

1. INTRODUCTION

The European Union is preparing to grow from 15 to 25 Member States. At the same time, negotiations are taking place with a view to enlarging the European Economic Area (EEA) from 18 to 28 participating States. The Agreement on the European Economic Area (*EEA Agreement*) creates a European Internal Market that stretches beyond the European Union. For the three EFTA States participating in the EEA (*Iceland, Liechtenstein and Norway*), the EEA Agreement ensures access to an internal market of more than 300 million inhabitants. When the European Economic Area is enlarged to include 28 States, this market will comprise more than 400 million people. If this internal market is to function as intended, it is of paramount importance that the common body of rules and principles that shape it, is correctly implemented by all the participating States on time.

This is the EFTA Surveillance Authority's 12th Internal Market Scoreboard in which the Authority publishes figures comparable to those drawn up by the Commission of the European Community (*European Commission*) in their Internal Market Scoreboard No 12. Both Scoreboards gauge the success of the States participating in the EEA by ensuring compliance with internal market rules and principles. The EFTA Surveillance Authority's Scoreboard does this by providing information on:

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

The present Scoreboard demonstrates that the EFTA States take their obligations under the EEA Agreement seriously. Compared with November 2002, Liechtenstein and Norway have improved their implementation record. Iceland's performance, however, has deteriorated. All three EFTA States now rank among the EEA States that have the lowest transposition deficits.

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

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

Directives are the main instruments used to regulate the Internal Market.

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

How are the figures produced?

Both the EFTA Surveillance Authority and the European Commission maintain statistics on the EEA States' implementation of the Internal Market rules and principles, and on infringement proceedings. The figures in this Scoreboard concerning the EU Member States are provided by the European Commission, and appear in its Internal Market Scoreboard No. 12. The figures concerning the three EFTA States are based on the Authority's own databases. Further information concerning the EFTA States' implementation of Internal Market directives is found at the Authority's website¹.

Differences between EEA and EC acquis

It is important to note that, whereas the Commission Scoreboard No 12 deals with the 1530 Internal Market Directives which were part of the legal basis of the European Community on 15 April 2003, the statistics shown in this EFTA Scoreboard are based on the 1447 Directives that were part of the EEA Agreement on that date². The comparisons made between all the EEA States in this Scoreboard should be read with this in mind.

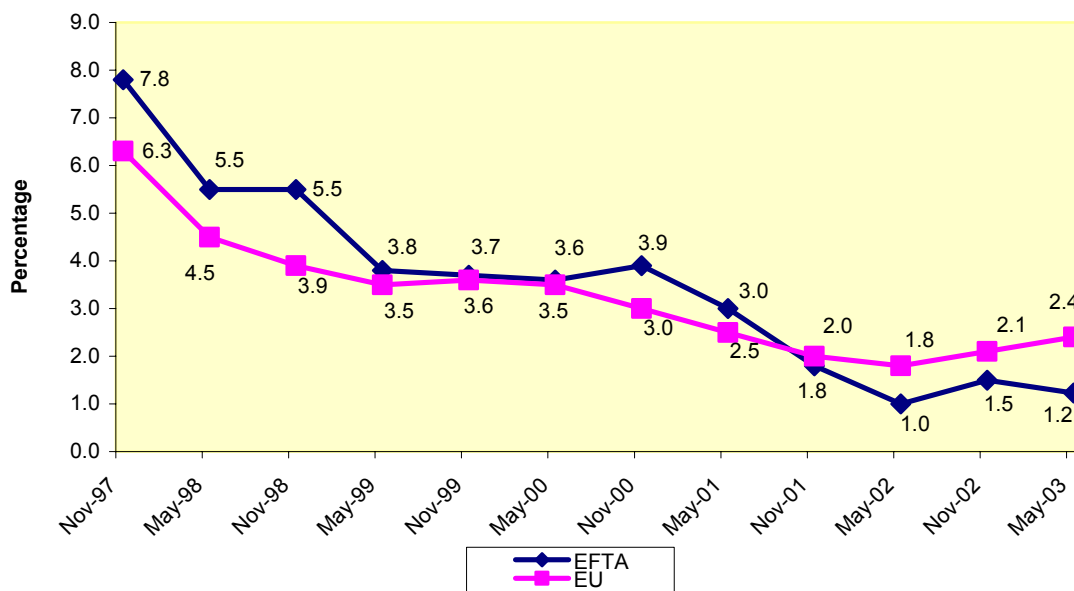
¹ The Authority's website may be accessed at www.eftasurv.int. Information on implementation status is found in "*Information and Publications*" under the heading "[Implementation status – AIDA Database](#)".

