

# 1. Introduction

## ***EEA States apply common rules***

The objective of the Agreement on the European Economic Area (*EEA Agreement*) is to establish a dynamic and homogeneous European Economic Area between the EC 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 EC, 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 *Internal Market Scoreboard - EFTA States* at the same time as the European Commission's Internal Market Scoreboard. The present document contains Scoreboard No 10.

## ***The Scoreboard measures EFTA States' performance***

The *Internal 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 Internal Market rules in the three EFTA States, that is with the implementation by *Iceland, Liechtenstein and Norway* of the Internal Market directives that are part of the EEA Agreement and were to be complied with by 15 April 2002. Furthermore, the Scoreboard contains certain information concerning the infringement proceedings commenced by the Authority against these States in order to ensure correct use of the Internal Market rules.

## ***1403 EEA directives***

The Commission's *Internal Market Scoreboard No 10* deals with 1497 Internal Market directives that were part of the *acquis communautaire* on 15 April 2002. On the same date, the number of Internal Market directives that were part of the EEA Agreement, and form the basis of the statistics set forth in the present *Internal Market Scoreboard - EFTA States No 10*, was 1403.

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

There are two main reasons why the number of Internal Market directives is lower in the Authority's Scoreboard than in that of the Commission. First, some directives, for example directives dealing with various aspects of the citizenship of the European Union, fall outside the scope of the EEA Agreement. Second, although of EEA relevance, some of the 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 Internal Market directives

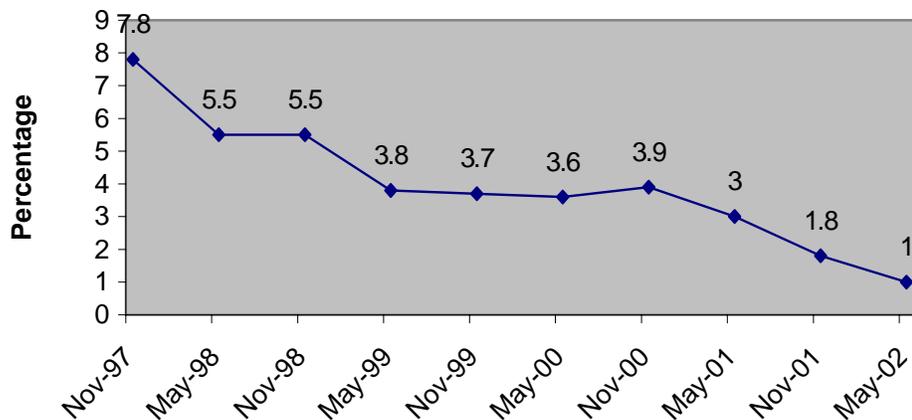
**Late implementation disrupts the functioning of the EEA and limits its benefits**

Timely and correct implementation of Internal Market directives is a cornerstone of a homogeneous European Economic Area based on common rules and equal conditions of competition. A different situation undermines this aim, disrupts the functioning of the EEA Agreement and prevents business and individuals from fully benefiting from the Agreement.

**Measurement shows whether progress has been made**

By measuring the performance of the EFTA States concerning their implementation of directives, the Authority can easily demonstrate whether they are making progress, both with regard to previous performance and when compared to each other and the EC Member States. The fact that such measurement takes place hopefully encourages the EFTA States to perform as well as possible. Furthermore, the results of the measurement can act as one of the indicators of the good functioning of the EEA Agreement and the EFTA States' commitment to it.

Figure 1: Average transposition deficit of the EFTA States:



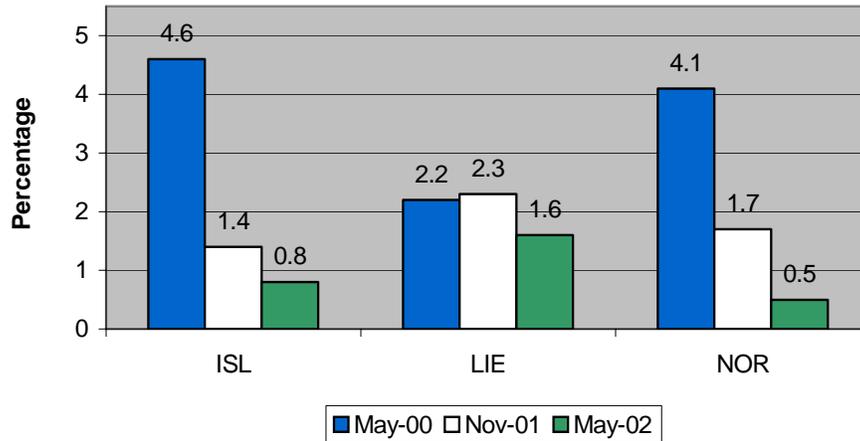
**“Transposition deficit”**

The so-called *transposition deficit* indicates whether the EFTA States have fulfilled their obligations relating to timely implementation of Internal Market directives. The term is used to determine 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 average deficit stands at 1 %, down from 3 % one year ago**

The current average transposition deficit is 1 % compared to 1,8 % in November and 3 % one year ago, as can be seen from *figure 1*. The improvement has been substantial and has moved the EFTA average firmly below the EC average, which currently stands at 1,8 %.

