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**Liechtenstein and the EEA:
the Europeanization
of a (very) small state**

**Christian Frommelt
& Sieglinde Gstöhl**





OM RAPPORTEN

Rapporten er skrevet på oppdrag for Europautredningen. Innholdet i rapporten er forfatterens ansvar. Rapportene er å betrakte som et innspill til utredningen og reflekterer ikke Europautredningens synspunkter.

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Liechtenstein and the EEA: the Europeanization of a (very) small state

Christian Frommelt & Sieglinde Gstöhl

1. Introduction

The principality of Liechtenstein, embedded between Austria and Switzerland, is Europe's fourth smallest country with a longstanding sovereign history. For almost seventy years Liechtenstein was in a customs and currency union with the Austrian monarchy, which ended with World War I. As a substitute, Liechtenstein has since the interwar period built up an even closer regional union with Switzerland. After World War II the three neighbours pursued similar integration policies in Europe as members of the European Free Trade Association (EFTA) – until their paths finally separated in the mid-1990s. Today, Liechtenstein finds itself as a member of the European Economic Area (EEA) half-way between Austria, a member of the European Union (EU), and Switzerland, which has stayed out of both the EEA and the EU.

This introduction presents some specific characteristics of Liechtenstein's regional context and its political system before it turns to a short review of the relevant literature on Liechtenstein and the EEA.

1.1 The Alpine three

The three Alpine neighbouring countries Austria, Switzerland and Liechtenstein share many common features such as language, culture, geography or history. In the post-War era they have enjoyed stable domestic situations to which their neo-corporatist systems and consensus democracies have contributed. Like Switzerland, the principality of Liechtenstein cherishes a tradition of direct democracy, while Austria and Switzerland are both federal states. All three countries have been pursuing neutral foreign policies, Switzerland since the 16th century, Liechtenstein since the late 19th century and Austria since 1955.

As small states in the heart of Europe the Alpine three have economically been closely integrated with the surrounding countries of the European Communities (EC). Despite their export dependence on the EC, however, they opted in the late 1950s for the European Free Trade Association. Among the three, Austria has traditionally been the most integrationist. The Austrian government had considered joining the European Coal and Steel Community as well as the European Economic Community but such aspirations met with fierce opposition from the Soviet Union. In the 1960s the neutral EFTA countries considered an association with the Communities in the wake of the British, Danish and Norwegian membership applications that finally failed as a result of the French vetoes. In 1973, the UK, Denmark and Ireland joined the EC, whereas Norway failed to ratify the accession treaty after a negative referendum. At the same time, bilateral Free Trade Agreements (FTAs) entered into force between the enlarged European Communities and the remaining EFTA countries.

On the basis of these FTAs, bilateral cooperation with the EC was in the following years extended through several sectoral agreements. In 1984, the last tariffs and almost all quantitative restrictions on trade in industrial goods were removed. On this occasion and in an attempt to keep up with the “deepening” of integration in the European Communities, the “Luxembourg Process” – named after the place of the first joint EC-EFTA ministerial meeting – was launched. It consisted of a pragmatic sector-by-sector approach for cooperation in new fields such as technical barriers to trade, education, research and environmental protection as well as the transition from a bilateral to an increasingly multilateral relationship. In light of the new dynamics towards the completion of the EC's internal market, the “Luxembourg Process” soon proved

to be too cumbersome. The Austrian government began to conceive a “global approach” for participation in the internal market already in 1986 and one year later, in view of the East-West détente, discussed the possibility of membership with a neutrality reservation. As of 1988, most EFTA governments embarked upon voluntary harmonization between national and EC legislation in order to secure an adequate parallelism with the internal market. The Swiss government – and thus indirectly also Liechtenstein – opted for a strategy of “parallel legal development” in terms of a unilateral adaptation to internal market rules.

In 1989, Commission President Delors introduced the idea to switch from a sectoral to a global and truly multilateral approach towards cooperation. At the outset, neither the EC nor the EFTA side had a clear concept of the envisaged European Economic Area. The Community hoped to be able to focus on its own deepening by offering an alternative to EC membership, while the EFTA countries hoped to escape economic discrimination and political satellization by gaining access to the internal market and its decision-making process. For Norway and the neutral EFTA countries, the EEA seemed to offer a depoliticized version of EC membership. However, the final institutional set-up of the EEA with its „participatory deficit“ was a source of frustration (Gstöhl 1994). With the end of the Cold War being near, Austria applied for EC membership in 1989. Within three years, Sweden, Finland, Switzerland and Norway had joined the applicants' queue. Switzerland failed to ratify the EEA Agreement in 1992 and decided to suspend its application for EC membership. In 1995, Austria, Finland and Sweden joined the EU while Norway, for the second time, failed to accede due to a negative referendum.

Instead of joining the EEA or the EU, the Swiss government asked the European Union to negotiate further bilateral sectoral agreements on the basis of the 1972 Free Trade Agreement. In 1999 the first seven agreements („Bilaterals I“), which mainly aimed at liberalization and market opening (technical barriers to trade, public procurement, agriculture, research, civil aviation and overland transport), were signed. Five years later, an additional nine agreements („Bilaterals II“) were signed, strengthening economic cooperation and extending cooperation (Schengen/Dublin, taxation of savings, processed agricultural products, media, environment, statistics, fight against fraud, pensions as well as education, vocational training and youth).

Hence, in the 1990s the Alpine three have opted for very different integration policies: Austria became a member of the EU, Liechtenstein joined the EEA, and Switzerland contented itself with a bilateral approach. Since 16 years Liechtenstein has thus positioned itself – not only geographically – in-between its two neighbours.

1.2 Regional cooperation with Switzerland

The Princely House of Liechtenstein, of Austrian origin, acquired the fiefs of Vaduz and Schellenberg in 1699 and 1713 respectively. In 1719 the country gained the status of an immediate (“reichsunmittelbar”) principality of the Holy Roman Empire under the name Liechtenstein, directly under the Emperor. It became a sovereign state in 1806 when Napoleon established the Confederation of the Rhine. At the Congress of Vienna in 1815 the country was accepted into the German Confederation, of which Liechtenstein over time was the only small German state able to maintain its independence. The Houses of Habsburg and Liechtenstein were closely connected, and from 1852 to 1919 a customs and currency union with Austria-Hungary was in place. When the Danube monarchy collapsed, Liechtenstein reoriented itself from Austria to its Western neighbour Switzerland in search for economic assistance and stability. With an exchange of notes Switzerland assumed in 1919 representation of Liechtenstein's diplomatic and consular interests in countries where Switzerland maintains representation and Liechtenstein does not. One year later, the treaty on postal, telegraph, and telephone (PTT) services followed. In 1923 the Customs Treaty was concluded which still forms the basis for a close partnership. This customs union and the introduction of the Swiss Franc as the national currency supplied two cornerstones for the principality's economic boom after World War II. Within a few decades, Liechtenstein developed from a poor agricultural state into a modern society with a diversified economy.

An increasing number of treaties (*inter alia* on the treatment of foreigners, the enforcement of civil judgments, the control of medicines, on air traffic, patent protection and the currency) was concluded with the Swiss federal government and cantons over the following decades, and the customs union was extended to an economic and monetary union. From Liechtenstein's perspective, this regional union was a genuine success story as its economic actors gained access to the Swiss market and to the export markets that Switzerland had opened up through trade agreements. Today, the

two countries have close to 60 bilateral international agreements in place of which ca. 25 are related to the European integration process (Frommelt 2011a). As a result, Liechtenstein's integration policy has been closely intertwined with the Swiss integration policy.

1.3 Liechtenstein's political system

According to Art. 2 of the Liechtenstein Constitution, "the Principality is a constitutional hereditary monarchy on a democratic and parliamentary basis; the power of the State is inherent in and issues from the Reigning Prince and the people". The political system is thus characterized by a dualism of the monarchic and the democratic principles (Frieese 2011: 180-193). The current Constitution dates back to 1921 but was several times amended, and it reflects the historical compromise between Parliament and the ruling monarch. Unlike in the other European monarchies (except for Monaco), the Prince has real powers and is not confined to a mere representational role. Marxer and Pällinger (2009: 915) therefore classify the principality as a "semi-presidential" political system, if the role of the Prince, as head of state, is equated with that of a president. Another specific characteristic of Liechtenstein's political system is the tradition of direct democracy with the instruments of initiative and referendum (Waschkuhn 1994: chs. 9-10).

Liechtenstein's unicameral Parliament (the Diet or "Landtag") is every four years directly elected by the people according to a system of proportional representation. It has 25 members who meet eight to ten times per year for one to three days. The meetings are usually public and most items are dealt with in plenary sessions. The Prince has to sanction each law within six months before it enters into force. The government is collegial and consists of the Prime Minister and four additional Ministers appointed by the Prince following a proposal by Parliament. Each of the two electoral districts – which correspond to the two historical fiefs – must be represented by at least two Ministers. There are only three political parties in Liechtenstein: the Patriotic Union („Vaterländische Union“ VU), the Progressive Citizens' Party („Fortschrittliche Bürgerpartei“ FBP) and the smaller and younger Free List („Freie Liste“ FL). VU and FBP are both of a Christian-Democratic orientation and often form coalition governments. The Free List usually takes a more social democratic and green attitude in the opposition. Voter volatility is relatively low. As a result of the high number of potential veto players in the legislative process (Landtag, Prince, people), the pressure to reach com-

promises is quite strong (Marxer and Pällinger 2009: 915).

Given its size, Liechtenstein has an impressive number of associations representing various economic and societal interests. They participate in the consultation processes organized by the government on new legislation as well as in referendum campaigns (Waschkuhn 1994: ch. 7). The early involvement of interest representations in the legislative process increases the acceptance of political decisions and facilitates their implementation (Marxer and Pällinger 2009: 919). Liechtenstein's civil society is thus well developed and many private institutions assume public tasks, for example the Social Partnership between the business chambers and the labour union (ibid.: 919-920). Such a neo-corporatist structure as well as the "militia" political system, whereby many public offices are held by part-time politicians, are rather typical features of small states. The liberal orientation of Liechtenstein's economy is *inter alia* reflected in the fact that the labour union is much weaker and less organized than industry and commerce.

Moreover, Liechtenstein's political structure is rather decentralized and comprises the state level and the communal level. The 11 political communes enjoy a high level of autonomy. The citizens in each commune elect a Council, headed by a chairperson, and they can appeal the decisions of the Council by means of a referendum. The communal authorities are independent in the conduct of their business and administer their own budgets.

When it comes to the relationship between international and national law, Liechtenstein follows a monist approach. Questions of the primacy and direct effect of EU/EEA law are thus handled in the same way as in the EU which makes compliance easier. The principality has traditionally been a "policy taker" regarding the reception of foreign law (see below). This tradition has facilitated compliance with international law. "Liechtenstein's status as a very small EEA member does not seem to have adversely affected its global commitments towards and implementation record for the EEA *acquis*" (Maresceau 2011: 508).

1.4 Literature review

Most academic studies on Liechtenstein's integration policy in the past two decades have been carried out at the Liechtenstein-Institut in Bendern, Liechtenstein. In addition, a few relevant PhD theses have been com-

pleted at various universities in Austria, Switzerland and Germany. The Liechtenstein-Institut is a private institution, founded in 1986 and dedicated to research on Liechtenstein in the fields of history, law, political science and economics. By contrast, research and teaching at the University of Liechtenstein, founded in 1961 as a school of engineering, are focused on architecture and planning as well as business administration, including financial services.

