

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

## ***The Authority and the European Commission ensure fulfilment of EEA obligations***

In parallel with the European Commission in the European Community, 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 is published. The present document contains Scoreboard No 11.

## ***The Scoreboard measures EFTA States' progress or lack of progress***

The *Internal Market Scoreboard - EFTA States* is a tool to measure progress regarding several issues. First, it measures timely transposition of EEA rules by the EFTA States; that is 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 1 October 2002. Second, it contains information concerning the infringement proceedings commenced by the Authority against these States in order to ensure correct use of the Internal Market rules. Third, it attempts to put forward a positive measurement of the functioning of the internal market – the Internal Market Index - in *Iceland and Norway* (figures were not available for *Liechtenstein*).

## ***1392 EEA directives***

The European Commission's *Internal Market Scoreboard No 11* deals with the 1475 Internal Market directives that were part of the *acquis communautaire* on 1 October 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 11*, stood at 1392.

## ***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 in the Authority's Scoreboard is lower than in that of the European 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 to the Agreement.

## 2. Implementation of Internal Market directives

***EEA aims at creating an Internal Market with a common legal framework.***

***The rules have to be effective to benefit individuals and economic operators***

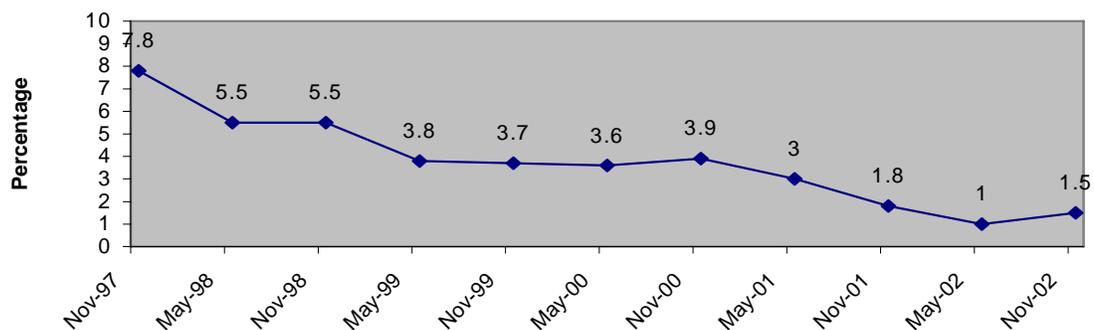
***Measurement shows whether progress has been made***

The EEA Agreement was designed to create an area in which goods, services, persons and capital would circulate freely and where there would be equal conditions of competition. To thus achieve the aim of an Internal Market, the same legislative framework has to be applied throughout the EEA.

It is, however, of little use to adopt rules, if they are not put into effect in a manner that benefits individuals and economic operators. It is the task of the governments of the EFTA States to ensure that EEA rules are correctly implemented in a timely manner into the national legislation.

Measurement of the EFTA States' performance regarding implementation of directives, demonstrates whether they are making progress, both as compared to previous performance and as compared to each other and the EU Member States. Furthermore, the results thereof can act as an indicator of the good functioning of the EEA Agreement and the EFTA States' commitment to it.

