

**EUROPEAN ECONOMIC AREA**  
**JOINT PARLIAMENTARY COMMITTEE**

Ref. No. 1066093  
12 May 2006  
Brussels

**WORKING DOCUMENT**

**on**

**The implementation of EEA legislation**

**Elaborated by**

Ms Diana WALLIS (ALDE-UK)

Mr Gudlaugur Thór THÓRDARSON (Independency Party-Iceland)

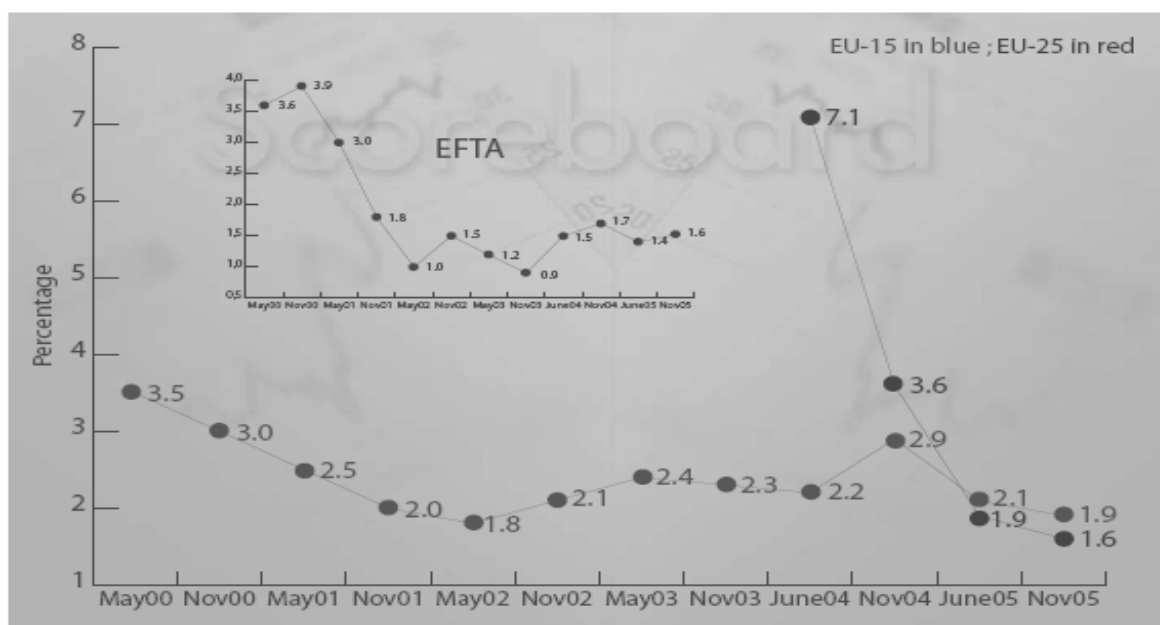
## I INTRODUCTION

The aim of the EEA Agreement is to establish a dynamic and homogenous European Economic Area, based on common rules and equal conditions of competition. It extends the four fundamental freedoms of the Internal Market of the European Community, as well as a wide range of accompanying European Community rules and policies, to Iceland, Liechtenstein and Norway, the EFTA States that are signatories to the Agreement.

A well functioning internal market is the cornerstone of economic integration in Europe. It brings benefits such as lower prices, better services and more work opportunities. The citizens and businesses of the EEA-countries will not be able to reap these benefits unless efforts are made to implement the common rules and principles according to which the internal market functions. All Member States will suffer if some Member States do not deliver.

Two separate legal systems are employed within the EEA. On one side, the EEA Agreement applies to relations between both the EFTA and the European Community sides and between EFTA States themselves. On the other side, European Community law applies to relations between the EU Member States. For the EEA to persuade its aim of homogeneity, the two legal systems must develop parallel and be applied and enforced in a uniform manner.

**Figure 1: EEA Member States Transposition Deficits**



*The transposition deficit shows the percentage of Internal Market directives not yet communicated as having been transposed, in relation to the total number of Internal Market directives which should have been transposed by the deadline. As of 31 October 2005, 1639 directives and 546 regulations relate to the Internal Market as defined in the EC Treaty.*

The main legal instrument 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, but it is left up to each EEA State to choose the form and method of implementation. Figure 1 above shows the transposition deficit of EEA Member States. The

transposition deficit measures how many directives containing Internal Market rules and principles that the EU and the EFTA States have failed to transpose on time.