**Figure 2: Comparison of rates of failure to implement EEA Internal Market directives (transposition deficit) between May 2000, November 2001 and May 2002:**



***Iceland and Norway have reduced their deficits considerably, Liechtenstein is also making progress***

Figure 2 sets out the implementation situation in each of the EFTA States and compares the level of the current transposition deficit to the situation six months and two years ago. Both Norway, with 0,5 % deficit, and Iceland, with 0,8 % deficit, have continued to make progress. Liechtenstein, with 1,6 % deficit has also improved its performance during the last six months.

Both Norway and Iceland have, therefore, achieved the aim of 1,5 % deficit to be reached by spring 2002, set by the Stockholm European Council for the EC States. Liechtenstein is close. 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.

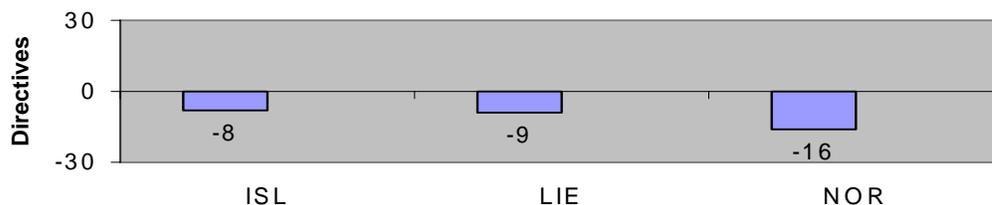
***Comparison between the 18 EEA States – Norway on the top***

A comparison between the 18 EEA States shows that the EFTA States can, on this occasion, be proud of themselves. Norway (0,5 %) would come on top of the EEA class, in front of Sweden (0,7 %) and Denmark (0,7 %). Iceland (0,8 %) holds 4<sup>th</sup> place, followed by Finland (0,9 %), the Netherlands (1,3 %), the United Kingdom, Spain and Belgium (all with 1,5 %). Liechtenstein (1,6 %) would come in 10<sup>th</sup> place followed by Italy (1,7 %).

***It is easy to slide backwards and it takes time and effort to make up for that***

The question is whether Norway and Iceland, after the significant progress made during the last year, can maintain these good results and even improve their performance. In this respect, it should be kept in mind that due to the ongoing nature of the implementation process it is easy to slide backwards if momentum is lost and it can take time and effort to make up for that. As an example, despite making good progress during the last six months, Liechtenstein's deficit is now the same as it was one year ago.

**Figure 3: Increase/decrease in the number of outstanding directives**



***All the EFTA States have reduced their backlog of directives not implemented***

Figure 3 shows the change in the number of directives that have not been fully implemented in time, the so-called backlog, compared to the situation in Scoreboard No 9. As can be seen, all the EFTA States are reducing their backlog in this respect, whereas in the EC 8 out of 15 States are making progress. If the improvement by the EFTA States is calculated in percentages, Norway has reduced its backlog by 70 % since the last Scoreboard, Iceland by 42 % and Liechtenstein by 29 %. When compared to the reduction of the backlog by EC States, Norway (16) would come 2<sup>nd</sup> to the UK (20), followed by Belgium and Austria (11). Liechtenstein (9) and Iceland (8) would be come in 5<sup>th</sup> and 6<sup>th</sup> place.

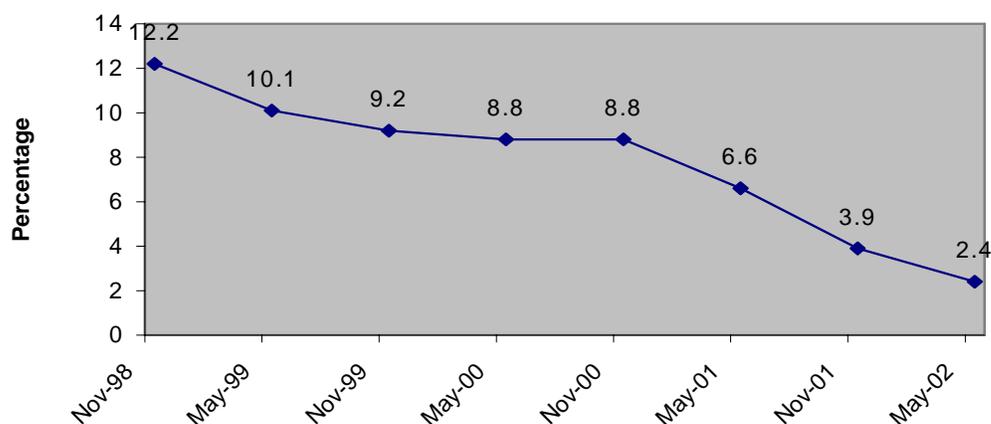
**Figure 4: State of EFTA States' transposition planning and future implementation:**