**Figure 1: Average transposition deficit of the EFTA States:**



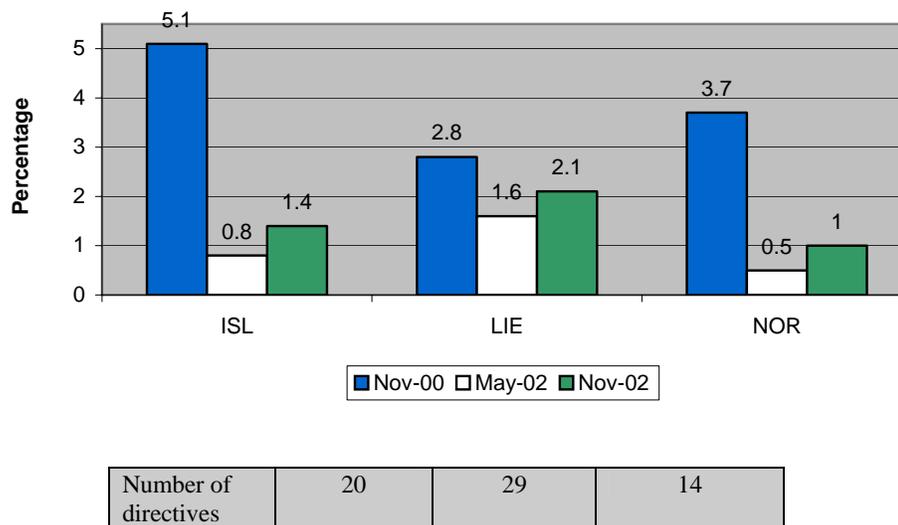
***“Transposition deficit”***

***The average deficit stands at 1,5 %, going up after 2 years of improvement***

The so-called *transposition deficit* indicates whether the EFTA States have fulfilled their obligations relating to the timely implementation of Internal Market directives. The term is used to establish 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.

As can be seen from *Figure 1*, the current average transposition deficit is 1,5 % compared to 1 % in May 2002 and 1,8 % one year ago. The deficit is rising again after two years of steady decrease, indicating a certain loss of momentum by the EFTA States. Nevertheless, it is still below the European Community average, which currently stands at 2,1 %.

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



***The transposition deficit has gone up in all the EFTA States***

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 ago and two years ago. The number of outstanding directives for each State is featured below the figure. Figure 2 demonstrates that the transposition deficit has risen during the last six months in all the EFTA States, although it is much better than the situation two years ago. Norway has 1 % deficit, Iceland has 1,4 % deficit and Liechtenstein has 2,1 %. Both Norway and Iceland have, again, achieved the aim of being below 1,5 % deficit, set by the European Council for the EU States.

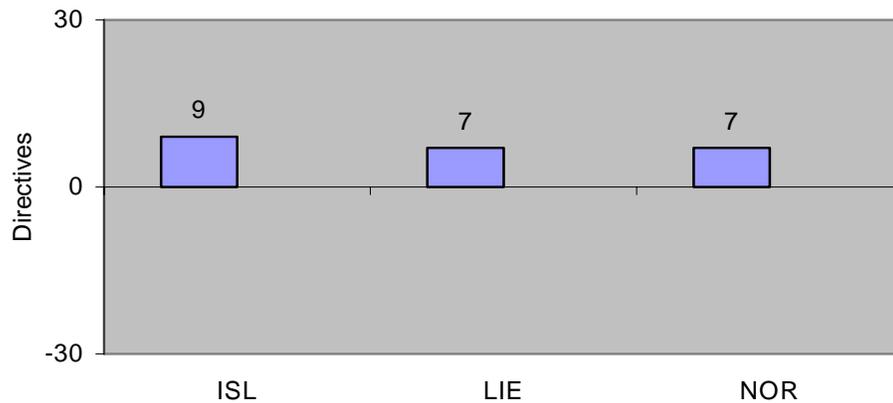
***Comparison between the 18 EEA States – Norway number 4***

A comparison between the 18 EEA States shows that the EFTA States are doing relatively well. Norway (1 %) comes in 4<sup>th</sup> place, after Sweden (0,4 %), Finland (0,6 %) and Denmark (0,7 %). Iceland (1,4 %) is in 6 - 7<sup>th</sup> place with the UK and the Netherlands (1,3 %) slightly ahead. Liechtenstein (2,1 %) stands at 10<sup>th</sup> place.

***The EFTA States' seem to have lost momentum and slid back***

In Scoreboard No 10, it was pointed out that even though Norway and Iceland had made significant progress, it might be difficult to maintain the momentum. It was further recalled that, due to the on-going nature of the implementation process, the States could slide backwards if the implementation rate were to slow down. This has now happened, although the margins are very low. Hopefully, the EFTA States will again demonstrate progress in the next Scoreboard. The performance of Liechtenstein is especially worrying and without improvement it will demand further attention from the EFTA Surveillance Authority. It should, however, be mentioned that, in general, the same backward trend appears among the EU States concerning transposition deficits.

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



***All the EFTA States have an increased backlog of unimplemented directives***

Figure 3 shows the change in the number of directives that have not been fully implemented within time limits set, the so-called backlog, compared to the situation in Scoreboard No 10. As a consequence of rising transposition deficit, the backlog of unimplemented directives has increased in all the EFTA States. The same holds true for the majority of EU States. If the change for the EFTA States is calculated in percentages, *Norway's* backlog has doubled since the last Scoreboard, *Iceland's* has risen by more than three-fourths and *Liechtenstein's* by one-third.