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

2. IMPLEMENTATION OF INTERNAL MARKET DIRECTIVES

A major aim for the EFTA Surveillance Authority is to ensure that the EFTA States' transposition deficits are as low as possible. The Authority notes with satisfaction therefore, that, at present, the EFTA States are doing relatively well when it comes to implementation of EEA directives (figure 1). Seen together, Iceland, Liechtenstein and Norway have an average transposition deficit of 1.2 %. This figure compares with a deficit of 2.4 % for the EU-15. After the last Scoreboard's disappointing break in the positive downward trend, the EFTA deficit is again falling. This has not been the case in the European Community, where the average deficit has risen. The Authority interprets this positive trend as an indication that the EFTA States now give high priority to the functioning of the Internal Market. One year ago, however, the EFTA average transposition deficit was even lower. Hence, there is still room for improvement for the EFTA States.

Figure 1: EFTA average transposition deficit is down at 1.2 %



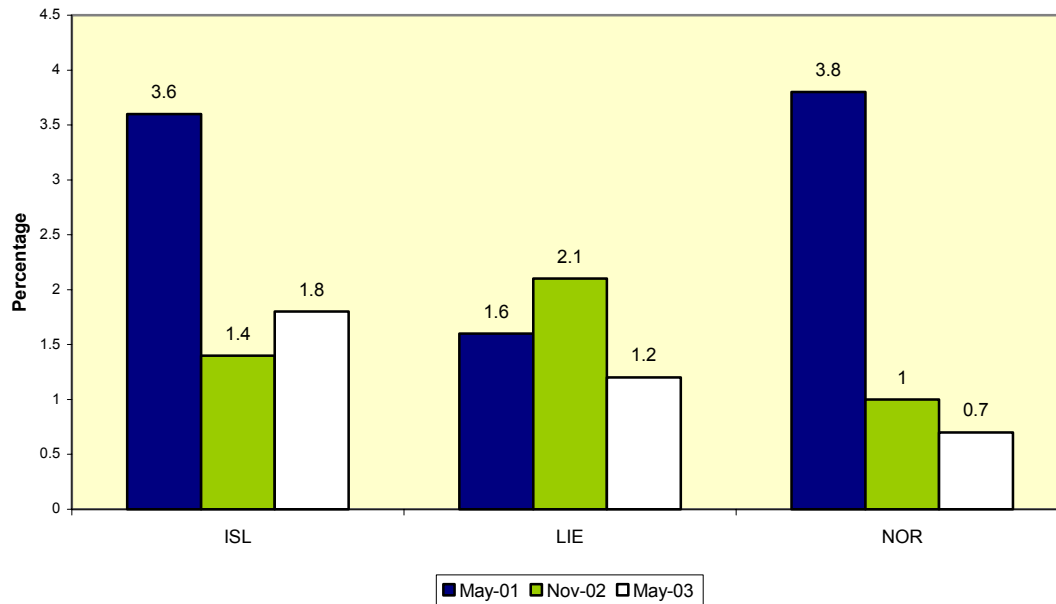
Source EU figures: European Commission's Internal Market Scoreboard No. 12

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

The figures measuring transposition deficits for each EFTA State individually (figure 2) reveal that both Liechtenstein and Norway have made progress. Compared with November 2002, Liechtenstein has reduced its transposition deficit by 43 %, and Norway by 30%. Iceland, on the other hand, has not managed to turn the negative trend shown in the last Scoreboard. Iceland's transposition deficit has increased 29 % since then.

In terms of number of overdue directives yet to be transposed, a deficit of 1.2 % implies that, on 15 April 2003, the EFTA Surveillance Authority was still waiting for 53 notifications of full implementation from the EFTA States. Some of these are directives have been incorporated into the EEA Agreement only recently, while other directives have been overdue for a longer period of time.

Figure 2: EFTA transposition deficits



| | | | |
|----------------------------------|----|----|----|
| Number of outstanding directives | 26 | 17 | 10 |
|----------------------------------|----|----|----|