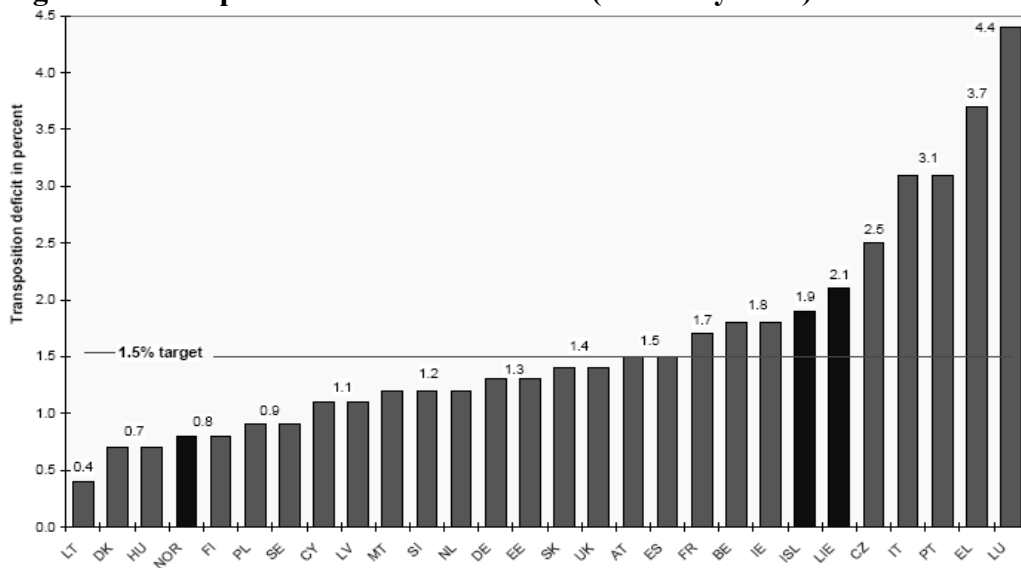
It is the task of the EFTA Surveillance Authority to ensure that transposition in the EFTA States takes place in a timely manner, and that the transposition measures provide for full implementation of the directives in question. In carrying out its tasks, the Authority co-operates closely with the European Commission, which is entrusted with the parallel task towards the EU Member States. This co-operation helps a uniform implementation and application of the Internal Market rules and principles throughout the whole EEA.

## II EU MEMBER STATES AND EEA LEGISLATION

At the end of 2005 the transposition deficit for the EU-25 Member States was 1.6%. This is still 0.1% short of the interim 1.5% transposition deficit target that has been agreed on. But the 1.6% transposition deficit is the best result ever achieved and gives reasons for optimism. Figure 2 shows current EFTA deficit compared to the EU-25

17 Member States have reached the 1.5% target. Once again, Lithuania is the overall winner followed by Denmark, Hungary, Finland, Poland and Sweden. A further 3 Member States are close to reaching the 1.5% target: France, Belgium and Ireland. The Czech Republic and Italy are still some way off the target, but importantly, these Member States have made progress since the last Scoreboard. Portugal has a long way to go and progress over the last months has been modest. Luxemburg and Greece are still far off the target and it is a source of concern that the transition deficit in these two countries has increased even further since the last Scoreboard. The transposition deficit of the new Member States is 1.2% compared to 1.9% for the old Member States. Out of 8 Member States that have not reached the 1.5% target, 7 are old Member States.

**Figure 2: Transposition deficits in EEA 28 (February 2006)**



Whilst the record has dramatically improved as regards the transposition of internal market directives, only five EU-15 Member States - France, Belgium, Austria, Ireland and the

Netherlands - have reduced the number of infringement proceedings against them over the last three years. The number of infringement cases against all other old Member States has increased. In the absence of a historic point of comparison for the new Member States figures must be treated with care. However, high number of infringement cases against Poland, Malta and the Czech Republic seems to suggest that there is a problem of incorrect application of internal market legislation in these Member States that needs to be addressed.