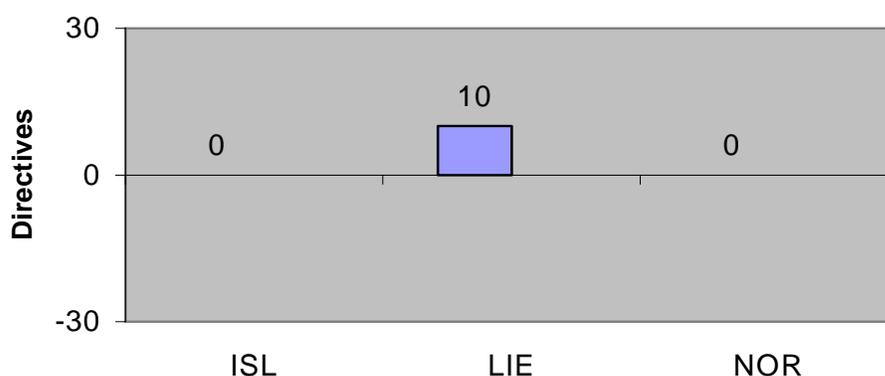
**Figure 4: State of EFTA States' transposition planning and future implementation:**

	ISL	LIE	NOR
Number of directives for which transposition forecast was requested in August 2002	46	51	33
Number of directives for which no planning provisions have been received	0	0	0
Number of directives for which implementation was overdue and to be implemented by 31 December 2002	27	31	20

***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, in light of the situation when the Scoreboard was prepared. It also shows that the EFTA States seem to take active steps to make plans regarding their transposition of directives. They also all provided transposition forecasts to the EFTA Surveillance Authority.

**Figure 5: “Zero tolerance” – Number of directives overdue since 1 March 2001**



***Both Iceland and Norway pass the “zero tolerance” target, whereas Liechtenstein has to improve***

Figure 5 demonstrates the number of directives that have not been implemented and have been overdue since 1 March 2001. Neither *Iceland* nor *Norway* have such “old sins”, while *Liechtenstein* has 10 directives outstanding. The EFTA Surveillance Authority has started infringement proceedings concerning six of those directives. Proceedings concerning four of these have already reached the stage of a reasoned opinion and might end before the EFTA Court. Compared to the EU States, only Finland has a clean sheet like Iceland and Norway, whereas Sweden has one directive on record and Portugal, the Netherlands and Denmark have two “old” directives outstanding. Liechtenstein comes in the same category as Luxembourg (10), Greece (10), Germany (11) and France (14). The Barcelona European Council in March 2002 set a “zero tolerance” target to be reached by the EU States concerning directives overdue by two years.

**Figure 6: Fragmentation factor by sector of EEA Internal Market directives:**

		%	ISL	LIE	NOR
1	Social Security (1)	100,0 %	1	0	0
2	Audiovisual Services (4)	50,0 %	0	2	0
3	TBT: Construction Plant&Equipment (4)	25,0 %	1	0	0
4	Labour Law (18)	22,2 %	3	1	1
5	Consumer Protection (14)	21,4 %	1	3	0
6	Energy (10)	20,0 %	1	2	0
7	Telecommunications (22)	13,6 %	0	3	1
8	Intellectual Property (8)	12,5 %	0	1	1
9	Financial Services (42)	11,9 %	3	5	3
10	Transport (86)	8,1%	1	6	0
11	Environment (62)	6,5%	3	3	0
	<b>AVERAGE OF ALL SECTORS</b>	<b>3,16%</b>			

***Some areas are problematic for the EFTA States***

Figure 6 demonstrates the most problematic areas of implementation, where more than 6,5 % 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. *Liechtenstein* needs to improve its performance relating to consumer protection, where it has a transposition deficit of 21 % and in the sectors of audiovisual and telecommunication services, where the combined deficit is 19 %. *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 financial services, where it has a transposition deficit of 7 %.

***The “fragmentation factor” in the EFTA States stands at 3,2 %***

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. The current “fragmentation factor” for the EFTA States stands at 3,2 % compared to 2,4 % six months ago, which is a development in the wrong direction. This can, however, be compared to a “fragmentation factor” of 9 % for the 15 EU Member States (7,7 % six months ago). It can therefore be said that the Internal Market/EEA is only operating on approximately 90 % capacity.