	ISL	LIE	NOR
Number of directives for which transposition forecast was requested in February 2002	42	38	37
Number of directives for which no planning provisions have been received	0	0	0
Number of directives overdue and to be implemented by the end of 2002	21	29	18

***Full implementation requires constant 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 4 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 all provided transposition forecasts to the Authority. This planning, which has been improving, might be one of the reasons for better results in the Scoreboard for the EFTA States.

**Figure 6: Comparison of percentage rates of EEA Internal Market directives not transposed by all EFTA States (fragmentation factor):**



*The Internal Market is becoming less fragmented in the EFTA States*

To achieve the aim of a truly Internal 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 Internal Market is fragmented. *Figure 6* 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 2,4 %. This can be compared to a “*fragmentation factor*” of 7,7 % for the 15 EC Member States. As can be seen there has been a steady improvement in the level of the “*fragmentation factor*” for the EFTA States.

**Figure 7: Fragmentation factor by sector of EEA Internal Market directives:**

		%	ISL	LIE	NOR
1	Social Security (1)	100,0 %	1	0	0
2	Audio-Visual Services (4)	50,0 %	0	2	0
3	Labour Law (16)	25,0 %	3	2	0
4	Consumer Protection (14)	21,4 %	1	3	1
5	Telecommunications (22)	18,2 %	0	4	1
6	Energy (7)	14,3 %	0	1	0
7	Intellectual Property (8)	12,5 %	0	1	1
8	Environment (60)	6,7 %	1	2	3
9	Transport (83)	6,0 %	1	4	0
10	Financial Services (45)	4,4 %	0	2	0
	<b>AVERAGE OF ALL SECTORS</b>	<b>2,35 %</b>			

**All EFTA States have specific areas where they have problems regarding implementation**

Figure 7 indicates the most problematic areas of implementation where more than 4 % of the Internal Market directives have not been 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. *Liechtenstein* needs to improve its performance in the sectors of audiovisual & telecommunication services, where the combined transposition deficit is 23 % and in that relating to consumer protection, where the deficit is 21 %. *Iceland* seems to have problems when it comes to implementation in the field of labour law, where it has a transposition deficit of 19 %. *Norway* needs to make progress when it comes to the environment, where it has a transposition deficit of 5 %.

### 3. 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 the matter. 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 8: All open infringement cases on 28 February 2002:**

	ISL	LIE	NOR	EFTA
Letters of formal notice	14	19	27	60
Reasoned opinions	5	9	7	21
Cases referred to the EFTA Court	0	0	1	1
<b>Total open cases</b>	<b>19</b>	<b>28</b>	<b>35</b>	<b>82</b>

**In total, there were 82 infringement cases open with the Authority**

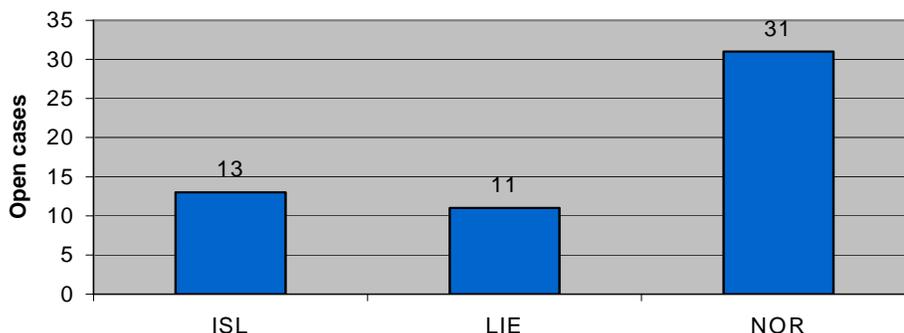
On 28 February 2002, 82 infringement cases against the EFTA States remained open with the Authority. Compared to the situation six months ago, when 121 cases were open, the number of all open cases has decreased by almost a third. The main reason is that, consistent with the EFTA States' implementation improvement, many simple cases relating to late implementation have been closed.