**Figure 3 Long-term progress of transaction deficit EU-15 (1997-2005)**

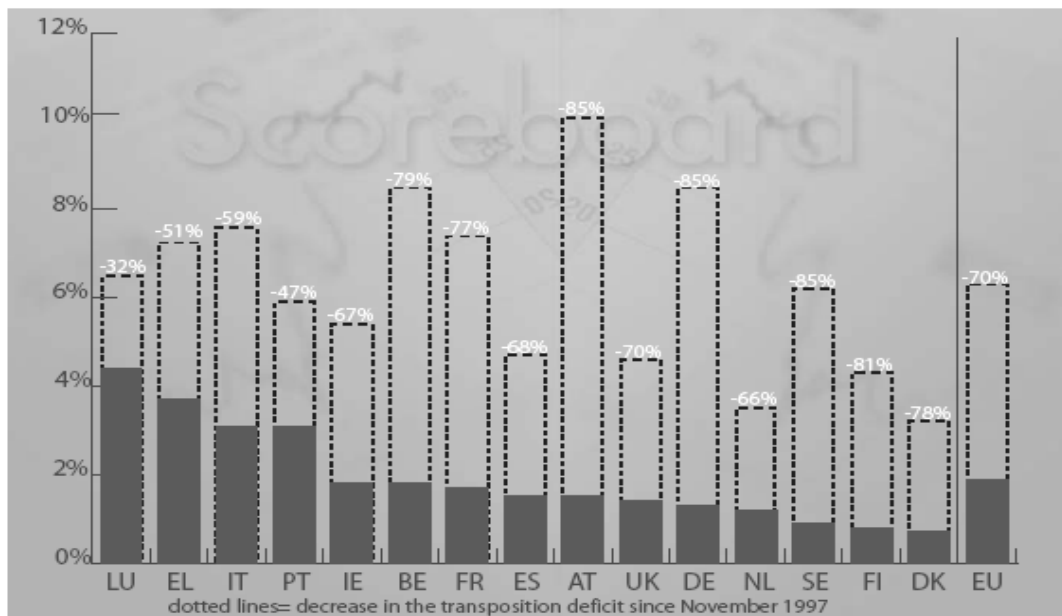
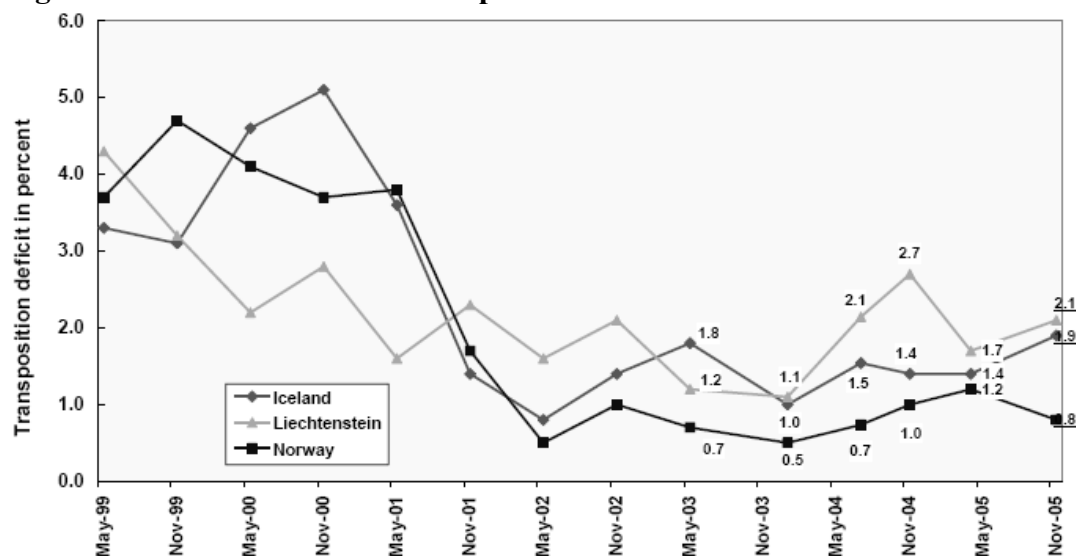


Figure 3 displays long-term comparison of the average transposition record. It shows an EU average reduction of 70% in transaction deficit over the last eight years. Luxembourg has made the least long-term progress, with a reduction of only 32% in transition deficit, closely followed by Portugal and Greece who have respectively posted 47% and 51% reduction. The Member States with the largest reductions are Austria, Denmark and Sweden all with an 84% reduction in transaction deficit.