In 1991-92 the first legal expert opinions were elaborated at the Liechtenstein-Institut on the country's possible participation in the emerging EEA (Bruha 1990a, 1992a and b; Leibfried 1991). It dawned upon the elite that "in the long run the international recognition of a state will depend on whether it is willing and able to work together with other states and the increasingly important international organizations in the management of the world's problems which can only be solved together through various forms of cooperation and integration" (Bruha 1990b: 205, authors' translation). Demonstrating its willingness to integrate and cooperate in areas of concern to its European partners, Liechtenstein could hope to defend its own legitimate interests owing to its smallness. Frick (1993) examined in her thesis possible scenarios in case of a liberalization of capital movements and financial services.

In the late 1990s, Prange (1999; 2000) investigated for the first time the economic consequences of Liechtenstein's EEA membership. Even though the transposition of the *acquis* was not yet completed and a number of transitional periods were still in place, the economic actors noticed an overall positive impact despite more competition. Integration also opened new business opportunities, for instance in the insurance sector, and mitigated the chronic shortages on the labour market. Moreover, it reinforced the awareness of the need for structural reforms and a further diversification of the economy (ibid.: 154). At the same time, Gstöhl (2001a) analyzed how a small state like Liechtenstein can assert itself in the context of a further deepening and widening of European integration and to what extent differentiation might offer new perspectives. Both from an economic and political perspective, the EEA membership was considered "a good starting point" for future, and even additional, options of integration.

At a conference assessing ten years of EEA membership, Gstöhl (2005) examined alternatives of integration after the potential end of the European Economic Area. She identified in particular two relevant scenarios: an association with the EU ("bilateral EEA") or a bid for a kind of EU membership. The EEA Agree-

ment states in its preamble that it would not prejudice in any way the possibility of any EFTA state – hence also of Liechtenstein – to accede to the EU. Bruha and Alsen (2005) argued that, if the accession criteria were fulfilled, the European Union had to accept any European state that applied to become a member. These conditions encompassed both the ability to accede and the ability to enlarge. In case an accession was not possible, "the principle of best possible participation" required a solution as close as possible to full membership (ibid.: 176). Also Breuss (2010: 181) came in her thesis to the conclusion that the small size of states like Andorra, Liechtenstein, Monaco or San Marino could not serve as a legal reason to reject a membership application. Flexible solutions would have to be found for the representation of these countries in the Union's organs and for their specific problems with the implementation of the *acquis*.

Friese (2011) provided in her thesis an in-depth comparative study of the five European "microstates" and their relationships with the European Union. She observed a development from an indirect integration based on historical relations with neighbouring countries to direct agreements between the EU and these states. Among them, Liechtenstein enjoys a special position in terms of being the only member of the EEA and the only one with close relations with a non-EU neighbouring country (ibid.: 520). Although an EU membership of these small states is not on the agenda, "it cannot be excluded in the longer run" (ibid.: 502). Alternatively, Friese (2011: 530-531) sees the possibility "to create a special form of EU membership with alleviated rights and obligations", accession to the EEA or the conclusion of association agreements.

Maresceau (2011) also looked closer into Liechtenstein's complex relations with the European Union, following up on his earlier work on the relations between the EU and Andorra, San Marino and Monaco (Maresceau 2008). He concluded that "its status as a very small state in the heart of the European Union, its very close relationship with another non-EU member, Switzerland, also encircled by the EU, its EEA membership and exemplary integration in this very demanding structure, and its additional commitments far beyond the strict EEA *acquis* make Liechtenstein a very special neighbouring partner of the EU" (Maresceau 2011: 525-526).

Finally, Frommelt (2011a-d) has conducted several recent studies on the Europeanization of Liechtenstein. This report incorporates many of his empirical findings which will also be part of a PhD thesis on differenti-

ated integration. The thesis analyzes to what extent a homogeneous and dynamic economic area has been implemented between the EU and the EFTA countries and which conditions affect its performance.

1.5 Aim of the report

In December 2010 the Council of the EU, while acknowledging “the positive relationship with the EFTA countries” and their “excellent record of proper and regular incorporation of the *acquis* into their own legislation”, announced a review of the functioning of the EEA Agreement (Council of the European Union 2010: para 1 and 3). This assessment, inspired by Norway’s EEA review process, *inter alia* examines whether the existing framework should be replaced “by a more comprehensive approach, encompassing all fields of cooperation and ensuring a horizontal coherence” as well as “possible developments in the membership of the EEA” and a simplification of certain procedures (ibid.: para 35 and 36).

At the same time, the Council has launched a review of the Union’s relations with European countries of small territorial dimension, based on Art. 8 TEU and the Declaration attached to it. This evaluation aims at an analysis of the progressive integration of Andorra, San Marino and Monaco into the internal market, possibly in a common framework which would take into account their particularities (Council of the European Union 2011). Whereas Liechtenstein is an EEA EFTA state, and therefore already to a large extent integrated into the internal market, its size and population are comparable to those of the three other very small European countries. Yet, given the different nature and level of integration achieved and the different economic structures, it is not in Liechtenstein’s interest to join this group of heterogeneous small states. Moreover, its regional union with non-EU/EEA member Switzerland make Liechtenstein stand out as well. The principality’s integration policy has in the past and will in the future to a great extent depend on the Swiss integration policy. In its report on the assessment of Swiss European policy in 2010, the Federal Council concluded that the bilateral way was still the most suitable choice for Switzerland (Switzerland 2010a). The Swiss government wishes to conclude new agreements with the EU and to review the institutional questions that have arisen in the framework of the existing bilateral agreements. These questions include in particular the modalities for adjusting existing agreements to new developments in EU law, the interpretation of the agreements and the settlement of disputes.

In 2010 the government of Liechtenstein issued an extensive report on “15 years EEA Membership of the Principality of Liechtenstein” which, confirmed by the statements of various national professional bodies and organizations, stroke a positive balance (Liechtenstein 2010a). Prime Minister Klaus Tschütscher (2010) considered that EEA membership has been “an extremely positive success story” for Liechtenstein. This appraisal is impressive given that the two referendum campaigns on joining the EEA in the early 1990s were very controversial (see below).

Nevertheless, in light of the EU’s reviews of the EEA and of its relations with the smallest European states as well as the uncertainty about Iceland’s accession to the EU or Switzerland’s search for a new institutional framework with the EU, Liechtenstein must have a strong interest in assessing not only the status quo of its integration policy but also its future perspectives. This report studies the impact that the European Economic Area and other agreements with the European Union have so far had on Liechtenstein. To what extent have Liechtenstein’s economy, society, legal order, Parliament and national administration been Europeanized? What challenges does the principality face with regard to the domestic implementation of the *acquis* and the integration process more generally? And what are the future perspectives for the EEA and Liechtenstein’s relationship with the European Union?

The sources that this report draws upon are secondary literature as the one reviewed above as well as official documents, recent surveys in Liechtenstein and interviews with policymakers in Vaduz and Brussels. The authors are grateful to all interviewees in Brussels and Vaduz for sharing their time and insights, yet all interpretations, errors and omissions remain the sole responsibility of the authors.

Before analyzing the status quo of Liechtenstein’s Europeanization, the history of its relations with the European Union will briefly be recalled.

2. A short history of Liechtenstein's relations with the EU

As a very small country, Liechtenstein's foreign policy had to deal with regional integration in a broad sense throughout its history. While joining the newly founded European Communities was not an issue, the principality intended to participate in European integration. Although indirectly an associated member of EFTA since 1960, via its customs union with Switzerland, Liechtenstein could only formally join the organization in its own right in 1991. This achievement was closely connected to the negotiations on an EEA Agreement. Two national referenda were required to become a contracting party to this ambitious internal market association in 1992 and 1995. The second vote was necessary after Switzerland had rejected EEA membership. Today, Liechtenstein can look back on 16 years of EEA membership. In addition, it has concluded bilateral agreements with the EU beyond the EEA Agreement and is about to join the Schengen area.

2.1 Liechtenstein's foreign policy

Historically, Liechtenstein has participated in various forms of integration, ranging from the Roman Empire to Napoleon's Confederation of the Rhine and from the German Confederation to the Austrian-Hungarian and Swiss customs unions to the present EEA membership. Due to its smallness, Liechtenstein's foreign policy "has to a large extent always been integration policy as well" (Liechtenstein 1996a: 5, authors' translation). Moreover, the principality has handled features such as direct democracy and neutrality much more pragmatically than Switzerland. In fact, the Liechtenstein government has often taken the view that integration does not automatically mean a loss of sovereignty but may actually serve as a means to strengthen the sovereign statehood (ibid.: 7). Liechtenstein has since 1866 developed a *de facto* unarmed neutrality. Together with Switzerland it had managed to remain neutral during World War II.

Until the 1970s Liechtenstein's foreign policy has been rather passive and reactive; the principality had only joined the International Court of Justice and a few specialized UN agencies. The country still strongly relied on Switzerland, even for its representation at international organizations. In 1975, however, Liechtenstein seized the opportunity to sign the Helsinki Final Act of the Conference on Security and Cooperation in Europe (CSCE, now OSCE). Its increasing activities and memberships enabled the principality to build up

an international reputation as a constructive partner (Friese 2011: 206-223). In 1974 it obtained observer status at the Council of Europe and four years later joined as the first very small European state. This was considered a historical milestone for Liechtenstein's foreign policy since the desire to adhere to international organizations had in the past met with strong scepticism. Liechtenstein's application in 1920 to join the League of Nations was rejected due to its small size, the delegation of some aspects of its sovereignty and the lack of an army (Gstöhl 2001b). Similar obstacles had to be overcome later on when joining the International Court of Justice in 1950, the Council of Europe and the United Nations (ibid.; Beattie 2007: 26-35). UN membership was strongly supported by the Prince, Parliament and the government although the population was rather sceptical. Switzerland itself was at the time not a member of the UN and only joined in 2002. Nevertheless, Liechtenstein joined the United Nations in 1990. In 1992 the people approved an initiative under which any assent by the Landtag to an international treaty must be submitted to a popular vote if either Parliament so decides or if a certain number of citizens or communes submit a petition to that effect. In 1991 the principality joined EFTA and four years later the EEA (see below) as well as the World Trade Organization (WTO). Hence, the principality could assert its international legal personality and paved the way for other very small states to join international organizations. The EEA Agreement gave Liechtenstein the first own treaty-based relationship with the European Union. Liechtenstein's EEA membership also allows it to gather information for its work in international fora such as the United Nations since candidate and associated countries are invited to regular consultations and to align themselves with EU declarations.

The overarching goal of Liechtenstein's foreign policy is to safeguard the country's independence and welfare (sovereignty policy), followed by the subordinate goals of a peace policy, solidarity policy, human rights policy as well as the safeguarding of Liechtenstein's economic interests and the protection of the natural environment (Liechtenstein 2008a: 9-10). Accordingly, the Liechtenstein government has drawn the following concentric circles of activities: first, close bilateral relations in Europe with neighbouring Switzerland and Austria as well as with Germany; second, European policy with a focus on integration and participation in European institutions (Council of Europe, OSCE, EFTA, EEA), supplemented by the cultivation of bilateral relations, in accordance with existing capacities and interests); and third a global presence, especially through multi-lateral cooperation and, to a limited extent, bilaterally

(United States) (ibid.: 10). This pattern corresponds to the selective representations abroad. The principality currently only has embassies or missions in Berlin, Bern, Brussels, Geneva, New York, Strasbourg, the Vatican (non-resident), Vienna and Washington.

Building up an active and independent foreign policy obviously required more human and financial resources. However, investing in bi- and multilateral diplomacy was increasingly considered essential for a small state. “Since Liechtenstein lacks the political and military means to enforce its interests, it is much more dependent than other States on the existence and application of international law that helps it protect its interests” (Liechtenstein 2008a: 11).