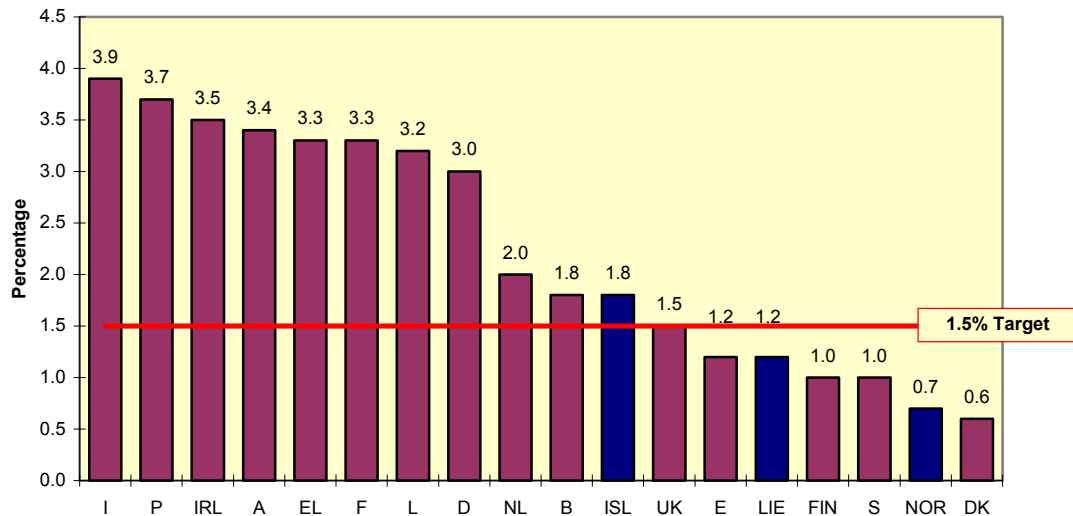
Note: Comparison of rates of failure to implement EEA Internal Market directives (transposition deficit) between May 2001, November 2002 and May 2003

When the 18 EEA States are seen together, all the EFTA States are in the better performing half (figure 3). Norway, ranking as number 2 (up from 4th), has a transposition deficit of 0.7 %. This places Norway together with its Nordic neighbours, at the top end of the table. Liechtenstein, sharing 5th place (up from 10th) with Spain, is close behind with a 1.2 % deficit. Finally, Iceland sharing 8th place (down from 6th) with Belgium, is lagging somewhat behind with a transposition deficit of 1.8 %. As a result, Iceland is the only EFTA State no longer falling within the European Council's 1.5 % target³. This target has also been endorsed by the Authority.

³ The Barcelona European Council of March 2002 set a 1.5 % target, which was renewed at the recent Spring European Council.

It is worth mentioning that one year ago, Norway and Iceland stood at a record 0.5% and 0.8% transposition deficits, respectively.

Figure 3 - An EEA comparison of deficits per State: Two EFTA States within the 1.5 % target



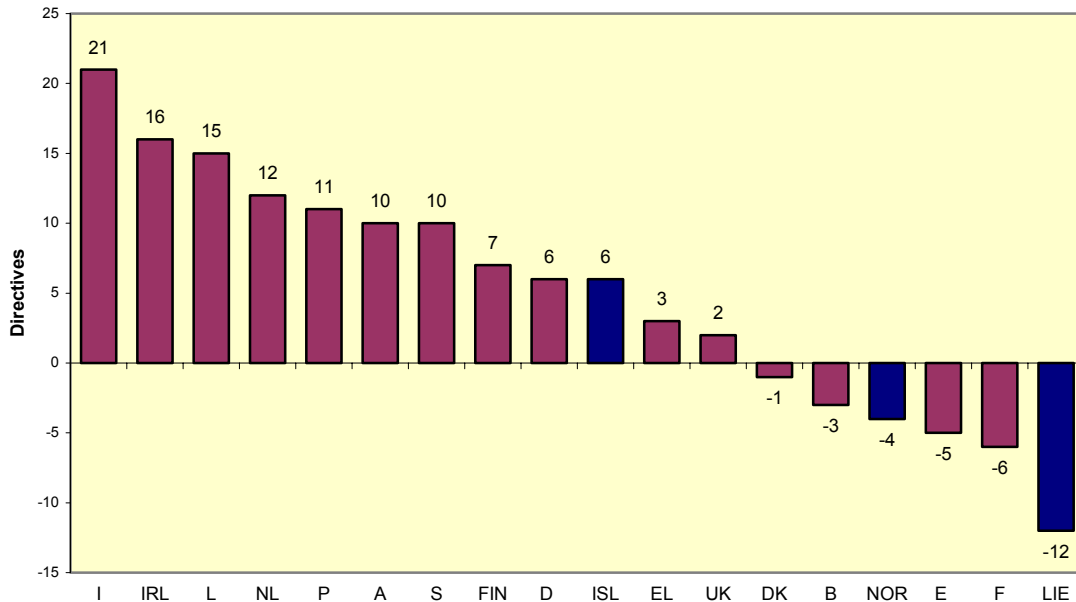
Source EU figures: European Commission’s Internal Market Scoreboard No. 12

The improved transposition deficits for Liechtenstein and Norway are due to these countries’ ability to cut back their backlog of overdue directives⁴. In the last six months, Liechtenstein and Norway have reduced the number of overdue directives by 12 and 4 respectively. On the other hand, Iceland today has 6 more directives to implement than it did at the time of the last Scoreboard, translating into the increased deficit shown above.