### 3. Infringement proceedings

***Failure to fulfil EEA obligations can lead to 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 proceedings are identical to those initiated by the European Commission within the European Community. 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 EFTA Surveillance Authority notifies the Government of the EFTA State concerned of its opinion that an infringement has taken place. This is done by a *letter of formal notice*, inviting the Government to submit its observations on the matter within a specified 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 to the State in question. In a reasoned opinion, the Authority defines its final position on the matter in dispute, states the reasons on which that position has been based, and requests the Government to take the measures necessary to bring the infringement to an end. Should the Government fail to comply, the Authority may bring the matter before the *EFTA Court*, whose judgment is binding on the State concerned.

**Figure 7: All open infringement cases on 31 August 2002:**

	ISL	LIE	NOR	EFTA
Letters of formal notice	11	15	19	45
Reasoned opinions	7	9	12	28
Cases referred to the EFTA Court	0	0	1	1
Total open cases	18	24	32	74

***In total, there were 74 infringement cases open with the Authority***

On 31 August 2002, 74 infringement cases remained open with the EFTA Surveillance Authority against the EFTA States. This is compared to 82 open cases in May 2002. The number of open infringement cases has been in decline because of improved levels of implementation by the EFTA States. This situation could, however, easily be reversed if their transposition deficits were to rise as non-implementation of a directive is a breach of the EEA Agreement in itself and the consequent infringement proceedings relatively straight forward.

***60 % of open cases are at the stage of a letter of formal notice***

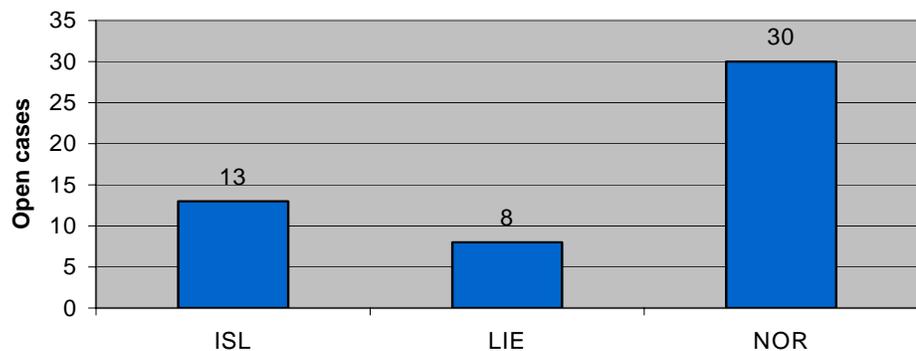
Figure 7 shows that approximately 60 % of cases remaining open in the EFTA Surveillance Authority were at the stage of a letter of formal notice. Only one case remained with the EFTA Court. That case was against *Norway* and concerned the fact that Norway does not permit men to apply for certain academic posts, which the Authority considers to breach the rules of equal treatment between men and women. At the time of reporting, *Norway* accounted for 43 % of the total open cases, *Iceland* for 24 % and *Liechtenstein*

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

for 33 %.

Infringement cases can be divided into 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. 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 conform totally to the requirements of the relevant directive or that the application by the EFTA State is in one way or another incorrect. Usually, there are few disputes about breaches falling into 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 7* on “All open cases”) will be on cases arising from non-conformity or incorrect application, excluding cases of late implementation.<sup>1</sup>