2.2 EFTA 1960 and 1991

After the failure of the negotiations on a Pan-European free trade area in the framework of the Organization for European Economic Cooperation (OEEC, now OECD) in 1958, seven of the non-EEC countries (Austria, Denmark, Norway, Portugal, Sweden, Switzerland, and the United Kingdom) presented a plan for an industrial free trade area among themselves. Liechtenstein, which was not an OEEC member, was not admitted to the European Free Trade Association as an independent contracting party – even without voting rights (Batliner 1989: 12). Instead, a special protocol of the Stockholm Convention provided that the EFTA provisions applied also to Liechtenstein as long as the customs union with Switzerland persisted. The principality was formally represented by the Swiss delegation to EFTA.

The same applied to the 1972 Free Trade Agreement between the EC and Switzerland, yet Liechtenstein was allowed to have a representative in the Mixed Committee. For the few areas not covered by the Customs Treaty the principality authorized its neighbour to represent it. Since in the 1980s many of the new fields of the “Luxembourg Process” fell outside the scope of representation, Liechtenstein was invited to the annual meetings of the High-Level Contact Group consisting of representatives of the EFTA countries and the European Commission. It thus participated independently in this pragmatic sectoral approach. Subsequently, the principality also took part in the informal exploratory talks about closer cooperation following Commission President Delors’ 1989 initiative for an EEA. In the so-called “Brussels Process” Liechtenstein was present with an own delegation in the Joint High-Level Steering Group and working groups

(Liechtenstein 1989: 38-48, 62-64). The envisaged European Economic Area with its four freedoms went well beyond the Swiss competence in the framework of the Customs Treaty and the sectoral cooperation in the “Luxembourg Process”.

This development together with the completion of the EU’s internal market and the establishment of the World Trade Organization made it increasingly difficult to separate trade in goods from other matters of international negotiations which the treaty-making power delegated to Switzerland did not cover. In 1991 the Customs Treaty was modified to allow the principality its own membership of international organizations and agreements, provided that Switzerland was also a contracting party. Liechtenstein joined EFTA as well as the WTO and participated in its own right in the EEA negotiations. Hence, in the context of the new dynamics in European integration and the end of the Cold War, Liechtenstein within a few years emancipated itself from Switzerland and developed an own integration policy vis-à-vis the European Union. Today, it has positioned itself at the intersection of two important economic and legal areas: Switzerland and the EEA.

2.3 EEA 1992 and 1995

In the run up to the referenda on the EEA Agreement the sequence of the votes in Switzerland and Liechtenstein turned into a contentious issue. The principality worried about the possibility of diverging outcomes in the two countries and the consequences this might imply. This debate led to a fierce controversy about the interpretation of the 1921 Constitution regarding the role of the Reigning Prince in Liechtenstein’s foreign policy.

In September 1992 the Landtag approved the EEA Agreement and decided to hold a national referendum. In March 1992 a popular initiative had introduced the optional referendum on international treaties into the Constitution. The goal of this amendment successfully requested by citizens was to make sure that there would be a public vote on the EEA Agreement – especially since there had been no referendum on UN membership. The government set the date for Liechtenstein’s vote on the EEA Agreement one week after the Swiss referendum. Prince Hans Adam II, a fervent proponent of the EEA, disagreed with this decision and demanded to hold the referendum before Switzerland, threatening to dismiss the government and dissolve the Landtag. In the ensuing compromise

the later date was kept but it was clarified that a positive referendum outcome would be considered valid independent of the Swiss vote.

This crisis is often seen as the trigger for the constitutional reform of 2003. The controversy during the 1990s covered not only the Prince's role in foreign policy but also his right to dismiss members of the government, to dissolve Parliament or to nominate judges. Prince Hans Adam II and Parliament floated various proposals but no compromise was found. In 2002 the Prince and his eldest son launched a popular initiative to put their proposals to a vote. A group of Liechtensteiners brought the dispute before the Parliamentary Assembly of the Council of Europe which asked the Venice Commission to assess the proposed constitutional reforms. In its 2002 opinion the Venice Commission considered the Prince's proposals as a step backwards for democracy in Liechtenstein since the monarch would – against the European trend – acquire more rights (Maresceau 2011: 504-507). At the same time, the people would obtain the possibility of a vote of no confidence towards the monarch and the right to abolish the monarchy in a referendum. Since the Reigning Prince basically turned the campaign into a vote in favour of or against monarchy, a large majority of Liechtenstein's citizens (64%) in March 2003 sanctioned the constitutional changes (see Marcinkowski and Marxer 2010). This outcome made it difficult for the Council of Europe to pursue the matter further. Instead of a monitoring procedure it opened a “constructive dialogue” to study the constitutional and political practices in Liechtenstein. Three years later this dialogue was concluded without any consequences. Liechtenstein's bilateral relations with the European Union have not been affected by this constitutional controversy.

In December 1992, the Swiss people and cantons rejected EEA membership by a very narrow margin. Against all odds, the Liechtensteiners approved the EEA Agreement in a national referendum only one week later. Of all possible “yes/no” combinations between the two countries, this scenario was the most unexpected one as the two economies seemed too tightly interwoven to permit a different policy choice. For many “yes” voters the official reassurance that this ballot could not be the final word but that another referendum was to be held on the necessary adaptations of the bilateral agreements with Switzerland was crucial. The disappointment in Switzerland in the aftermath of the negative referendum there and the readiness of the Swiss government to discuss a modification of the Customs Treaty contributed to Liechten-

stein's choice of keeping the “window of opportunity” towards Europe open.

As a result, the Liechtenstein government had to first renegotiate relations with Switzerland, then have the solution approved by the EEA partners and finally overcome the domestic ratification hurdle. Several factors allowed to “square the circle” of participating in the EEA's enhanced free trade area while maintaining the bilateral customs union with a non-member (Gstöhl 1997: 164-166): the small size of Liechtenstein made it quite easy to observe the trade flows, the need to adapt the bilateral relations was mainly restricted to the free movement of goods and the differences between EU and Swiss rules that could potentially lead to conflict were relatively small. The political will on all sides to honour the Liechtensteiners' wish to join the EEA despite Switzerland's opt-out was strong – the Swiss had no interest in complicating their future bilateral negotiations with the EU, while the Union was keen to demonstrate its understanding for the concerns of small states after the Danish “no” to the Maastricht Treaty. Finally, Art. 121(b) of the EEA Agreement already recognized the regional union between Liechtenstein and Switzerland as being in conformity with the EEA Agreement to the extent that it did not impair its functioning. It would indeed have been paradoxical to force these two countries to reintroduce border controls after seventy years. Moreover, an additional EEA EFTA country was most welcome in view of the EU accession negotiations of Austria, Finland, Norway and Sweden.

The Customs Treaty now allowed Liechtenstein to join international organizations or agreements without Switzerland but such an act required a special bilateral understanding. The solution of the “Gordian knot” was based on the innovative principle of parallel marketability which allows products meeting *either* EEA *or* Swiss requirements to circulate in Liechtenstein (Baur 1996). The principality created a market surveillance and control system to prevent the circumvention of Swiss import restrictions for EEA goods, adapted its customs procedures for the import of EEA goods and was granted certain transitional periods for areas where legal discrepancies between the Swiss and the EEA *acquis* persisted. These discrepancies have to a large extent faded away over time as Switzerland has been aligning its legislation to the EU or other solutions were implemented.

Regarding the politically most sensitive issue of the free movement of persons, Liechtenstein obtained in addition to the transitional period and the review clause a joint declaration with the EEA Council. This declaration recognized the very small inhabitable area of rural character and the unusually high percentage of non-national residents and employees and acknowledged Liechtenstein's vital interest in maintaining its own national identity (EEA Council 1995: 80). While the principality must ensure equal treatment for EEA nationals living on its territory, it may take safeguards against an extraordinary further influx. In order not to discriminate against Swiss citizens compared to EEA nationals, Liechtenstein agreed to liberalize the free movement of persons also with Switzerland. The other bilateral agreements (e.g. PTT services, air traffic) were only marginally affected or not at all (e.g. currency treaty).

Although the EEA offers only limited decision-making powers, in the regional union with Switzerland the principality's influence is even weaker and its position is similar to that of a canton. Swiss customs legislation and, to the extent that the customs union calls for its application, other federal legislation is automatically applicable in Liechtenstein. Whereas the original Customs Treaty did not even foresee any joint body, the 1995 revision established a Joint Commission for the implementation of the agreement.

The second referendum took place in April 1995 after the approval by Parliament and vivid campaigns in favour and against EEA membership. In a remarkable show of independence, Liechtensteiners voted again in favour of European integration. With close to 56% "yes" votes the support was about the same as in 1992. On 1 May 1995 the principality became of full member of the European Economic Area and ever since has demonstrated its ability to cope with the obligations this entails. "Given its limited human resources, the swiftness shown by Liechtenstein in most areas in adopting European Union legislation and regularly updating its legislation in accordance with the evolving EU *acquis* is to be commended" (Council of the European Union 2010: para 17).

In order to reflect the more ambitious level of integration in the EEA and in the EU-Swiss bilateral agreements, the EFTA Convention was updated accordingly. The so-called Vaduz Convention entered into force in 2002 and ensures that the EFTA states benefit from virtually the same privileged relationship among themselves as they do with the EU. It is regularly updated by the EFTA Council to take into account

developments under the EEA Agreement and the Swiss bilateral agreements.

2.4 Sectoral agreements

Liechtenstein, like the other EFTA states, has concluded bilateral agreements with the European Union beyond the EEA Agreement. For example, the principality has negotiated an agreement with the EU on the taxation of savings income (2004) and on security procedures for exchanging classified information (2010). Still pending is a bilateral anti-fraud and tax information exchange agreement with the EU (see below). In addition, the EU-Swiss agreements on processed agricultural products (2004), on the carriage of goods (2009) and on the protection of geographical indications of agricultural products (2011) apply in Liechtenstein as long as the principality is in a customs union with Switzerland. Both countries have entered an arrangement with the EU on their participation in the activities of the FRONTEX Agency (2009).

An important sector for Liechtenstein's economy are financial services. The conclusion of bilateral agreements on the taxation of savings income with Switzerland, Liechtenstein, Andorra, San Marino and Monaco was a condition for the entry into force of the Council Directive on the taxation of savings interest within the EU. The agreements provide for a withholding tax on payments of interest similar to what Austria, Belgium and Luxembourg were allowed to apply as a transitional measure, derogating from the principle of automatic exchange of information. Bank secrecy has thereby largely been left intact for the third countries. Yet this limitation has in recent years, especially in light of the worldwide fight against terrorism and the financial crisis, increasingly been challenged by various multilateral initiatives such as from the Organization for Economic Cooperation and Development (OECD) or the G20. The principality found itself until 2009 blacklisted as uncooperative tax haven by the OECD but it also faced bilateral clampdowns, in particular from Germany (Maresceau 2011: 520-525).

These political pressures had a profound impact on Liechtenstein's approach to international tax cooperation. It made substantive concessions in the negotiations of an Anti-Fraud and Tax Information Exchange Agreement with the EU which covers assistance regarding illegal activities in connection with trade, including VAT evasion, but also fraud affecting direct taxes. This goes well beyond the 2004 savings tax agreement. Assistance in the form of an exchange of

information also covers funds controlled by a fiduciary where the owner is not publicly registered such as private-use foundations („Stiftungen“).

Although the Commission, supported by the European Parliament, called for the signature of the agreement, the Council of Ministers in February 2009 refused to accept the draft at the instigation of the German Minister of Finance. The Council wanted further negotiations to obtain at least a similar scope of obligations as Liechtenstein had in December 2008 agreed with the United States. The agreement with the US provides for information exchange upon request in case of a suspicion, under US law, concerning tax offences by US taxpayers with assets in Liechtenstein. It thus goes beyond combating fraud, and requests for cooperation are easier to initiate. As a result, Liechtenstein made additional concessions to ensure effective exchange of information on tax matters. Due to internal EU problems, conclusion of this agreement is still pending (see below).