The EEA wide comparison in figure 4 shows that the EFTA States are among the best performing half of the EEA States, Liechtenstein being the top scorer, Norway ranking 4th and Iceland sharing 9th place with Germany.

⁴ A directive is said to be overdue once the deadline for it being transposed into national law has expired.

Figure 4: Liechtenstein has reduced its backlog the most since last Scoreboard



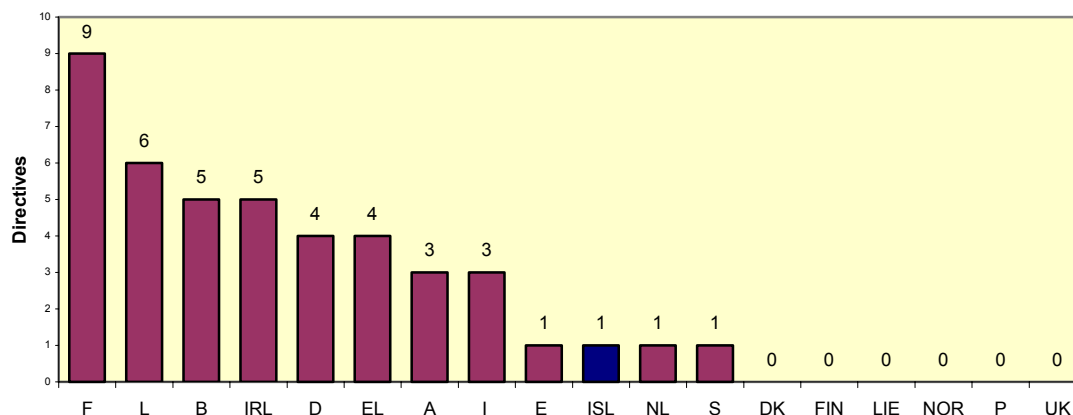
Source EU figures: European Commission's Internal Market Scoreboard No. 12

Note: Change in the transposition performance (number of directives overdue) since the last Scoreboard in November 2002 (backlog)

The Barcelona European Council of March 2002 set a 'zero tolerance' target for directives whose transposition was overdue per 1 March 2001. Among the EFTA States, Iceland has one directive falling in this category. Directive 97/81 on Part-Time Work⁵ was due to have been implemented 20 January 2001. Liechtenstein has worked very well during the last six months and has succeeded in eliminating a backlog of 10 directives that in November 2002 were already more than 2 years overdue. Once more, on an EEA scale, the three EFTA States are among the better performing half (figure 5).

⁵ Council Directive 97/81/EC of 15 December 1997 concerning the Framework Agreement on part-time work concluded by UNICE, CEEP and the ETUC (OJ L 14, 20.1.1998, p. 9). Due to a technical error, this Directive was not mentioned in the Internal Market Scoreboard No. 11.

Figure 5: Iceland has one “old sin” – i.e. a directive overdue for more than two years



Source EU figures: European Commission’s Internal Market Scoreboard No. 12

Note: “Zero tolerance”, i.e. directives overdue by more than 2 years; EEA wide performance per State

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

The Surveillance Authority encourages the EFTA States to prepare transposition of new directives by filling in transposition forecasts twice a year. Figure 6 sets out the workload of the EFTA States to enable them to arrive at a zero deficit by the end of 2003. It also shows that the Icelandic, Liechtenstein and Norwegian national administrations have made transposition forecasts for all the directives that are due to be transposed by the end of 2003. It is important to note that these forecasts do not take account of directives that will be added to the EEA Agreement in the period from 15 April 2003 until the end of the year.

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

| | ISL | LIE | NOR |
|---|------------|------------|------------|
| Number of directives already overdue + directives to be implemented between 15 April 2003 and 31 December 2003. | 47 | 24 | 34 |
| Number of directives for which transposition forecast was requested in February 2003 | 67 | 51 | 60 |
| Number of directives for which no planning provisions have been received | 0 | 0 | 0 |

Delays in transposition is sometimes due merely to the legislative processes in the EFTA States, and the directives are transposed relatively fast after the expiry of the time limits. Directives that have been overdue for a long period of time are of more concern to the Authority. Long delays indicate unwillingness on the part of the State concerned to take the measures necessary to ensure that the Internal Market is functioning. Figure 7 illustrates that Iceland and Liechtenstein both have failed to transpose directives with a transposition time limit between 1 March and 31 December 2001. The table shows an average delay in months for all outstanding directives. All of the directives that Liechtenstein has yet to transpose are relatively old, leading to a high average. In sum, the figures on average delays seem to indicate that, while Iceland and in particular Liechtenstein have generally kept up the transposition of new directives, they have problems with certain directives that remain un-transposed for a long time. Norway, on the other hand, has a shorter average delay that may be due to the length of the legislative process. One important factor in ensuring timely transposition nevertheless seems to be early planning and preparation before directives become part of the EEA Agreement.