**Figure 8: Open infringement cases on 31 August 2002 due to non-conformity or incorrect application:**

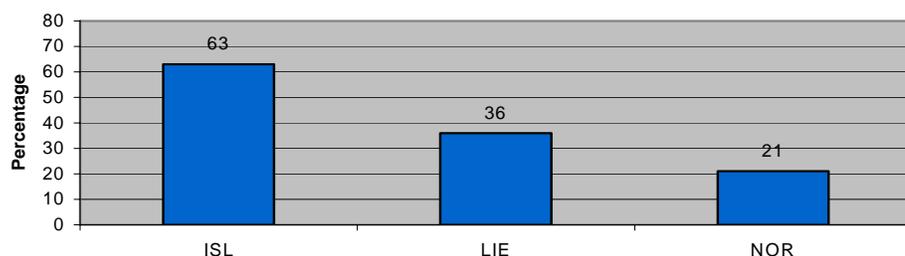


**Most current cases are open against Norway, but the overall number of open cases has declined slightly**

*Figure 8* sets forth information on the number of infringement cases opened due to non-conformity or incorrect application of EEA provisions. On 31 August 2002, there were 51 open cases in this category, compared to 55 cases, six months earlier. More than half of those cases (30) currently open were against *Norway*. 13 cases have been opened against *Iceland* and eight against *Liechtenstein*. Looking at the situation for the 18 EEA countries as a whole, the EFTA States would rank at the lower end of the infringement scale and would have the fewest open infringement cases of this type. In fourth place, after the EFTA States would come Sweden (32) then Luxembourg (33), Denmark (33) and Finland (39). Most cases in the EEA are open against France (216).

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

**Figure 9: The proportion of early closures of infringement cases due to non-conformity or incorrect application:**



Note: Number of cases closed by 31 August 2002 as a percentage of the number of cases opened between 1 January 2000 and 31 December 2001.

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

*Figure 9* provides information on the proportion of cases closed after the receipt by EFTA States of letters of formal notice. 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. Swift solution of problems and removal of barriers is of great importance for the good functioning of the EEA Agreement. It is of even greater importance to individuals and/or economic operators faced with restrictions. *Figure 9* demonstrates that there are some differences between the EFTA States concerning settlement of disputes at an early stage of infringement proceedings. *Iceland* did best with 63 % of the relevant cases closed swiftly, whereas resolution of cases against *Liechtenstein* (36 %) and *Norway* (21 %) seem to take longer. In fact, *Iceland* and *Liechtenstein* have improved their performance from the situation prevailing in the last Scoreboard, whereas the proportion of early closures has gone down in relation to *Norway*. In comparison, the proportion of swiftly resolved cases on the European Community side runs from 47 % down to 22 %. *Iceland* would rank in 1<sup>st</sup> place among the 18 EEA States, whereas *Liechtenstein* would come in 9<sup>th</sup> and *Norway* at the end, in company with *Finland* (22 %) and *Denmark* (22 %).

## 4. Internal Market Index – EFTA States

***The Internal Market Index (IMI) is a tool to measure the functioning of the Internal Market***

The Internal Market Index constitutes a tool to measure the functioning of the Internal Market in the EFTA States.<sup>2</sup> The objective of the Internal Market Index is to provide some measure of the effects of Internal Market policy as defined in the broadest terms by the free circulation of goods, services, capital and workers within the EEA. It should be seen more as a reality check than as a precise scientific exercise.

***The Authority's IMI evaluates the progress of Iceland and Norway in parallel to the EU IMI***

In its Scoreboard, the European Commission decided to assess the progress of the EU Member States since 1992 based on the Internal Market Index.<sup>3</sup> The EFTA Surveillance Authority decided that it would be appropriate to evaluate the progress of the EFTA States, that are Contracting Parties to the EEA Agreement, based on the same methodology.<sup>4</sup>

***Base indicators are linked to the core business of the Internal Market***

The Internal Market Index focuses on a set of indicators that are intended to ascertain the impact of the Internal Market by measuring “on the ground” regarding the “core business” of the Internal Market. This impact is assumed to be reflected by variables, such as, e.g. intra-EEA trade, the value of published public procurement, intra-EEA foreign direct investment, electricity prices or sectoral and ad hoc state aid.

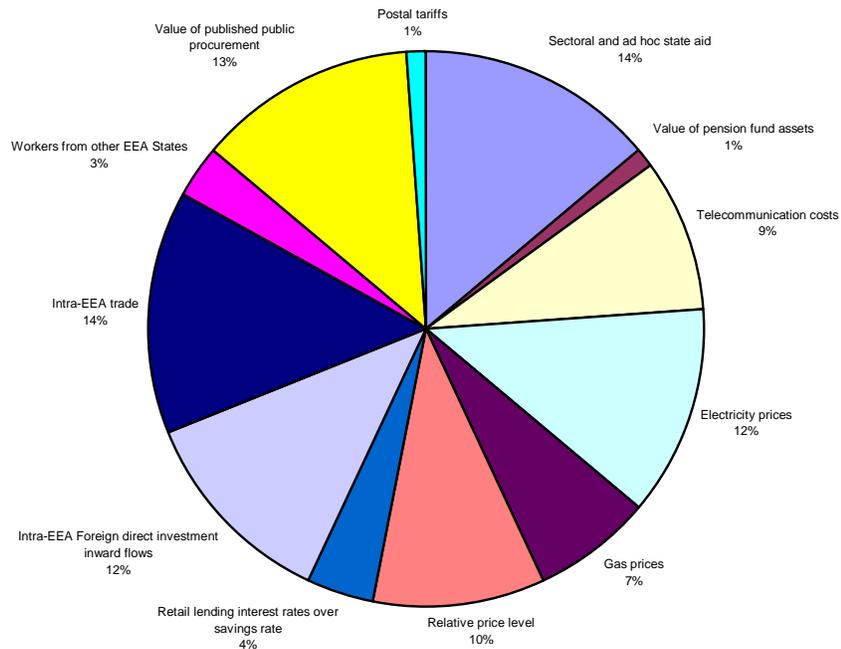
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<sup>2</sup> *Liechtenstein* is not included in this survey because of lack of the necessary data.