2.5 Schengen/Dublin association 2011

Another important integration step for Liechtenstein – like for Norway, Iceland and Switzerland – is the association with the Schengen area and Dublin convention. It requires the principality to adopt the relevant *acquis* and includes it in the European information and consultation mechanisms in the fields of border controls, international justice and police cooperation, visa and asylum policy. Similar to the EEA, the EFTA countries have the right to participate in decision-shaping but not a formal right to participate in decision-making in the further development of Schengen/Dublin law (cf. Filliez 2008).

Switzerland has been integrated into the Schengen area since late 2008, and its only external borders are the airports – and for a transitional period the border with Liechtenstein. The principality should have become involved as soon as possible after the Swiss entry. For this purpose, two protocols were signed in early 2008 but for technical and political reasons the entry into force was delayed (see below). In spring 2011 the European Parliament and the Council of Ministers finally proceeded with the ratification. Following an evaluation process, passport controls at the Austrian-Liechtenstein border are expected to disappear by the end of 2011.

Although Liechtenstein's association is not based on a separate agreement with the EU but linked to the Swiss bilateral agreements via protocols, the principality is to become an independent contracting party (Liechtenstein 2008b). It enjoys the same rights and obligations as the Swiss Confederation. Specific provisions are laid down for Liechtenstein concerning the time period required to implement new *acquis*, in case constitutional requirements need to be fulfilled (18 months). Liechtenstein is a member of the Mixed Committee, in which it has the right to express its opinion and which it may preside over.

The principality is surrounded by Schengen states and has no airport. To keep the open border with Switzerland during the transitional period, roads between the two countries are, as a pragmatic interim solution, subject to video surveillance instead of border controls. A trilateral police liaison office was set up at the main border crossing to Austria and a bilateral treaty with Switzerland regulates cooperation in the areas of visa, entry, residence and police cooperation in the border region. Liechtenstein has also arranged for Schengen visas to be issued free of charge to resident foreigners.

Overall, the principality of Liechtenstein has reached an unprecedented level of participation in European integration. The next section will examine the increasing Europeanization that this policy has brought about in the country.

3. The Europeanization of Liechtenstein: status quo

The understanding of “Europeanization” in this report includes a wide array of domestic effects that can be ascribed to the European integration process (Goetz 2006: 473). First, the changing conditions for economic actors are addressed. Second, Europeanization of society is explored by means of the media coverage on EEA matters as well as Liechtenstein's participation in EU programmes. Third, the Europeanization of the legal order, parliamentary work and national administration are analyzed which allows to draw conclusions regarding the impact on sovereignty and the legitimacy of the political system. As the government's regular reports on the EEA show, the challenges and benefits of Europeanization have been remarkably constant

(Liechtenstein 1996b, 2000, 2005a, 2010a). On the one hand, the strong increase of legal provisions has raised the administrative costs and reduced the scope of action for both economic and political actors. On the other hand, the EEA membership guarantees the access to the internal market of the EU as well as the participation in the EU's policy-making process and has reduced Liechtenstein's legal and political dependence on Switzerland.

3.1 Europeanization of Liechtenstein's economy

Liechtenstein's economy is characterized by four main features: it is highly diversified, highly export-dependent, with a high ratio of small and medium-sized enterprises (SMEs) and a liberal economic policy. The largest share of the labour force works in the services sector (58%), followed by industry (41%) and agriculture (1%). The most important industrial branches are mechanical engineering, electrical machinery, vehicle components, dental technology and food products, with an emphasis on the development of high quality, high-tech products (Liechtenstein 2011a). The EU/EEA is Liechtenstein's main export (86%) and import (98%) market, whereas due to the customs union with Switzerland there is no reliable data regarding the exports to and imports from Switzerland. The total employment almost equals the number of inhabitants, and in 2009 more than half of the 32'877 employees commuted to Liechtenstein from the neighbouring countries Switzerland (51%), Austria (45%) or Germany (3%). Less than fifteen percent of the 3'600 companies settled in Liechtenstein have more than ten employees. The low public sector share of GDP (21%) underlines the very liberal economic policy (Liechtenstein 2010a: 25).

3.1.1 Pros and cons of EEA membership

Overall, Liechtenstein's economy has greatly benefited from EEA membership. In its report on "15 years EEA Membership of the Principality of Liechtenstein", the government concluded that Liechtenstein had successfully maintained, if not improved, its location attractiveness (*ibid.*: 5). Due to its relatively small size, access to the EU's internal market, diversification and internationalization are essential conditions for Liechtenstein's prosperity. Criticism of the EEA mainly concerns the high regulatory density as a limitation of entrepreneurial freedom as well as the public procurement procedure which disallows preferential treatment of the local business.

An empirical analysis of the impact of EEA membership on Liechtenstein's national economy is constrained by several factors. The effects of the EEA can hardly be isolated from the effects of globalization or regional cooperation with Switzerland. Furthermore, Liechtenstein lacks important statistical data as the collection of independent statistics began only a few years ago. A systematic comparison of current data to the period before EEA accession is therefore not possible. The available data do illustrate, however, that after joining the EEA the annual increase in the number of work places, exports of goods and bank balance sheets has been stable and approximately at the same rate as during the 1980s (*ibid.*: 24).

Alternative methods for measuring the Europeanization of Liechtenstein's national economy include surveys of economic actors. In 1998, an initial study showed great satisfaction with EEA membership in all economic sectors, and in particular in industry, whereas the independent professions were the most critical respondents (Prange 1999: 154-157). A 2007 study focusing on SMEs confirmed these results with more than 70% of all companies assessing EEA membership as advantageous (Sander, Hartmann and Morellon 2007: 24). Nonetheless, 62% of the surveyed SMEs viewed the customs and currency union with Switzerland as more important than EEA membership (*ibid.*).

A further confirmation of the high approval of EEA membership resulted from the consultation of all professional associations as part of the report on "15 years EEA Membership of the Principality of Liechtenstein" in 2010. According to this survey, engineers and architects were the only professions which negatively assessed EEA membership due to increasing competitive pressures, the strong legal regulation and the complex procedures of public procurement (Liechtenstein 2010a: 224-299). Another increasingly critical actor is the Liechtenstein Chamber of Trade and Commerce ("Gewerbe- und Wirtschaftskammer" GWK) which represents the interests of the services sector, trades and crafts, commerce, industry, transport, consulting and tourism. In addition to the public procurement process, its criticism is directed mainly at the high density of EEA rules in labour law, equal treatment and environmental protection. For instance, the Liechtenstein government faced some opposition from the local trade and commerce when it introduced parental leave (Liechtenstein 2003a: 9-25) or strengthened the equal treatment of men and women (Liechtenstein 2010b: 29-50). The domestic opposition was enhanced by the fact that these issue areas are not part of Swiss-EU relations and many enterprises in Liechtenstein feared

a loss of competitiveness in the common economic area with Switzerland. As a result, various actors demand regularly an examination of the compatibility of EEA rules with the high share of SMEs in Liechtenstein before implementing them into national law. Against this background, the Liechtenstein government limits the implementation measures of EEA rules, at least within the horizontal and flanking policies (except for company law), to the minimum level required. The high share of contracts to enterprises in Liechtenstein (61.2%) and Switzerland (32.2%) shows that EEA public procurement provisions have not affected local business as feared (Liechtenstein 2009a).

In contrast to local business, the regulatory density is of low importance for the larger export-orientated companies. Thanks to the EEA membership, they have equal access to the internal market with over 500 million consumers, legal certainty and planning stability. Additional positive aspects include intensive competition and access to the European research area, which have increased innovation and productivity. EEA membership has also led to the establishment of new lines of business in the financial services sector, such as investment funds and life insurances, taking advantage of the different levels of integration of Liechtenstein and Switzerland.

The export-orientated companies are concerned about the shortage of skilled workers which they see as a result of Liechtenstein's restrictions on the free movements of persons in the EEA (see below). Other criticism is aimed at customs formalities and the current weakness of the Euro. Especially small companies without an establishment in the Euro area are suffering from the unfavourable exchange rate. Due to the weakness of the Euro some enterprises have even started to pay their employees in Euros instead of Swiss Francs, although the legal basis for such payments remains unclear (Liechtensteiner Vaterland 2011a: 29). Outside of the EEA the export industry wishes to ensure better access to Asian markets by free trade agreements.

3.1.2 EEA and customs union with Switzerland

Beyond the great number of SMEs and the liberal economic policy tradition the close relations to the non-member Switzerland occasionally lead to frictions with the EEA. Generally, the Swiss-Liechtenstein relations function well despite their different levels of integration with the EU. Switzerland has signed numerous bilateral agreements with the EU and continuously adopts new EU law through the so-called "autono-

mous adaptation" ("autonomer Nachvollzug"). Nevertheless, Liechtenstein has been obliged to negotiate several bilateral agreements with Switzerland in order to ensure the correct implementation of EEA rules on the one hand as well as to prevent discrimination of Liechtenstein's companies within the Swiss-Liechtenstein economic area on the other hand. A prominent example is the "agreement on environmental charges" (LGBI. 2010 No. 13) that ensures the compatibility of Swiss and EEA environmental rules in Liechtenstein, in particular the emissions trading directive (Directive 2003/87/EC). It prevents a double charging of Liechtenstein's enterprises by Swiss and EEA regulation. Additional controversial issues are the increase of transaction charges for credit cards or restrictions of the business opportunities of Swiss Post in Liechtenstein due to the division of Switzerland and Liechtenstein into two different payments areas by a decision of the European Commission and the Payment Service Directive (Liechtenstein 2009b).

Switzerland applies the same flanking measures to Liechtenstein as it does to the EU member states to protect the incomes and working conditions of Swiss companies. These Swiss measures force Liechtenstein's entrepreneurs to pay a deposit before they can provide their cross-border services in Switzerland and the right to provide cross-border services is limited to 90 days. Although these measures aim at the EU states, they strongly affect Liechtenstein's local trade and commerce which considers them inappropriate for a common economic area and not compatible with the EFTA Convention (Wirtschaft Regional 2011: 2). In spring 2011, bilateral negotiations began, but a solution is not to be expected as long as the Swiss measures towards the EU continue. Therefore, Liechtenstein's economic associations in cooperation with the government try to find domestic solutions to ease the access of Liechtenstein's local trade and commerce to the Swiss market. Switzerland's flanking measures illustrate that its relations with the EU influence Liechtenstein's relations with Switzerland as well as Liechtenstein's benefits from the EEA Agreement.

Liechtenstein's economy has benefited from both economic areas, however, due to the close cooperation with Switzerland, the EEA has not yet displayed its full economic potential in particular in the field of competition policy (Interviews 2011). It is also still unclear how Switzerland's autonomous introduction of the "*Cassis de Dijon*" principle in June 2010 affects the price level in Liechtenstein, where the principle has applied without noticeable effects since its EEA accession (Interviews 2011). The same holds for paral-

lel imports of medicinal products which are legally allowed but hardly used by Liechtenstein's pharmaceutical actors (Liechtenstein 2005b: 90) although the price level diverges strongly between the Swiss and the EEA market.

3.2 Europeanization of the society

Assessing public opinion in Liechtenstein on the EEA or the European integration process in general is a difficult task. No specific surveys have so far been fielded. A more general survey carried out in 2006 showed a relatively higher cosmopolitanism in Liechtenstein than in Germany or Switzerland, and the concern about a possible transfer of power from the national government to international organizations was less significant (Marxer 2006: 217-218). There are mainly positive statements on the EEA from the various economic and societal associations in Liechtenstein. Yet there is no public debate which would allow to estimate society's support. One reason for this lacuna might be the absence of a political party arguing against the EEA membership or in favour of an EU membership. Also the media coverage on the EEA is very limited. In comparison with national bills the reporting in the print media on EEA bills is shorter and less prominently positioned. Additionally, reports on the functioning of the EEA or further integration steps appear mostly in the form of official statements from the governments or its representatives, and there is little reporting about developments in the other EEA EFTA states. For instance, Liechtenstein's newspaper have so far not included any comments on the reservations of Norway towards the third postal directive (Directive 2008/06/EC) and the possible consequences they might have for the EEA Agreement.