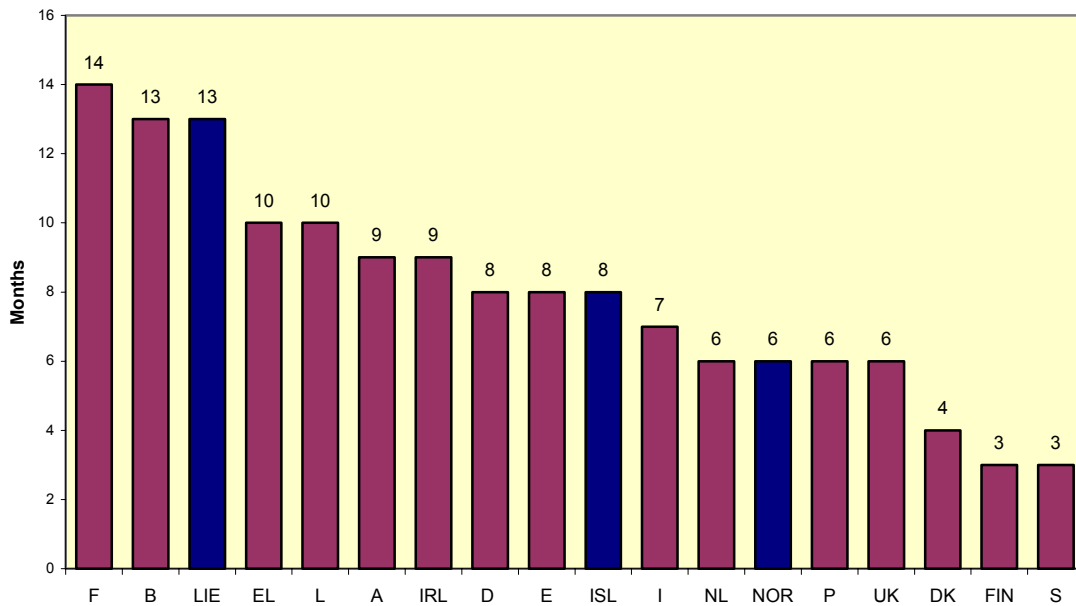
Figure 7: Number of EEA directives whose transposition was overdue by 15 April 2003, and average delays in notification:

| Year of transposition deadline: | ISL | LIE | NOR |
|---|------------|-------------|------------|
| - 2001 | 4 | 4 | - |
| - 2002 | 15 | 9 | 5 |
| < 15 April 2003 | 7 | - | 3 |
| Average delay (in months) by 15 April 2003 | 8.4 | 13.3 | 6.0 |

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

A comparison between all the EEA States (figure 8) show that while Norway's average delay is shorter than that of most EEA States, Liechtenstein still has one of the longest average delays in the EEA. In order to reduce the average delay, Liechtenstein must continue to concentrate their efforts on transposing a number of old directives.

Figure 8: EEA comparison - Norway best of the EFTA States, Liechtenstein 16th in EEA



Source EU figures: European Commission’s Internal Market Scoreboard No. 12

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

The Authority’s statistics indicate for Iceland and Liechtenstein, particular problematic sectors with respect to transposition. Iceland faces particular problems in fields relating to foodstuffs, seeds and veterinary issues, where it has 10 outstanding directives to transpose altogether. In the field of environment, three overdue directives remain to be transposed. Liechtenstein also has problems ensuring that the Internal Market rules and principles on the environment are followed. It has yet to transpose four directives in this sector. Furthermore, Liechtenstein is slow in transposing legislation relating to the free movement of services. It has two overdue directives outstanding in the field of audiovisual services, three concerning financial services and three concerning electronic communications services. For Norway, the directives that remain to be transposed are thinly spread across a number of sectors, with two directives missing in the transport, electronic communications and veterinary sectors, respectively.

The statistics drawn up in this chapter of the Scoreboard are based on the Authority’s Acquis Implementation Database, AIDA, a valuable tool for the Authority in its work. Selected parts of AIDA are accessible on the Authority’s website, www.eftasurv.int, giving information (updated monthly) concerning progress by Iceland, Liechtenstein and Norway on implementation of EEA directives, and including the titles of the national transposing measures.