As can be seen from *figure 8*, of the cases open, approximately three in every four open cases were at the stage of a letter of formal notice and only one case remained with the EFTA Court. That case was against *Norway* and concerned 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. In March 2002, the EFTA Court found Norway's behaviour in this matter to constitute a breach of the EEA Agreement. At the time of reporting, *Norway* accounted for 35 open cases, *Iceland* for 19 and *Liechtenstein* for 28 cases.

***Two categories of infringement cases - focus put on non-conformity or incorrect application***

Infringement cases can be divided in two categories. The first relates to late implementation, meaning that directives are not transposed into the national legislative framework of EFTA States within set time limits. The second relates to non-conformity or incorrect application of EEA provisions, which 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 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). The focus in this chapter (except for figure 8 on "All open cases") will be on cases arising from non-conformity or incorrect application, excluding cases of late implementation.<sup>1</sup>

**Figure 9: Open infringement cases due to non-conformity or incorrect application on 28 February 2002:**

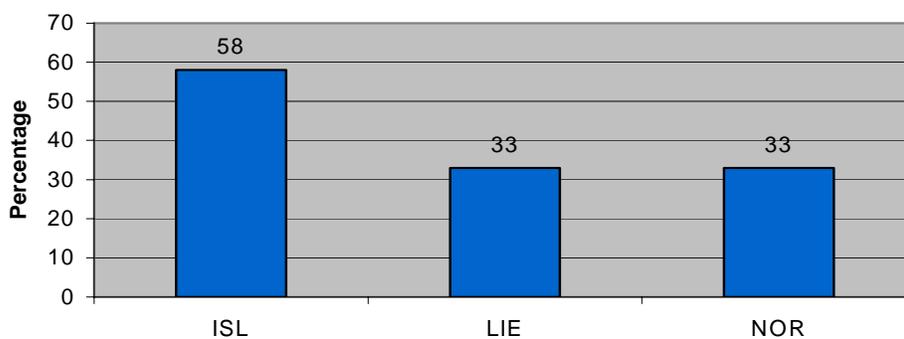


<sup>1</sup> This method is also used in the Commission Scoreboard. Because of this, infringement figures from Scoreboards previous to No 9 may not be fully comparable.

**Most current cases are open against Norway, but the overall number of open cases has gone down**

Figure 9 sets forth information on the number of infringement cases opened due to non-conformity or incorrect application of EEA provisions. On 28 February 2002, there were 55 such cases open compared to the 66 cases, which were open six months earlier. More than half of those cases (31) currently open were against Norway. 13 cases have been opened against Iceland and 11 against Liechtenstein. Looking at the situation for the 18 EEA countries as a whole, the EFTA States would rank at the lower end and would have the fewest open infringement cases of this type. In fourth place, after the EFTA States would come Luxembourg (32), Sweden (37), Finland (38) and Denmark (40). Most cases in the EEA are open against France (205).

**Figure 10: The proportion of early closures of infringement cases due to non-conformity or incorrect application:**



**Iceland is the EEA State which most quickly solves infringement cases**

Figure 10 sets forth information on the proportion of cases closed after the receipt of letters of formal notice<sup>2</sup>. As cases are normally 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 to the individuals and/or economic operators faced with restrictions. As can be seen from figure 10 there are some differences between the EFTA States in settling disputes at an early stage of infringement proceedings. Iceland did best with 58 % of the relevant cases closed swiftly, whereas cases against Norway (33 %) and Liechtenstein (33 %) seem to take longer. In fact, all the EFTA States have considerably improved their performance from the situation prevailing in last Scoreboard. In comparison the proportion of swiftly resolved cases on the EU side runs from 50 % down to 22 %. Iceland would rank in 1<sup>st</sup> place among the 18 EEA States, whereas Norway and Liechtenstein would come in 9<sup>th</sup> and 10<sup>th</sup> place.

## 4. Conclusions

<sup>2</sup> Number of cases closed by 28 February 2002 as a percentage of the number of all cases opened between 1 July 1999 and 30 June 2001.

From this Scoreboard the following conclusions can be drawn:

- The EFTA States, especially *Iceland* and *Norway*, have improved their implementation performance significantly during the last year. It now remains to be seen whether they can make the success sustainable. The dynamic nature of the EEA Agreement, with constant updating of the EEA Agreement, leaves no room for complacency.
- Although the EFTA States have improved their performance, there is a scope for improvement and all the EFTA States seem to have certain problematic areas, as demonstrated in *figure 7*.
- When it comes to infringements, the number of open cases has diminished compared to the last Scoreboard. All the EFTA States improved their performance when measured as the number of infringement cases closed early.