3.2.1 Participation in EU programmes

Based on its EEA membership Liechtenstein participates in about twenty EU programmes, of which only the Lifelong Learning Programme (LLP), the programme Youth in Action and the Seventh Framework Programme for Research (FP7) are well known in Liechtenstein. In the remaining programmes Liechtenstein participates as a "passive contributor" (Liechtenstein 2010a: 222).

The national agency of international education matters ("Agentur für internationale Bildungsangelegenheiten" AIBA) is responsible for the management of Liechtenstein's participation in the LLP. According to

an interim report for 2010, the LLP is very successful and provides a substantial contribution to the idea of a common Europe in Liechtenstein (Weiß, Mogg and Lachmayr 2010). The positive experiences of LLP participants had been passed on from one person to the next and therefore boosted the popularity of LLP despite the AIBA's small administrative capacity. The reflow of Liechtenstein's payments to the EU has increased from 70% in 2006 to over 90% in 2010 (Liechtenstein 2006: 16-21; Prange-Gstöhl 2011). Compared to Liechtenstein's participation in other EU programmes, this is a very high value. The only criticism of the LLP concerns the relatively high administrative costs, especially regarding the reporting duties (Interviews 2011). The programme management would prefer a selective adjustment of the EU programme structure taking into account the limited capacities of a very small state like Liechtenstein (Weiß, Mogg and Lachmayr 2010: 23-28). Finally, Liechtenstein hopes to limit the administrative costs in the course of an extended LLP participation of Switzerland.

The success rate of Liechtenstein's participation in the FP7 has fluctuated strongly over the past 15 years. Whereas Liechtenstein had regained 114% of its contribution in the fifth framework programme (FP5) the reflow from the sixth framework programme (FP6) was just 30% and also in the latest release (FP7) Liechtenstein's benefit has been very small with a reflow of only 14% and a success rate of applicants of less than 15% so far (see Table 1). The low success rates of FP6 and FP7 are surprising since research is vital for Liechtenstein's high-tech economy and the investment in research and development (R&D) as a share of GNP is above the OECD average (in 2008: 6.8% compared to 2.1% in the EU). However, R&D expenditure comes mainly from the private sector and Liechtenstein's public R&D expenditure is very low (in 2009: 0.1% compared to 0.6% in the EU). Due to the EU-wide above-average success rate of applicants from the public sector in the FP7, the low public R&D expenditure might be a reason for the small reflows of FP7 to Liechtenstein. In the case of Switzerland, private actors benefit only from 33.6% of the total grants of the FP7 to Switzerland although they are responsible for more than 65% of the R&D expenditures (Switzerland 2010b: 15). Additional reasons for the low reflow of the FP7 to Liechtenstein might be the lack of administrative capacity and the high share of SMEs. Finally, interviews with potential FP7 applicants showed a certain restraint towards the FP7 since unsuccessful

applicants spread their negative experience (Interviews 2011).

Recently, the government has undertaken strong efforts to improve Liechtenstein's participation in FP7. It has established a National Contact Point which promotes the programme and contacts Liechtenstein's companies directly if there is a suitable call for proposals. Additionally, the government has concluded an agreement with Euresearch (the contractor of the Swiss government within FP7) to support actors from Liechtenstein when submitting a project proposal. Furthermore, the principality has introduced supportive measures on the national level to improve the cooperation between companies and the administration. This intensified cooperation shall prevent the dissemination of "frustration" (Liechtensteiner Volksblatt 2011a: 19) among potential applicants since Liechtenstein's successful participation in the LLP has shown how important the transmission of positive experiences is for the popularity of a programme in Liechtenstein. The latest data indicate a slight increase in the success rate of Liechtenstein's projects proposals (Liechtensteiner Volksblatt 2011b: 17). Nevertheless, considering the smallness, the low share of public R&D expenditures and the high number of SMEs, a successful participation in FP7 will remain a big challenge for Liechtenstein.

Table 1 compares Liechtenstein's participation in FP7 with the other EFTA members as well as with the smallest EU country Malta and the EU average. Liechtenstein's success rate of applications is very low (12%), whereas the success rate in terms of financial reflow is higher (17.8%) which means that the success rate of applications increases with the project budget. Liechtenstein's low success rates of applications surprises because Swiss applications – which are also supervised by Euresearch – reach a very high success rate. Since a country's national contribution to the EU is recalculated every year the reflow can only be estimated. Based on figures of the EFTA Secretariat (2010: 55-56) and the Swiss government (2010b: 5), the reflow for Liechtenstein would be approximately 14% in 2010 compared to 45% for Norway, 96% for Iceland and 109% for Switzerland.

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Table 1: CORDA FP7 country profiles (June 2011)

	Success rate in terms of applications (in %)	Success rate in terms of financial reflow (in %)	Reflow from EU (in mio EUR, 1/2007-6/2011)	National contribution to FP7 (in mio EUR 2010)
Liechtenstein	12	17.8	1.18	1.87
Norway	24.5	20.9	338.59	167.32
Iceland	23.5	18.0	24.01	5.52
Switzerland	25.4	26.3	915.36	194.12
Malta	19.4	11.4	8.61	-
EU-27	21.5	21.0	17'563.00	-

Source: European Commission, CORDA database.

3.2.2 Europeanization of domestic actors

European politics in Liechtenstein follows a very pragmatic approach. After two emotional referendum campaigns on EEA accession in the 1990s the issue has not figured prominently in any public debate again. At the same time, the government has stated its pride about the good functioning of the EEA Agreement and the gain of sovereignty and prosperity. From this perspective one can assume that the EEA Agreement enjoys strong support within Liechtenstein's society, even though support for EEA membership has to be seen in the context of the strong scepticism towards an EU membership among Liechtenstein's political elite and probably among the people as well (Liechtensteiner Volksblatt 2011c: 4-5). Overall, Liechtenstein's society seems to pay little attention to European politics and regarding the EU, reluctance and rejection dominate. Nonetheless, due to the pragmatic approach in Liechtenstein's European politics this could change rapidly.

Despite its smallness Liechtenstein has a considerable number of public and private actors in all policy fields. These associations as well as the eleven communities can shape domestic policy-making by advocating their specific interests in the public consultation procedure. They do so especially in the fields of social policy and education. By contrast, there are only a few actors participating in the consultation on EEA-related bills. These are mainly the Liechtenstein Bankers Association ("Liechtensteinische Bankenverband"), an association of the banks operating in Liechtenstein, the Liechtenstein Chamber of Commerce and Industry ("Liechtensteinische Industrie- und Handelskammer" LIHK), a private association of larger industrial companies, major banks and various service companies, and the different associations in the financial services sector. Also Liechtenstein's only labour union ("Liech-

tensteinischer Arbeitnehmerverband" LANV) and the numerous professional associations participate actively in the consultation process on EEA-related bills. Unlike the economic actors, the involvement of civil society actors and the communities is rather rare.

Most associations have an EEA expert who can be called upon. Their involvement starts at an early stage. In most important cases, the government's EEA Coordination Unit („Stabsstelle EWR“) contacts the EEA experts of the associations when the national experts of the administration evaluate the EEA relevance of a proposed EU act. However, most of the associations do not seize the opportunity to comment and participate only when the domestic implementation process starts. The main reason for this delay is the small administrative staff of all associations. Additional reasons are poor European networking and knowledge as well as a certain indifference towards the EEA due to the strong focus on Switzerland. After all, expert interviews confirmed that many associations have little confidence in the ability of Liechtenstein's government to contribute to the policy-making process of the EEA and concentrate therefore their activity on the domestic implementation process (Interviews 2011).

In the last ten years various associations, especially in the financial services sector, succeeded in linking themselves with the corresponding European umbrella association and established direct contacts with decision-makers in the different EU institutions. Through this network the associations become more and more independent from the engagement of the Liechtenstein government. Nevertheless, the government strongly supports the international network of the domestic associations since cooperation in the European umbrella associations increases knowledge about the policy-making process of the EU as well as the preferences of other states and non-state actors. This knowledge enables Liechtenstein's associations to establish strategic alliances with actors from other countries.

Liechtenstein's associations perceive no discrimination within the European umbrella association due to the EEA membership of Liechtenstein, but similar to Norwegian actors (Eliassen and Peneva 2011) EEA membership is perceived as a disadvantage in relation to the European Commission, the European Parliament or other EU actors. As a result, Liechtenstein's associations face more restrictions in the access to information than their counterparts in the EU (Interviews 2011). Overall, even though some associations have managed to establish a European network, it seems that the Europeanization of Liechtenstein's

associations has just started and is mainly restricted to the financial services sector. It remains to be seen whether other associations can benefit from the experiences made by the financial services sector and improve their European knowledge and engagement.

3.3 Europeanization of the legal order

Considering its close relations with neighbouring countries, its small size and the lack of a faculty of law, Liechtenstein is to some extent dependent on the legal education, the legislation and the jurisdiction of its neighbouring countries (Berger 2004: 2). For these reasons, the legal order of Liechtenstein is strongly influenced by Austria and Switzerland. Until World War I, the reception of foreign law by Liechtenstein was focused on Austria but the influence of Switzerland has increased rapidly after signing the Customs Treaty in 1923. In the course of EEA membership some experts observed again a change of direction towards the Austrian legal order (Interviews 2011). In sum, the legal order of Liechtenstein remains a mixture of legal reception of Swiss and Austrian law with some independent adaptations to the specific needs of Liechtenstein.

3.3.1 Europeanization of Liechtenstein's legislation

The impact of EEA membership on the legal order of Liechtenstein was subject to a study at the Liechtenstein-Institut in 2010, measuring the share of EU-related rules within the legal order of Liechtenstein (Frommelt 2011b). The study includes both an examination of all Liechtenstein Law Gazettes („Landesgesetzblatt“ LGBl.) published between 2001 and 2009 („chronological analysis“) as well as an examination of the whole national law („Landesrecht“ LR) at a specific date (31 March 2010, „inventory“). The distinction between a chronological analysis and an inventory checks for the fast increase in the number of Law Gazettes published per year from 86 in 1994 to 470 in 2010. In Liechtenstein, 41% of all legal acts published between 2001 and 2009 were EU-related, with a peak of 47% in 2007. By contrast, the share of legal acts with a national impulse was only 33% in the evaluation period (see Table 2). Furthermore, the analysis differentiates between policy fields, types of legal acts and staffing implications for the government, showing that Europeanization is extraordinarily high for laws (49%) and laws with additional staffing costs (56%). The inventory of the national law in force on 31

March 2010 confirms these results with a share of 39% EU-related rules.

The findings confirm the EU's substantial influence on Liechtenstein's legal order. The fact that the share of EU-related rules culminates in laws with additional costs for administrative staff enhances the EU impact. However, the above mentioned increase in the number of Law Gazettes published per year is not just driven by the EU/EFTA. Instead the share of EU-related Law Gazettes remains nearly constant over time. Consequently, there is also an annual increase of Law Gazettes with a national, international or Swiss impulse as a result of the growing need for more legal certainty and transparency in a globalized world as well as a consequence of the increased independence of Liechtenstein from Switzerland.

Table 2: Liechtenstein Law Gazettes (LGBL.) classified by impulse and type of legal acts (2001-2009, in percent)

Type of legal act	EU/EFTA	International	National	Switzerland	Cumulated
Laws	49.3	8.7	39.2	3.3	100
Government decrees	34.1	23.5	36.7	5.7	100
Financial decrees	5.3	12.2	80.2	2.4	100
Announcements	64.6	5.6	8.8	21.1	100
International treaties	31.5	56.4	0	12.1	100
TOTAL	41.2	17.1	33.3	8.5	100

Source: Frommelt 2011b.