3. INFRINGEMENT PROCEEDINGS

All infringement cases

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

The EFTA Surveillance Authority initiates formal infringement proceedings by sending a *letter of formal notice*, inviting the EFTA Government in question to submit its observations on the matter within a specified time limit. If no solution is found at this stage, the Authority may take the second step in the proceedings by delivering a *reasoned opinion*. A reasoned opinion defines the final position of the Authority, states the grounds for the opinion and requests the Government to take the measures necessary to end the infringement. If a matter is not resolved following a reasoned opinion, the Authority will refer it to the *EFTA Court*, whose judgment is binding on the State concerned.

Over the last six months, the number of cases opened by the Authority against the EFTA States has risen to 79, an increase of almost 7 % (figure 9). This is the first time for several years that the number of cases has gone up. The new cases opened are first of all directed against Iceland. Whereas the number of open cases against Iceland has increased by 61 %, the number of open cases against Liechtenstein and Norway has decreased by 8 and 12.5 % respectively⁶. The increase in cases opened against Iceland is explained by the higher transposition deficit for that country.

Iceland now accounts for 37 %, Liechtenstein for 28 % and Norway for 35 % of all open cases. Almost two-thirds of the open infringement cases are at the stage of a letter of formal notice. The one case remaining with the EFTA Court is a case against Iceland concerning discriminatory air transport taxes.

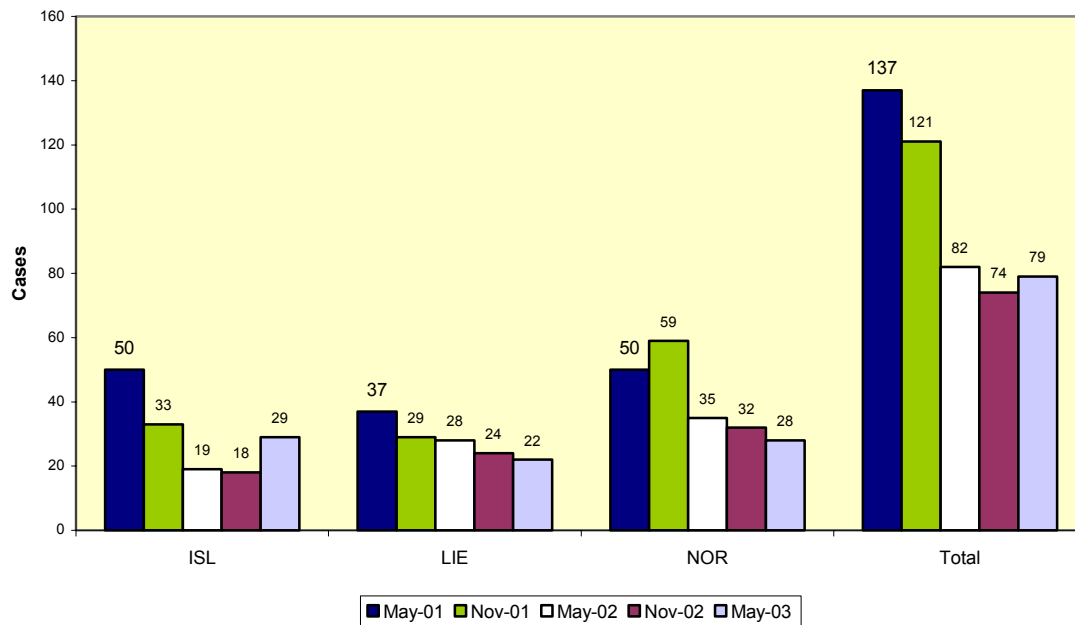
Figure 9: All open infringement cases on 28 February 2003

| | ISL | LIE | NOR | EFTA |
|----------------------------------|------------|------------|------------|-------------|
| Letters of formal notice | 19 | 16 | 16 | 51 |
| Reasoned opinions | 9 | 6 | 12 | 27 |
| Cases referred to the EFTA Court | 1 | 0 | 0 | 1 |
| Total open cases | 29 | 22 | 28 | 79 |

Over the last year, the total number of open infringement cases has been stable at around 80 (figure 10). The figure illustrates a higher number of open cases in 2001, which reflects the EFTA States' higher transposition deficits during that year.

⁶ It should be noted that cases based on non-transposition of directives are included in figure 6.