<sup>3</sup> The European Commission published a first version of the EU Internal Market Index in the November 2001 Scoreboard. The 2002 EU Internal Market Index is a revised and improved version of the EU Internal Market Index first edition. Similarly to the EU Internal Market Index, the Commission's Joint Research Centre (JRC) has computed all index values for the Internal Market Index - EFTA States. This index is the result of close cooperation between the statistical offices of the EFTA States, the EFTA Surveillance Authority, the EFTA Secretariat, the JRC and the Commission. An in-depth report on the methodology and calculation of the index is available at: [http://europa.eu.int/comm/internal\\_market/en/update/score/index.htm](http://europa.eu.int/comm/internal_market/en/update/score/index.htm).

<sup>4</sup> Although the EEA Agreement only entered into force on 1 January 1994, the Internal Market Index - EFTA States is calculated as from 1992 for the sake of coherence with the EU Internal Market Index.

**Figure 10: Weighting of base indicators for the Internal Market Index; state aid, intra-EEA trade, public procurement, foreign direct investment and the cost of utilities are the most important indicators:**



Note: Average weighting of variables provided by EU Member States (except Luxembourg). Each Member State was asked to identify important variables and allocate 100 points among these important variables. All EEA States, which make up part of this survey have equal weight in the overall average and in the index.

**Figure 10 explains how the IMI is computed. It is the weighting of 12 base indicators**

Figure 10 indicates the way in which the Internal Market Index is computed. It is a weighted sum of 12 base indicators.<sup>5</sup> Their relative importance was decided by canvassing the members of the Internal Market Advisory Committee (IMAC), the group of EU Member State officials who advise the European Commission on Internal Market matters. The EFTA Surveillance Authority has also used the same weighting in respect of *Iceland* and *Norway* in order to have a comparable measurement.

**The eight indicators with the most weighting are analysed**

As illustrated by *Figure 10*, state aid, intra-EEA trade, public procurement, foreign direct investments and the cost of utilities have been given the most weight. Although all base indicators have been used for the calculation of the Internal Market Index, only the eight most weighted indicators are subject of the following analysis.<sup>6</sup>

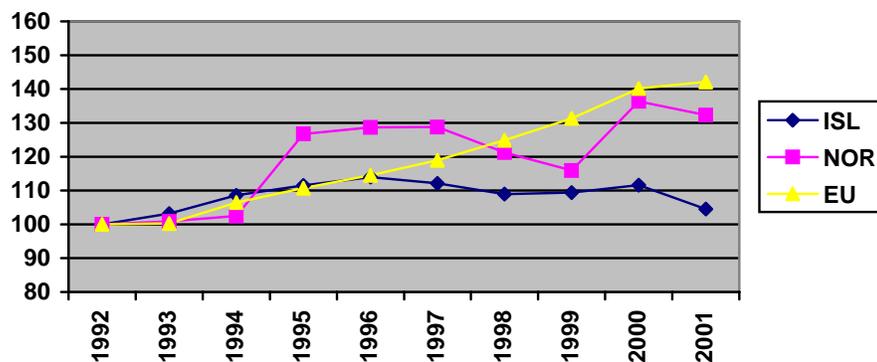
<sup>5</sup> Further information concerning the 12 base indicators are available at the Authority's homepage: <http://www.eftasurv.int/information/internalmarket/dbaFile2598.html>.