The most Europeanized policy fields concern the four freedoms, in particular trade in goods, financial services, telecommunication services and free movement of persons (Frommelt 2011b: 25). Given the specific structure of Liechtenstein's economy, the high shares of EU-related rules in financial services (70%) and the free movement of persons (95%) is remarkable. These policy fields are crucial for the economy and national identity. By contrast, Europeanization is low in social policy or sport and culture, where the EU has very little competences, too. Compared with similar studies on EU member states, the level of Europeanization in Liechtenstein is low in agriculture and fisheries which can be explained by the limited scope of the EEA Agreement and the direct application of Swiss legislation due to the Customs Treaty. In sum, the classification by policy fields mirrors the substantial impact of the EU within the four freedoms but also the varying

EU competences in different policy fields and the less comprehensive coverage of the EEA Agreement.

The close links between Switzerland and Liechtenstein are not fully reflected in Table 2. Although the biannual announcement of relevant Swiss legislation includes several binding acts for Liechtenstein, it just requires two Law Gazettes every year. Furthermore, the mere number of rules says little about their relevance in the daily application. While over the last 16 years the majority of Law Gazettes related to company law had an EU impulse, most companies in Liechtenstein still operate on the basis of law which had been adapted from Swiss law. Despite such shortcomings, there is no doubt about the substantial impact that the European integration process has on Liechtenstein's legal order.

3.3.2 Comparison with other EEA states

The impact of the EU on the legal order of Liechtenstein is surprisingly high compared to EU member states (Töller 2010; Müller *et al.* 2010). Nonetheless, a comparison has to consider the methods used since there is little consensus in political science on how to define an EU-related rule. For some authors, classification as an EU-related rule requires a direct reference to an EU act in the legal act itself, whereas other authors consider also references to an EU act within the corresponding documents of the government. In the case of Liechtenstein the share of laws with a direct reference to the EU is 27% (2010) and therefore significantly higher than in the Netherlands (12.6%, 2003), Denmark (19.7%, 2003), and Austria (10.6%, 2003) (see Table 3). Including documents of the government, the share of EU-related laws is in Liechtenstein again comparatively higher with 49.3% in Liechtenstein (2001-2009) and 35.7% in Germany (2002-2005, König and Mäder 2008: 449).

Table 3: EU impact on the legal order (legal acts with an EU impulse)

	Netherlands (2003)	Denmark (2003)	Austria (2003)	Liechtenstein (2010)
Laws	1781	1344	4110	343
	12.6%	19.7%	10.6%	27.0%
Government decrees	10169	7513	4416	509
	12.5%	13.2%	14.1%	28.0%
TOTAL	11950	8857	8526	852
	12.6%	14.2%	12.4%	27.0%
Ratio of laws to decrees	0.18	0.24	0.70	0.67

Notes: Laws and government decrees transposing EU directives and other EU rules which were in force in 2003 (NL, DK, AT) or 2010 (LI). The data collection uses a very narrow understanding of an EU impulse (see Frommelt 2011b).

Sources: adapted from Müller *et al.* 2010: 76; Frommelt 2011b.

A comparison of the Europeanization of Liechtenstein’s legal order with EU member states has to consider several country-specific factors. According to Müller *et al.* (2010), the Europeanization of the legal order increases with the level of integration, the duration of membership and the degree of centralization. With regard to Liechtenstein these factors have little relevance as the late and selective participation in the European integration process as well as the lack a federal level would predict a low level of Europeanization in Liechtenstein. Hence, the legal tradition, in particular the low number of rules, offers a better explanation for the high share of EU-related rules in Liechtenstein.

Many issue areas are not regulated in Liechtenstein due to its small size and the direct application of Swiss law. In 2010, the legal order of Liechtenstein comprised only 343 laws and 509 government decrees, whereas countries like Denmark and Netherland have more than one thousand laws and more than eight thousand government decrees (*ibid.*). As a result, Liechtenstein’s share of EU-related rules is relatively higher when implementing a similar number of European provisions. However, since many issue areas have been regulated for the first time by EEA rules, Liechtenstein was also able to combine several EEA rules in a single law which has limited both the total number of rules and the share of EU-related rules. In addition, unlike the dualist systems in Iceland and Norway which require international law to be translated into national legislation, Liechtenstein follows a monist approach and EU regulations gain direct effect without a national legal act.

3.3.3 Europeanization of the jurisdiction

Jurisdiction in civil and criminal matters is exercised in the first instance by the Court of Justice („Landgericht“), in the second instance by the Court of Appeal („Obergericht“), and in the third and last instance by the Supreme Court („Oberster Gerichtshof“). The decisions and decrees of the administrative bodies can be challenged in the Administrative Court („Verwaltungsgerichtshof“), and any final decision of a Liechtenstein court or administrative body can be appealed to the Constitutional Court („Staatsgerichtshof“ StGH) on the grounds of an infringement of constitutional rights or of rights guaranteed under the European Convention on Human Rights. Due to the lack of human resources and the strong impact of Switzerland and Austria on Liechtenstein’s legal system, all courts have judges of Swiss or Austrian nationality, but the majority of judges and the presidents of the respective courts have to be Liechtenstein citizens. All courts have been facing a strong increase in the number of cases.

The impact of EEA membership on the jurisdiction of Liechtenstein in general has not yet systematically been analyzed. Most of the EEA-related publications in law journals are single case studies by lawyers or judges. Among the published cases of the Supreme Court, the Administrative Court and the Constitutional Court, only an average of 8% includes a reference to the EEA or the EU, their institutions or legal acts (Liechtenstein 2011b). The figures indicate no significant change over time (max. 12%, min. 4%) but a strong variation across the different courts. Whereas the EEA or the EU are mentioned in only 2.5% of the cases of the Supreme Court and in 16.4% of the cases of the Constitutional Court, the Administrative Court refers in 36% of its cases to the EEA or the EU (Frommelt 2011f).

In the legal debate on the EEA, the relationship between EEA law and constitutional law is the main subject of interest. The judicial system of Liechtenstein is regarded as „friendly“ to international law and follows a monistic approach. The large majority of experts does not doubt the direct applicability and precedence of EEA law in Liechtenstein’s judicial system (Bussjäger 2006), but opinions are divided with regard to the relationship between the EFTA Court of Justice and the Constitutional Court.

According to Art. 104 of the Constitution, the Constitutional Court has the competence to review the constitutionality of laws, international treaties and government decrees. In this regard, the Constitutional Court takes a forfeiture decision. The Constitutional

Court's judicial review affects also the domestic impact of an advisory opinion by the EFTA Court. The main point at issue is whether domestic courts are allowed to disregard a national law which is not compatible with EEA law or whether they have to wait until the Constitutional Court annuls the respective law (Wille 2005; Bussjäger 2006). The proponents of the Constitutional Court hold the view that in case the EFTA Court has declared national law contrary to EEA law, the presenting court cannot disregard the respective law but must refer it to the Constitutional Court to conduct a judicial review. Hence, not the EFTA Court but the Constitutional Court would decide in last instance whether a national law is compatible with EEA law or not (Wille 2005: 136). On the other hand, many experts argue that the precedence of EEA law has to be interpreted as a precedence of application which replaces national law but does not dissolve it (Bussjäger 2006: 145). Until now, a judicial review of an EEA-related law by the Constitutional Court has not been requested (Baur 2011). Nevertheless, the debate confirms that the recognition of the EFTA Court among the legal experts of Liechtenstein has not entirely prevailed. As a result, the Europeanization of the jurisdiction, and particularly the relationship between the national courts of Liechtenstein and the EFTA Court, vary across different national courts and judges.

The interpretation of national law in conformity with EEA law includes several aspects (Batliner 2004: 139ff): first, EEA-related laws are interpreted with regard to the initial EEA provision; second, autonomous laws have to be interpreted in conformity with EEA rules even if their wording is contrary to the EEA provision; and third, reference to European law can strengthen the argument although a direct connection is not given (*ibid.*). However, in the context of state liability there was also a case where the courts of Liechtenstein have initially decided against EEA provisions and even rejected the complainant's request to ask the EFTA Court for an advisory opinion.

Based on a request of the Administrative Court, the EFTA Court stated in 2001 that non-resident doctors are allowed to start a medical practice in Liechtenstein even if they have another office outside the territory of Liechtenstein ("Single Practice Rule"). As a result, the Liechtenstein government had to change the national law on medical services. Nonetheless, an Austrian doctor brought an action against the government of Liechtenstein to court demanding a compensation of the financial loss suffered during the time the disputed law was in force. The Court of Appeal confirmed the compensation claim (18.8.2005) but was overruled by

the Supreme Court (7.12.2006). Due to a complaint to the Constitutional Court, the judgment of the Supreme Court was annulled (3.7.2007), but also in its second judgment the Supreme Court did not consider state liability (5.6.2008). Once more the Constitutional Court annulled the judgment of the Supreme Court (24.6.2009). In its third decision the Supreme Court finally accepted the compensation claim of the Austrian doctor (7.5.2010). Hence, in 2010 Liechtenstein has finally acknowledged state liability due to a wrong application of EEA rules while the national jurisdiction of its EEA EFTA partners covered state liability since 1999 (Iceland) respectively 2005 (Norway).

The late establishment of EEA state liability in Liechtenstein illustrates that even after years of EEA membership certain reservations to EEA law may remain. However, the example of state liability is not representative for the judicial system of Liechtenstein since domestic factors have influenced the decision as well. In general, the judicial system of Liechtenstein has a very open approach to international law. Until June 2011, the EFTA Court has dealt with 29 cases related to Liechtenstein of which eleven cases are requests for advisory opinions. One request for an advisory opinion was withdrawn after the Constitutional Court had annulled the law which was incompatible with EEA law (E-3/08, StGH 2006/94). Based on Art. 62 of the national law on the organization of courts (LGBI. 2007 No. 348), all Courts of Liechtenstein (of different instances) are allowed to interrupt the national procedure to request an advisory opinion from the EFTA Court. With six requests the Administrative Court has been the most active Court, followed by the Court of Justice with three requests and the Court of Appeal as well as the Financial Appeal Board ("Beschwerdekommission der Finanzmarktaufsicht") with one request each. Advisory opinions still face certain reservations in Liechtenstein and judges requesting them have been criticized (Interviews 2011). Additional reasons for the low number of advisory opinions might be the small size of Liechtenstein and the lack of knowledge of European law (Liechtensteiner Vaterland 2010a: 7). Nevertheless, the number of advisory opinions has increased recently and experts of Liechtenstein's judicial system expect a future increase of the general dialogue between the national courts and the EFTA Court (Interviews 2011). Most of Liechtenstein's requests for advisory opinions deal with issues related to the free movement of persons, for instance the interpretation of the EEA provisions on family reunification (E-4/11), the limited access to jurisdiction in civil matters (E-5/10, E-10/04) or professional activities (E-3/98, E-4/00, E-5/00, E-6/00).

3.4 Europeanization of Parliament's work

As in all parliamentary systems, Liechtenstein's Parliament plays a key role in legislation, budgetary control, ratification of international treaties, supervision and election of the government. It is on the national level the only political organ in Liechtenstein that is directly elected by the people and ensures the democratic legitimacy of the political process. Art. 103 EEA of the Agreement addresses this contribution of national parliaments to the legitimacy of the policy-making process by requiring the fulfilment of the national constitutional requirements to make a decision of the EEA Joint Committee binding on the contracting parties.