Figure 10: All open cases, development per EFTA State



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

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

Infringement cases can be divided into two categories. The first category relates to late implementation, meaning that directives are not transposed into the national legislation of the EFTA States within the set time limits. Infringement cases in this category are generally clear-cut and therefore seldom the subject of legally complicated disputes between the EFTA State concerned and the Authority. The same is not always true when it comes to the second category of cases, which relate to non-conformity or incorrect application of EEA provisions. This concerns situations in which the Authority, having acknowledged notification of transposition of a directive from an EFTA State, considers at a later stage, that the national legislation does not fully conform to the requirements of the relevant directive or that the application by the EFTA State is in one way or another incorrect.

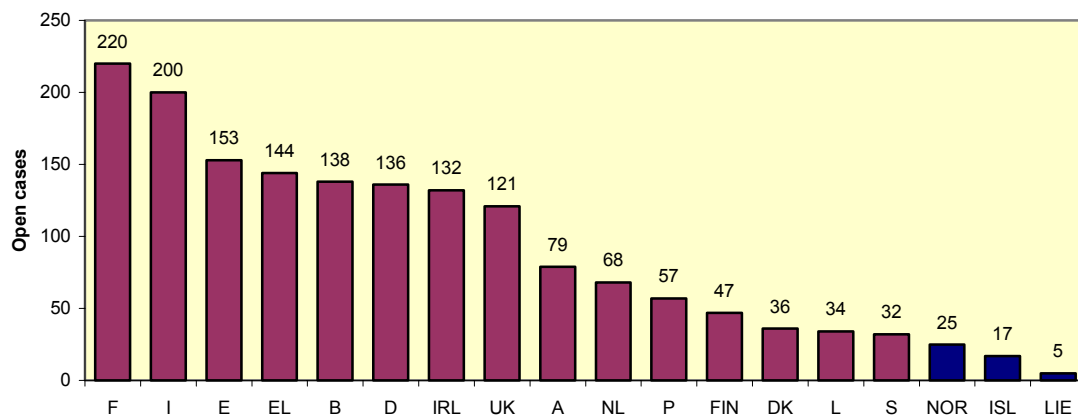
Whereas figures 9 and 10 above include both categories of cases, the figures below focus on the second category. Both the Authority and the European Commission include these figures in their Scoreboards to indicate the infringement problems faced by the EEA States in addition to mere non-transposition.⁷

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

A comparison between figures 9 and the EFTA figures from figure 11 shows that non-transposition cases constitute 41.38 % for Iceland, 77.27 % for Liechtenstein and 10.71 % for Norway. The corresponding figure for total cases is 40.51 %.

A comparison between the EEA States on the number of open infringement cases shows that, like in November 2002, the EFTA States have the lowest number cases opened against them. Although there is a number of possible reasons why this is so, this trend could suggest that the citizens and businesses of the EEA States are not sufficiently aware of the EEA Agreement and the benefits it brings. A lower degree of awareness about the Agreement among the general public will again lead to fewer problems relating to its implementation and application being brought to the attention of the Authority.

Figure 11: In the EEA, the EFTA States have lowest number of infringement cases



Source EU figures: European Commission's Internal Market Scoreboard No. 12

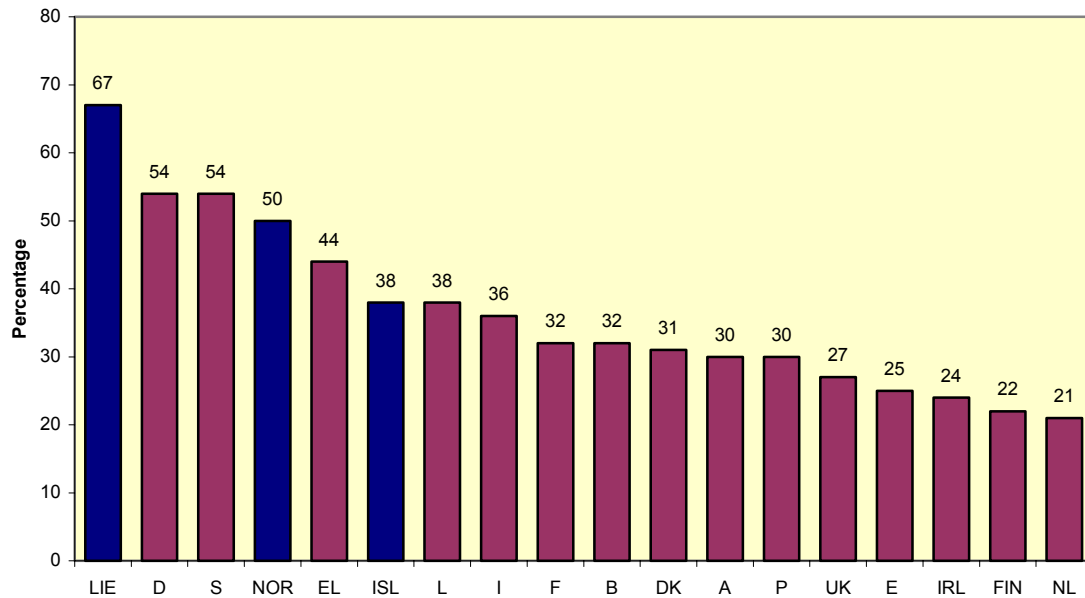
Note: Open infringement cases due to non-conformity or incorrect application on 28 February 2003