<sup>6</sup> The variables 'workers from other EEA States', 'value of pension funds', 'retail lending interest rates over savings rate' and 'postal tariffs' are therefore discarded from the following analysis.

***The IMI is a relative exercise which does not compare the performance of the EEA States***

In general, although all the data is not available for all EEA States, it is possible to measure the extent to which the index has increased in each EEA State. This does not permit the EEA State's relative Internal Market performance to be ranked. A rapid increase in the index may simply indicate that an EEA State started from a low level. A slow increase could easily be a sign that an EEA State started from a level where there was little room for further improvement. It is, however, possible to check how much the Index has increased in *Iceland* and *Norway* since 1992 – and to identify the base indicators within the Index responsible for the change. An increase indicates overall progress towards the goals of the Internal Market, whereas a decrease would show a reverse trend.

**Figure 11: Index for Iceland and Norway compared to EU-15 index:**



***Figure 11 illustrates that the EFTA States' Indexes increased less than the EU-15 Index***

*Figure 11* illustrates that the Index for *Iceland* and *Norway* increased less than the EU-15 average Index, possibly indicating that the Internal Market has had less impact in these EFTA States than in the EU. The index in *Norway* fluctuates more than the EU-15 Index (with a drop in 1998 and 1999) but improves its score over 10 years by 33 %. *Iceland's* Index chiefly increased in parallel to the EU-15 Index until 1996 but remains static thereafter, even decreasing in 1997, 1998 and 2001.

It is, however, difficult to draw general conclusions from such a finding. Some base indicators have been given high weight. However, their impact on the index may result in it giving a worse impression and lead to a slow down or even a drop in the evolution of the Index. This is, for example, the case for state aid and relative price levels in *Iceland* for the year 2001 and intra-EEA foreign direct investment inward flows (Intra-EEA FDI) in *Norway* for the years 1998 and 1999. Moreover, one of the eight most highly weighted indicators, i.e. gas prices (7 %) is not relevant in *Iceland* and *Norway*.

**Figure 12: Base indicators driving index up and down concerning Iceland and Norway:**

	Has driven index up	Has driven index down
<b>ISL</b>	Intra EEA-trade, Intra-EEA FDI	Relative price levels
<b>NOR</b>	Telecommunication and electricity costs	Relative price levels

***Figure 12 gives examples of indicators driving up or slowing down the EFTA States' Indexes***

*Figure 12* gives examples of base indicators that drive the index up and down in respect of *Iceland* and *Norway*. The relative price levels base indicator, weighted 10 %, slows the Indexes down in both *Iceland* and *Norway* throughout the period 1992 - 2001. This could be an indication that price levels of final private consumption in the two EFTA States have increased more than in the EU. It should also be borne in mind that the price indicators are measured in euro. As a consequence, the Index for the two EFTA States might also be affected by the changes in value of their currencies. On the other hand, telecommunication and electricity costs in *Norway*, which both drove its Index up from 1992 to 2001, may be a sign of a significant development in the liberalisation of those sectors. In *Iceland*, intra EEA-trade has driven up the index throughout the period, in particular as from 1994, possibly illustrating a benefit from the EEA Agreement.

## 5. Conclusions

From this Scoreboard the following conclusions can be drawn:

- The transposition deficit of the EFTA States has increased, indicating a reverse trend from the progress of the last two years. However, the deficit margins are low and the trend is the same within the European Community, so the EFTA Surveillance Authority hopes that this is only a temporary slide backwards.
- The situation regarding *Liechtenstein* and the high number of “old” directives outstanding gives a reason for special concern. The EFTA Surveillance Authority will, if necessary, pursue the aim of full implementation of those directives through infringement proceedings.
- The fragmentation factor has risen above 3 %, which indicates that the Internal Market within the EFTA States is only operating at 97 % capacity. All the EFTA States seem to have certain problematic areas, as demonstrated in *Figure 6*.
- When it comes to infringements, the number of open cases has diminished compared to the last Scoreboard. *Iceland*, in particular, is doing very well as regards early resolution of disputes.
- The Internal Market Index constitutes a tool to measure the functioning of the internal market in two EFTA States, *Iceland* and *Norway*. The progress in those States seems to have been slower than on average in the European Community. *Norway*'s index has fluctuated more than the EU-15 index, whereas *Iceland*'s index has grown sluggishly.