3.4.1 Parliamentary involvement in European politics

In Liechtenstein, every decision of the EEA Joint Committee represents a treaty under international law that requires the approval of the Landtag and is subject to an optional referendum (Entner-Koch 2005: 82). The Landtag has established a parliamentary EEA Committee ("EWR-Kommission") to decide whether constitutional requirements for a Joint Committee Decision (JCD) are needed or not. In nearly all cases the parliamentary commission decides according to the recommendation of the government and therefore a meeting of the parliamentary EEA Committee lasts less than 20 minutes on average (Liechtenstein 2011c: 10).

The recommendation of the government is based on an expert opinion of Liechtenstein's Constitutional Court (StGH 1995/14, Liechtensteinische Entscheidungssammlung (LES) 1996, 119 ff.) which specified the provisions of the EEA Agreement (Art. 103) and of Liechtenstein's Constitution (Art. 8). According to the Constitutional Court, Parliament's approval for an EEA JCD is only necessary if the corresponding EEA JCD changes domestic law or has financial consequences. Furthermore, the Constitutional Court stated that the EEA Committee's decision has to reflect the efficiency and proper working of the EEA Agreement. Finally, it highlights the necessity of a close cooperation between government and Parliament to ensure the democratic legitimacy of the EEA policy-making process. These specifications give all actors a certain room for interpretation whether constitutional requirements are necessary or not.

In a next step, the Landtag has to approve a decision of the EEA Joint Committee in a plenary meeting for which the government provides a short report addressing its relevance and consequences. The debates in the Landtag on an EEA JCD are usually very short. In most cases, there are just a few votes of the Members of Parliament. An exception was the incorporation of the Directive on Parental Leave (Directive 94/34/EC, Landtagsprotokoll 17.06.1999) which caused an extensive and emotional discussion. In other more controversial cases, like the incorporation of the Second Money Laundering Directive (Directive 2001/97/EC, Landtagsprotokoll 18.12.2003), the profession of lawyer (Directive 98/5/EC, Landtagsprotokoll 22.11.2002) or the Environmental Assessment Directive (Directive 2001/42/EC, Landtagsprotokoll 22.11.2002), opposition was mainly motivated by specific interests of individual Members of Parliament. The practical relevance of Art. 103 is thus limited and entails rather a right of information than a decision-making power of the Landtag. Hence, the time period between the decision of the EEA Joint Committee and the parliamentary ratification in Liechtenstein is very short compared to its EEA EFTA partners and does not differ over time or by policy field. Table 4 shows that the time required for parliamentary ratification of an EEA JCD is the longest in Iceland, followed by Norway and Liechtenstein. In all EEA EFTA states the number of days between a decision of the EEA Joint Committee and its parliamentary ratification decreased after 1998 but increased again since 2002.

Table 4: Ratification of EEA acts with constitutional requirements

Time period	Iceland		Liechtenstein		Norway		EEA EFTA*	
	Days	No.	Days	No.	Days	No.	Days	No.
1995-1998	605	18	177	23	228	35	388	49
1999-2002	199	50	140	54	170	65	227	102
2003-2006	324	62	188	48	243	69	334	106
2007-2010	462	72	189	36	304	37	463	92
1995-2010	358	202	171	161	226	206	331	349

Notes: Days = average time period between the JCD and its ratification by Parliament (in days); No. = number of JCDs with a constitutional requirement; * Average time between the JCD and the date of entry into force

Source: <http://efta.int/legal-texts/eea/list-of-constitutional-requirements.aspx> (accessed 29 July 2011).

Table 5 illustrates that the number of days between an EEA JCD and the parliamentary ratification as well as the number of constitutional requirements vary across policy fields. The time period is particularly short for EEA JCDs related to policy fields with a very technical character. A reliable comparison of the number of constitutional requirements by policy field would have to consider the total number of EEA JCDs per policy field, which is currently not available. Nevertheless, Table 5 suggests that the number of constitutional requirements is very low in technical policy fields. Issue

areas such as “goods” (EEA Annexes I, II, III), “statistics” (EEA Annex XXI) and “transport” (EEA Annex XIII) cover 76% of all EEA acts but only 21% of all constitutional requirements. By contrast, the number of constitutional requirements is with 22% very high in the field of “services” (EEA Annexes IX, X, XI) that covers only 4% of all EEA acts. Finally, the number of constitutional requirements varies across the three EEA EFTA states which have different criteria to decide whether Art. 103 shall apply or not.

Table 5: Constitutional requirements by EEA EFTA state and policy field (1995 to June 2011)

	Iceland		Liechtenstein		Norway		EEA EFTA*	
	Days	No.	Days	No.	Days	No.	Days	No.
Energy	421	8	174	5	318	5	428	13
Transport	241	23	188	13	226	26	271	52
Capital	349	18	198	18	403	16	427	24
Services	302	56	170	54	263	48	358	72
Persons	231	8	136	8	366	4	273	12
Goods	421	7	174	5	318	5	428	12
Environment	416	24	164	13	254	9	426	32
Competition	297	14	155	9	233	12	358	16
Labour law	406	26	178	26	213	23	415	35
Statistics	168	1	143	2	162	3	203	6
Protocols	230	6	95	8	112	56	149	59

Notes: Days = average time period between the JCD and its ratification by Parliament (in days); No. = number of JCDs with a constitutional requirement; * Average time between the JCD and the date of entry into force

Source: <http://efta.int/legal-texts/eea/list-of-constitutional-requirements.aspx> (accessed 29 July 2011).

The parliamentary impact on the domestic implementation of EEA rules can be analyzed by a comparison of the parliamentary debates on national or EU-related bills (Frommelt 2011c). As mentioned above nearly half of all laws published between 2001 and 2009 were EU-related. Most of these laws implement an EU directive into national law. Further possibilities of an EU/EFTA impulse are legal adaptations due to infringement procedures by the EFTA Surveillance Authority (ESA) or the autonomous adoption of EU policies. Compared to national bills, EU-related bills involve a much smaller number of votes or amendments by the Members of Parliament. Also the time between the first and second reading is shorter for EU-related bills, and there are fewer comments from economic or societal actors (see Table 6). In brief, the Landtag makes a smaller contribution to EU-related laws than to laws with a national impulse.

Table 6: Parliamentary debate on bills of different impulse (2007)

	EU/EFTA (N=18)	National (N=16)
Time between consultation and ratification (in days)	174.2	288.6
Votes of Members of Parliament	19.8	92.7
Participants in the pre-parliamentary consultation process	7.3	15.5
Amendments by Members of Parliament	0.3	3.1

Source: Frommelt 2011c.

Another indicator for the Europeanization of Parliament’s work constitutes the use of question and initiative rights by the Members of Parliament. References to the EEA or EU are very rare when exercising those rights. Considering the growing importance of benchmarks and models of best practice in the EEA, this observation might be surprising. There are many reports comparing Liechtenstein with other EEA member states but none of them has so far been addressed in a plenary session of the Landtag. Instead, most Members of Parliament still refer to Switzerland to back up their argumentation. From an analytical point of view, there is again a discrepancy between the relevance of the EEA and its public and political perception in Liechtenstein (see Table 7).

Table 7: References in parliamentary instruments to Switzerland or EU/EFTA (2007, in percent)

Parliamentary instrument	EU/EFTA (%)	Switzerland (%)
Small Question (“Kleine Anfrage”) (N=164)	4	19
Postulate (“Postulat”) (N=5)	0	60
Question (“Interpellation”) (N=6)	17	50
Motion (N=7)	14	43
Initiative (N=4)	0	25
TOTAL	5	22

Source: Frommelt 2011c.

Several factors help explain the Landtag’s limited input to European politics. First of all, as a militia parliament the Landtag possesses limited capacity. None of the 25 members of the Landtag is a professional politician. By contrast, the staff of the government offices (“Amts- und Stabsstellen”) and government ministries (“Ressorts”) has increased rapidly over the last few years. The strong unity of Parliament and government in Liechtenstein due to the lack of a strong opposition party weakens the domestic debate. In the current term of office (2009-2013), the opposition has just one seat in the Landtag and has therefore to pool its energy on domestic issues with a high resonance (Interviews 2011). The lack of an EEA-sceptical party and Liechtenstein’s experience as a „policy taker“ within the customs and currency union with Switzerland are additional reasons for the limited parliamentary input to European politics. Finally, the general lack of decision-making power of the EEA EFTA states in the European Economic Area might play a role as well.

3.4.2 Parliamentary control in Liechtenstein

The growing imbalance between the human and financial resources of Parliament and the government can explain the „de-parlamentarization“ but not the Parliament’s different interest in national and EU-related laws. From an analytical point of view, the level of parliamentary control in European affairs can be divided into three dimensions (Raunio 2005: 320-327; Winzen 2011). First, Parliament’s access to documents is very important. Second, the parliamentary control increases with the institutionalization of specialized committees, and third, the political power or constitutional right of Parliament to “mandate ministers through issuing voting instructions” (Raunio 2005: 322).

Unlike in the EU, the EEA Agreement does not require an automatic transmission of EU documents to national parliaments. Furthermore, Liechtenstein has failed to enact domestic measures for an obligatory transmission of EU documents to the Landtag, and so the Landtag has poor access to EU documents. However, considering the high number of EU documents and the limited information processing capacity of the Landtag, the mere access to documents would not suffice. The Parliament's level of information strongly depends on explanatory statements produced by the government which inform about the government's negotiation strategy, the positions of the negotiating partners and the domestic consequences of an EU/EEA act. Such reports include the most important aspects of an EU/EEA act and enable Parliament to control whether the position of the government concurs with its interests and whether the government enforces its position on the European level or not.

Statements of the government to the Landtag on the decision-making process of the EU and EEA are very rare as the interaction between government and Landtag usually starts with the question about possible constitutional requirements to an already negotiated EEA JCD. As a result, the Landtag lacks the means to influence the content of an EU act as well as the negotiations between the European Commission and the EEA EFTA states on the EEA relevance of a legal act or possible adaptations and derogations. The late involvement of the Landtag in the EEA policy-making process and its reliance on the information provided by the government hampers also the parliamentary control of the government.

The institutionalization of parliamentary committees and their mandating power are very low in Liechtenstein. The mandate of the Landtag's EEA Committee is limited to the decision whether there is a need for a parliamentary approval to an EEA JCD or not, whereas strategic questions of European politics are addressed by the Foreign Policy Committee of the Landtag ("Aussenpolitische Kommission"). The latter meets approximately ten times a year with an average meeting time of 100 minutes (Liechtenstein 2011c: 9). Compared to double taxation agreements and other questions of foreign affairs, EEA matters play an important role. However, the Foreign Policy Committee of the Landtag cannot give voting instructions or recommendations to the government. After all, the integration of the Joint EEA Parliamentary Committee into the parliamentary work of the Landtag is weak since there is no debate of its conclusions or transmission of documents.

As in other European countries, in Liechtenstein the integration process has boosted the „de-parlamentarization“ of the political system by strengthening the national and European executives. While similar developments occurred in many EU members (Goetz and Meyer-Sahlig 2008) and EFTA states (Linder 2010), the „de-parlamentarization“ in Liechtenstein appears to be even stronger. Applying the classification of Raunio (2005: 325) to Liechtenstein, the level of parliamentary control is weak in all three dimensions (specialized committees, access to information, voting instructions), whereas several EU states, in particular the Scandinavian ones, have established a strong or at least moderate level of parliamentary control in EU matters. Moreover, Parliament's scrutiny has been strengthened in nearly all EU members since 2005 (Winzens 2011). In contrast to Norway (St.meld. nr. 23 (2005-2006)), the government of Liechtenstein has so far not shown any willingness to strengthen the parliamentary involvement in the policy-making of the EEA. At the same time, Liechtenstein lacks also a public database on European politics to facilitate the information access (like www.europaportalen.no and www.europalov.no). Nevertheless, in 2011 the Landtag has started to take a more assertive stance, also in EEA matters, probably as a result of the upcoming revision of its standing orders.