Swift solution of problems and removal of barriers is of great importance to businesses and individuals faced with restrictions. A high proportion of closed cases can be interpreted as a sign of the EFTA States' willingness to solve alleged problems quickly.

Figure 12 illustrates the number of infringement proceedings that are solved quickly. Norway and Liechtenstein's ability to solve cases in an efficient manner has improved by 138 % and 86 % respectively since last the Scoreboard. Iceland's performance, however, has deteriorated by 40 %, falling back to the level of one and a half years ago.

Among the 18 EEA States, Liechtenstein comes in 1st, Norway 4th and Iceland 6th. The willingness of the EFTA States to solve cases swiftly, is also illustrated by the fact that only very few of the Authority's infringement cases are referred to the EFTA Court.

Figure 12: EFTA States are doing well on swift problem solving



Source EU figures: European Commission's Internal Market Scoreboard No. 12

Note: Number of infringement cases closed by 28 February 2003 as a percentage of the number of cases opened between 1 July 2000 and 30 June 2002.

4. ALTERNATIVE PROBLEM SOLVING

Package meetings

Despite efforts to solve formal infringement proceedings in a swift manner, few such cases are solved within one year⁸. The EFTA Surveillance Authority therefore encourages the solution of infringement problems by more informal means.

Before the Authority initiates formal infringement proceedings against an EFTA State, its services informally contact the relevant national authorities in order to try so solve alleged problems. Every year, the Authority holds so-called “package meetings”, where a package of cases concerning infringements of Internal Market rules and principles is discussed with national authorities in each of the three EFTA States. A large proportion of problems identified by the Authority are solved as a result of such discussions.

SOLVIT

Regrettably, citizens and businesses are often denied the benefits of their rights in the Internal Market, because of the misapplication of Internal Market legislation by public administrations. The European Commission has, therefore, set up an Internal Market Problem Solving Network (SOLVIT). Since July last year, citizens and businesses are able to turn to their national SOLVIT centre with their complaints.

As such, SOLVIT constitutes a complementary problem solving mechanism offering effective problem solving without need for legal action. 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 EU Member State or EFTA State⁹ and deals with cases of misapplication of Internal Market rules by national 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.

The EFTA States also take part in the SOLVIT network. According to information from the European Commission’s SOLVIT database, Iceland treats the cases submitted against it in 37 days, on average. Norway and Liechtenstein have not yet solved any cases. Norway and Liechtenstein have entered 3 and 2 cases respectively, Iceland, as of yet, none.

⁸ Only a little more than half of infringement cases due to non-conformity or incorrect application are solved within two years (EFTA Scoreboard No 9, November 2001); in the EU, the corresponding figure is only 47 % (EU Scoreboard No 9, November 2001).

⁹ 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 EFTA Surveillance Authority is presently examining the possibility and usefulness of entering complaints into SOLVIT.

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More information about SOLVIT is found at the European Commission website.¹⁰

¹⁰ http://europa.eu.int/comm/internal_market/solvit/

5. CONCLUSIONS:

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

- The EFTA States have succeeded in decreasing the transposition deficit compared with November 2002. With an average deficit of 1.2 %, the EFTA States compare well with the EU Member States. The deficit is still higher than a year ago and, hence, there is still room for improvement.
- Both Norway and Liechtenstein have a transposition deficit below 1.5 %, which is the target set by the Authority. Iceland has failed to remain below this limit, and now has a deficit of 1.8 %. Iceland's development in a negative direction is a cause for worry for the Authority.
- Liechtenstein has managed to eliminate its backlog of directives that were due to be transposed before March 2001. Iceland still has one such directive to transpose. Liechtenstein still rank among the States with the longest average transposition delay.
- The number of infringement proceedings against the EFTA States remains low compared with the EU Member States.
- When infringement cases are opened against the EFTA States, these are solved relatively quickly.
- The duty under the EEA Agreement to ensure a well-functioning Internal Market is taken seriously by the EFTA States.