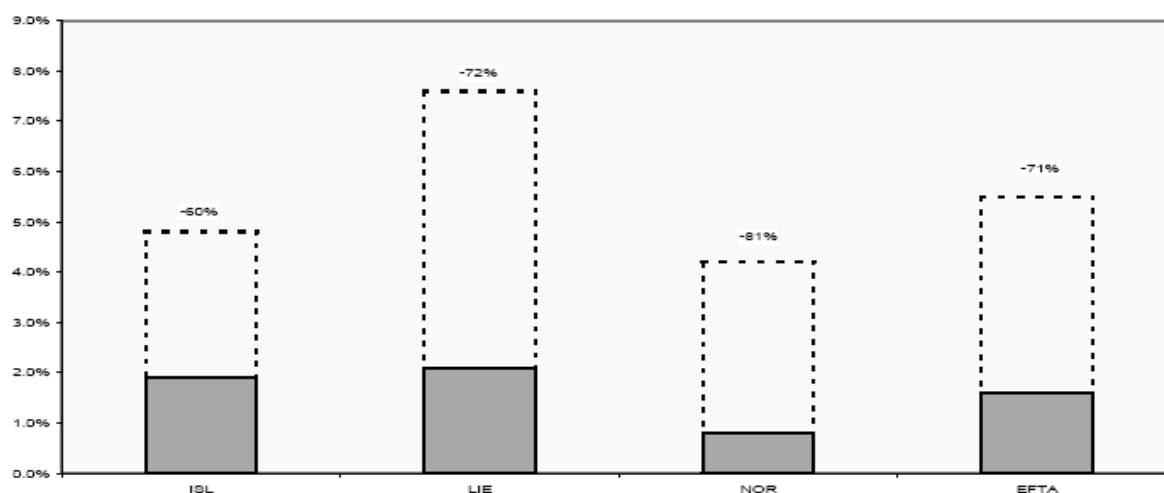
### III EEA EFTA STATES AND EEA LEGISLATION

Efficient implementation of EEA legislation is of great relevance and importance to the EEA EFTA States, Norway, Island and Liechtenstein, as they are partners in the Internal Market through the EEA Agreement.

When considering the EEA EFTA States *en bloc*, it is noticeable that transposition of relevant legislation has lagged somewhat in recent years: As of 30 November 2004, the EFTA transposition deficit stood at 1.7%, which was the first time since 2001 that the deficit breached the interim target of 1.5 set by the European Council and endorsed by the EFTA Surveillance Authority. Six months later the situation was turning positive: as of 30 April 2005, the deficit stood at 1.4%. However, by the end of 2005, the transposition deficit of the EFTA States had again increased to 1.6%, yet the transposition deficit matches the average for the EU-25.

**Figure 4: EEA EFTA States Transposition Deficit**

In January 2005, Norway led the 28 EEA states' ranking; Iceland was fourth, while Liechtenstein had slipped from fourth to 14th place. From end of May to 30 November 2005, Norway had decreased its transposition deficit from 1.2% to 0.8%, placing it in 4th place of the 28 EEA states. Iceland had increased its deficit from 1.4% to 1.9%, placing it in 22nd place, while Liechtenstein increased its deficit from 1.7% to 2.1%, placing it in 23rd place. These changes were due to Iceland having increased its backlog by 8 directives and Liechtenstein by 6 directives, while Norway had reduced its backlog by 5 directives. Figure 4 above displays the evolution of EFTA transposition deficits over the past few years.

**Figure 5: Long progress of transaction deficit EFTA States (1997-2005)**

**Note:** Long-term comparison of transposition deficits. Change from November 1997 to November 2005.

Figure 5 above display that the average EFTA States transposition deficit has gone down by 71% since 1997. The average reduction for the EFTA countries compares to the same figure for the EU-15, which stands at 70%. Iceland has made the least long-term progress, with a reduction of 60%, followed by Liechtenstein and Norway with reductions of respectively 72 and 81 in transition deficit.

Infringements appear to have become more serious over the past year. In 2005, the EFTA Surveillance Authority brought eight cases before the EFTA Court, compared to only one case in 2004. For the year 2005, the Surveillance Authority initiated 73 formal infringement proceedings against EFTA States, bringing the total number of pending infringement cases to 123 by the end of the year. The case of Iceland is prominent, since 98% of all new infringement cases brought against it were regarding failure to implement EEA acts into national laws.

In year 2005 Iceland and Norway had most open cases in Veterinary, with 17 and 27 cases, respectively. Similarly, Maritime Transport issues rank second in Iceland and Norway, with 16 and 21 cases, respectively. In Liechtenstein, Labour Law cases are predominant, with 10 open cases at the end of 2005, followed by Public Procurement, with 8 cases open. Public Procurement also ranks third in Norway, with 17 open cases. Another anomalous case concerns Norway: Free Movement of Workers and Freedom to Provide Services rank fourth and fifth with, respectively, 16 and 15 cases.

#### **IV COMMENTARY AND COMPARISON WITH EU MEMBER STATES**

A comparison of the implementation mechanisms applicable to EU Member States and to non-EU EEA Member States reveals several discrepancies that lead to a degree of dissymmetry between both systems which is worthy of comment and perhaps further investigation.

