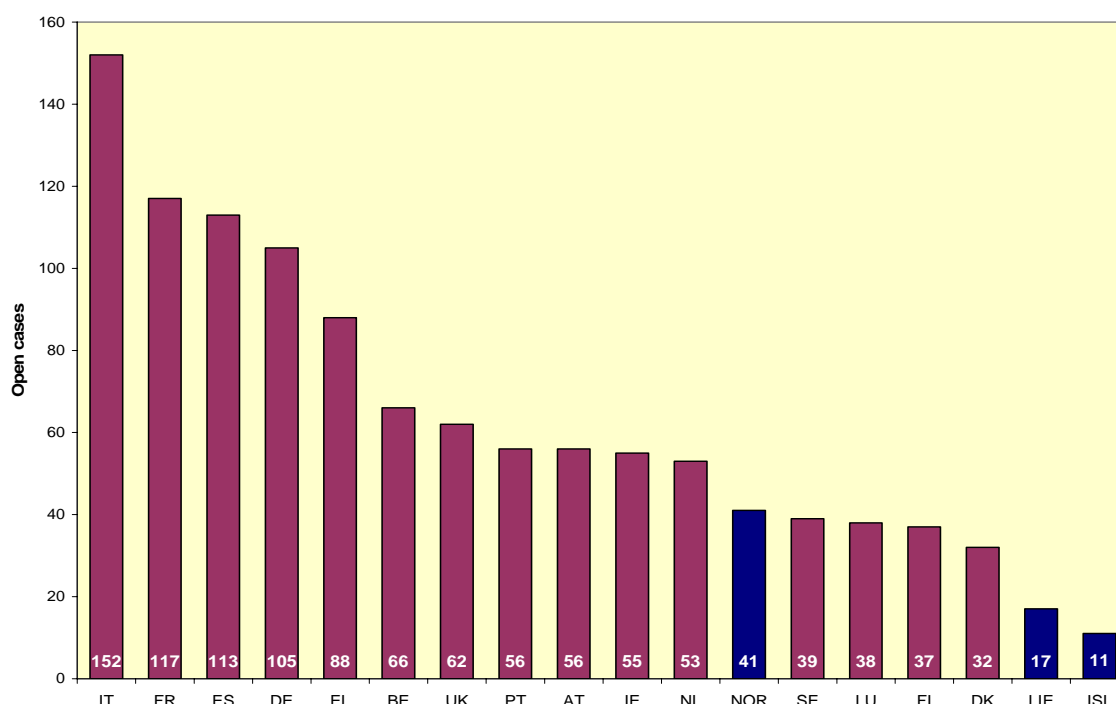
Infringement cases can be divided into two categories. The first relates to late implementation, meaning that directives are not transposed into the national legislation of the EFTA States within the set time limits. Infringement cases in this category are generally clear-cut and therefore seldom the 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, concludes at a later stage that the national legislation does not fully conform to the requirements of the relevant directive or that the EFTA State otherwise does not comply with EEA Internal Market rules and principles.

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.¹⁰

When directives are not applied correctly in practice, citizens and businesses are often deprived of their rights.

Figure 10: Infringement cases due to non-conformity or incorrect application



Note: Open infringement cases due to non-conformity or incorrect application on 15 November 2004. Source EU figures: The European Commission’s Internal Market Scoreboard N°14 - July 2005

¹⁰ Figures in EFTA Scoreboards prior to No 9 do not show this distinction and are therefore not fully comparable.

The total number of cases against the EFTA States falling into the more serious category – cases opened because of non-conformity or incorrect application – has increased by 57% since November last year. This increase is particularly high with respect to cases against Norway.

Out of the total number of infringement cases, those initiated due to non-conformity or incorrect application make up 83% for Norway, 53% for Liechtenstein and 32% for Iceland.

Comparing all the 28 EEA States, the number of infringement proceedings against the EFTA States is relatively low (**figure 10**). The number of cases against Liechtenstein and Iceland are the lowest of the 28 States, while Norway is the seventh lowest.¹¹

SOLVIT – solving problems arising from the misapplication of Internal Market rules

In 2002, the European Commission set up SOLVIT – a complementary problem solving mechanism offering problem solving without need for legal action. The three EFTA States all participate in SOLVIT. Whereas formal infringement proceedings led by the EFTA Surveillance Authority and the European Commission may last for years before a solution is found, complaints entered into SOLVIT should be solved within 10 weeks.

SOLVIT operates through a network of SOLVIT centres based in the national administration of each EEA State¹² and deals with cases of misapplication of Internal Market rules by national, regional and local administrations. Problems treated by the SOLVIT centres may relate to, for instance, mutual recognition of diplomas, social security or mutual recognition of products.

SOLVIT is operated by Commission, who maintains statistics on the SOLVIT case flow for all the 28 EEA States. According to the Commission statistics, the Norwegian and Icelandic SOLVIT centres submitted three cases each through the SOLVIT network from 1 May 2004 to 30 April 2005, to be solved by other SOLVIT centres. In the same period, the Norwegian SOLVIT centre handled four cases submitted by its counterparts in the other EEA States. The Icelandic centre did not handle any cases, and the Liechtenstein centre did not submit or handle any cases during the reporting period.

¹¹ This comparison does not include the 10 new EU States.

¹² The Commission has issued a Recommendation of 7 December 2001 on principles for using SOLVIT – the Internal Market Problem Solving Network (OJ L 333, 15.12.2001). The Recommendation has been integrated into the EEA Agreement.

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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