The number of complaints to the EFTA Surveillance Authority relating to infringements of EEA law shows that citizens play a vital role in its application. The total number of complaints received is however down by 7.5% compared to 2004, whereas the complaints received on the free movement of persons doubled compared to 2003. Furthermore, 90% of new complaints in 2005 were directed against Norway.<sup>1</sup> Citizens' complaints constitute a cost-effective and efficient tool for monitoring the application of EEA law and should be further encouraged.

Furthermore, a recent report by the European Parliament's legal affairs committee highlights the growing role of petitions to the European Parliament and complaints to the European Ombudsman, in particular concerning the detection of infringements.<sup>2</sup> Petitioners constitute a valuable source of information on how Community legislation works in reality. However, as their States are not members of the EU, nationals of Norway, Iceland and Liechtenstein have no corresponding right of petition or of complaint and are therefore prevented from playing a more pivotal role in the application of EEA law. To redress the balance, greater involvement of EEA citizens is necessary and should not be limited to receiving and considering complaints. This clear democratic deficit of Norway, Iceland and Liechtenstein in their relation with the EU has clearly become more pronounced since the Maastricht Treaty and the introduction of European Citizenship.

Following a judgment of the Court of Justice, the Commission has adopted a Communication on Article 228(2) EC (fines against Member States for continuing infringements despite a judgment

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<sup>1</sup> Article 109(3) of the EEA Agreement. At the end of 2005, the Authority was examining 609 cases, of which 120 were based on complaints. (Annual Report for 2005)

<sup>2</sup> Report of the Legal Affairs Committee on the Commission's 21st and 22nd Annual reports on monitoring the application of Community law (2003 and 2004), rapporteur: Mrs Frassoni, A6-0089/2006

to that effect by the Court of Justice).<sup>1</sup> It has revised its existing policy which consisted of simple penalty payments as these were considered insufficiently deterrent. The Commission will from now on<sup>2</sup> always include in its applications under Article 228 EC to the Court of Justice: (a) a penalty by day of delay in compliance after the Article 228 judgment, and (b) a lump sum penalizing the infringement from the 226 judgment. By contrast, there is no equivalent to Article 228(2) EC under EEA law. The only option left to the EFTA Surveillance Authority in the event of a non-EU EEA State not complying with a finding of infringement by the EFTA Court is simply starting the procedure over again<sup>3</sup>, which corresponds approximately to the less than satisfactory situation existing in the Community before the coming into force of the Treaty of Maastricht.

On the other hand, the EFTA Surveillance Authority and EFTA Court do not suffer from the same excessive case loads as the Commission and Court of Justice.<sup>4</sup> Currently, one of the main problems with the infringement procedure under the EC Treaty is its length. The Commission often makes strategic choices as to which infringements to pursue as the number of staff affected to infringement units is often insufficient in relation to the total number of ongoing investigations. In the case of certain pieces of legislation giving rise to recurring implementation problems in many Member States, the Commission and EFTA Surveillance Authority must cooperate closely, in particular during the enforcement stage, to ensure that infringements of the same nature or of the same provisions are pursued with the same rigour throughout the EEA. Particular attention should be paid to the fact that informal negotiations between the Commission and the Member States during the pre-judicial phase should not lead to compromises which put EEA EFTA States at a comparative disadvantage.

Detailed rules on co-operation between the EFTA Surveillance Authority and the Commission exist and entail extensive exchanges of information and rights to comment.<sup>5</sup> However practical and day to day cooperation should be further encouraged, taking as example but not being limited to the area of competition law (see for instance, the *Astra Zeneca* case in which Articles 82 EC and 54 EEA were applied in parallel)<sup>6</sup>.

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<sup>1</sup> Application of Article 228 of the EC Treaty (SEC(2005)1658final); Case C-304/02 *Commission v France*, 12 July 2005, not yet published.

<sup>2</sup> There are temporal limitations, and the Commission reserves itself a margin of discretion. See: SEC(2005)1658final

<sup>3</sup> Articles 31 and 33 of the EFTA Surveillance Authority and Court Agreement.

<sup>4</sup> Court of Justice, Annual Report for 2004; statistics available at: <http://curia.eu.int/en/instit/presentationfr/rapport/stat/st04cr.pdf>

<sup>5</sup> Protocols 23 and 24 to the EEA Agreement.

<sup>6</sup> See Commission Press Releases IP/05/737 and IP/03/1136