Despite the low involvement of the Landtag, it remains unclear whether EEA membership has weakened the democratic legitimacy of Liechtenstein's political system or not. Due to its small size Liechtenstein has always been a „policy taker“ and compared to the customs and currency union with Switzerland the participation and transparency in the EEA are much higher. Consequently, the criticism above refers mainly to the disproportional distribution of participation and information rights between executive and legislative powers and does not challenge the perception of EEA membership as a gain of sovereignty and legitimacy by the majority of Liechtenstein's politicians.

3.5 Europeanization of the national administration

Since 1994 the staff of the national administration has increased from 1'008 to 1'626 employees in 2009. Also the personnel expenditure in the national budget has grown rapidly from 89 million Swiss Francs in 1994 to 212 million Swiss Francs in 2009. This rapid increase has often been linked with EEA membership (Landtagsprotokoll 21.04.2010) as the government itself stated that the estimated staff for managing the EEA Agreement in 1992 was much lower than the 85

employees which are now involved in European affairs (Liechtenstein 2010a: 64). Nonetheless, the Europeanization of the national administration cannot be reduced to the increase in personnel expenditure but also needs to consider Liechtenstein's contribution to the EU and EEA policy-making as well as a possible gain of power of the national administration relative to Parliament and civil society.

The role of the domestic administrative actors

Liechtenstein's administration of the EEA Agreement follows a very technical and decentralized approach (Büchel 1999). The most important player is the national EEA Coordination Unit with seven employees (as of July 2011). It coordinates the adoption and implementation of EEA law, gives advice on EEA matters to the government and people and defends Liechtenstein's interests vis-à-vis the ESA, the EFTA Court of Justice and the Court of Justice of the European Union. Among Liechtenstein's EEA partners and the national administration the EEA Coordination Unit enjoys a high standing. A special feature of Liechtenstein's EEA set-up is the submission of the EEA Coordination Unit under the competence of the Prime Minister and not the Foreign Minister. As a result, its work is firmly anchored in the domestic administration whereas tensions could emerge in fields of cooperation with the EU outside the EEA Agreement. Furthermore, the conception of the EEA Coordination Unit suggests a very technical approach to the administration of the EEA Agreement which is especially evident with regard to the EEA relevance of an EU act.

in parallel to the EEA Coordination Unit in Vaduz, Liechtenstein's Mission to the EU in operates Brussels with six employees (as of July 2011). By monitoring European politics, maintaining a permanent dialogue with the EU and EFTA institutions and keeping direct contacts to the permanent representatives of all the other EEA member states, the Mission ensures the access to information and provides expertise to domestic actors. It represents Liechtenstein's interests in the EEA Joint Committee and several EU and EFTA committees. The Mission is also responsible for policies which cannot be subordinated to a certain issue area such as the EEA financial cooperation mechanism. The Mission is a crucial player with regard to the international reputation of Liechtenstein. Recently, the tasks of the Mission have increased when negotiating the Schengen/Dublin association of Liechtenstein as well as sounding out further integration steps. In contrast to the EEA Coordination Unit, the Mission in Brussels

serves under the responsibility of the Foreign Ministry. But since the EEA work is assigned to the Prime Minister's office the linkage between the Mission and the Foreign Ministry is rather loose compared to the practice in other West European states (Frommelt 2011d).

The EEA Coordination Unit and Liechtenstein's Mission in Brussels are assisted by the different government offices and their EEA experts. Liechtenstein's decentralized approach vests the government offices with much flexibility. Through their participation in EU and EFTA committees, the EEA experts of the government offices are directly involved in the evaluation of the EEA relevance of an EU act and its need for technical and material adaptations. However, the exact level of cooperation between the EEA experts of the government offices and the EEA Coordination Unit or the Mission in Brussels varies strongly and depends on the economic importance and political sensitivity of the issue area as well as the knowledge and experience of the respective expert which is why the actual sharing of competences between the different government offices but also between the government offices, the Mission and the ministries varies over time.

The work of Liechtenstein nationals in EFTA and EU institutions is not directly linked with the Europeanization of the administration as they act fully independent of the government. Nevertheless, it strengthens the exchange of knowledge about the EEA and Liechtenstein. Liechtenstein's engagement in international organizations outside the contractual requirement (one judge at the EFTA Court and one member in the ESA College) is very modest. In June 2011, there was just one person with a Liechtenstein passport working at the ESA and another one at the EFTA Secretariat. Liechtenstein has also no national experts seconded to the European Commission. The little interest surprises since the few Liechtensteiners working at the EFTA institutions report positively about their experiences (Liechtensteiner Vaterland 2011b: 11). Regarding future integration models for Liechtenstein, the current absence of Liechtensteiners in the EFTA institutions, in particularly in the board of the EFTA Secretariat, might affect possible negotiations about Liechtenstein's representation in those models. Against this background the government should motivate and support Liechtensteiners to apply for jobs at the EFTA institutions.

3.5.1 Liechtenstein's participation in the decision-shaping process

Decision-shaping embodies “the process of contributing to and influencing policy proposals up until they are formally adopted” (EFTA Secretariat 2009: 20). In the EEA context, the term is used to describe the involvement of the EEA EFTA states “in the phase of preparatory work undertaken by the Commission to draw up new legislative proposals” (EFTA Secretariat 2002), whereas the EEA EFTA states cannot participate in the decision-taking of the EU. The decision-shaping mechanisms provide “legitimacy to an inherently asymmetric process whereby the EEA EFTA states adopt legislation which has been decided without their participation” (EFTA Secretariat 2009: 7). These mechanisms are mainly based on the involvement of the EEA EFTA states in the different EU committees but include also the different EFTA working groups and subcommittees which play a key role when debating the EEA relevance of an EU act or its need for adaptations.

In theory, working method and negotiating style vary between committee type and policy field (Sannerstedt 2005). The literature suggests that the negotiating style of expert groups, which play a part in the Commission's preparation of policy proposals, is more cooperative than the one of comitology committees, which are part of the Commission's implementation of EU decisions. The most competitive negotiating behaviour is expected in Council working groups to which the EFTA states have only access when dealing with Schengen matters. Furthermore, the literature predicts an increase of the conflict intensity with the economic and identity-related relevance of an issue area. However, these differences are not very pronounced in practice and have hardly any impact on the integration of the EEA EFTA states into the committees' work (Frommelt 2011d).

Due to Liechtenstein's limited human resources, its participation in the EEA policy-making process is very selective. For this purpose, the EEA Coordination Unit categorizes all the EU and EFTA committees by their specific relevance for Liechtenstein. In November 2009 the EEA Coordination Unit listed 71 committees with priority one (full participation), 139 with priority two (partial participation) and 103 with priority three (rare participation). Additionally, Liechtenstein participates in several EU committees awaiting the accession to Schengen in late 2011. The prioritization of the different committees correlates with their economic importance, led by several committees in financial services and trade in goods. The prioritization

considers also a possible misfit with national policy structures which is why Liechtenstein's participation in EU committees includes issue areas such as medicinal products or telecommunication. A survey of the Liechtenstein-Institut in 2011, similar to recent studies in Norway (Egeberg and Trondal 2011), showed that the actual participation is mainly limited to committees with priority one, whereas priorities two and three have little relevance (Frommelt 2011d).

The EEA experts of Liechtenstein's administration perceive hardly any differences regarding the negotiation style of the different EU committees, and also the integration of the EEA EFTA states into the committees' work seems to be almost at the same level in all committee types and policy fields. Only 25% of Liechtenstein's EEA experts note discrimination compared to EU experts and even less than 20% assess restrictions of access to information or address inequalities due to restrictions of the seating plan or the speaking time for the EEA EFTA countries. These results underline the consensus orientation of the EEA-relevant EU committees as well as the low relevance of voting rights within these committees. In addition, only 22% of Liechtenstein's EEA experts receive “regularly” instructions from the government or other domestic EEA organs (*ibid.*). Liechtenstein's EEA experts identify in their committee work mainly with the corresponding government office as well as the challenges faced by the EEA and the policy field, whereas the identification is rather low with the respective committee and the challenges of the EU (see Table 8).

Table 8: Reference of identification for Liechtenstein's EEA experts in EU committees (N=69, in percent)

Identification with:	High	Moderate	Low	No answer
Government	57	28	7.2	7
Government office	55	6	22	7
Committee work	54	16	23	7
Challenges of the EU	37	31	25	7
Challenges of the EEA	63	15	15	7
Policy field	66	10	16	7

Note: multiple choices possible.

Source: Frommelt 2011d.

Direct contacts with experts from the other EFTA states or the EU and EFTA institutions are very important for the committee work of Liechtenstein's EEA experts. Also the EEA Coordination Unit as well as the EFTA Secretariat and the European Commission enjoy high relevance. By contrast, the relevance of the Mission in Brussels is considered rather low and the Foreign Ministry as well as the Landtag have been attributed hardly any meaning. Finally, most of Liechtenstein's EEA experts see the main purpose of the committee work in the access to information. Another important feature is the networking with policy-makers, whereas the textual contribution to an EU act and the representation of national interests are of lower relevance (see Table 9). Notwithstanding, Liechtenstein has occasionally shaped EU and EEA law according to its own preferences. For instance, in the field of statistics Liechtenstein has influenced the determination of threshold values within an EU act and therefore has avoided the implementation of the corresponding EU act on the national level (Interviews 2011; Frommelt 2011d).

Table 9: Importance of committee work for Liechtenstein's EEA experts (N=69, in percent)

	High	Moderate	Low	No answer
Textual contribution	37	19	41	3
Information access	91	4	1	3
Representing national interest	79	10	8	3
Networking	80	13	4	3
Explaining smallness of Liechtenstein	63	26	16	3
Explaining level of integration of EEA	37	19	40	3

Note: multiple choices possible.

Source: Frommelt 2011d.

3.5.2 Bureaucratization and politicization

Liechtenstein's participation in the decision-shaping process has increased over the last few years and its benefits in terms of a substantial increase of the level of information are well known among the actors involved. Nevertheless, the EEA experts sometimes face opposition within their own government office. This opposition could increase further since the government has started substantial cost-cutting efforts and the government offices have to reorganize their expenditures. For

the future a decrease of Liechtenstein's participation in the EU committees cannot be ruled out although such a decrease could seriously weaken the implementing quality of EEA law in Liechtenstein.

The EEA experts have an informational advantage towards the government and especially towards Parliament. This dominant position of national bureaucrats in the EU-related (domestic) policy-making process leads to a bureaucratization of the political system (Goetz and Meyer-Sahling 2008: 5). Considering the weak politicization of European politics in Liechtenstein due to the poor public interest in EEA matters as well as the weak involvement of the Landtag and the government ministries in the EEA policy-making process, bureaucratization is very intense in Liechtenstein. Moreover, the EEA lacks a powerful political organ, similar to the European Council, since competences of and attention for the EEA Council is very low (Frommelt 2011d).

The bureaucratization of the domestic policy-making process in the course of Europeanization and internationalization is limited by the fact that the government and the Landtag appoint new administrative staff. The decision on new administrative staff in Liechtenstein is often politically charged and might affect the Europeanization of the national administration. For instance, the government office for environmental protection has several times unsuccessfully applied for more employees by referring to EEA matters (Liechtenstein 2010c: 52-61) which can be interpreted as signal of the Landtag to limit Liechtenstein's engagement for environmental protection in the EEA.

The European integration process has affected Liechtenstein's administration in several ways and the increase in the administrative staff is just a minor factor. Liechtenstein's administration of the EEA Agreement follows a decentralized approach and gives the EEA experts of the government offices, the EEA Coordination Unit and the Mission to the EU a high level of independence. This independence ensures a flexible and effective engagement of Liechtenstein's EEA experts but it leads also to a gain of power of non-elected civil servants. Overall, the EEA has boosted the efficiency of the whole administration (Liechtenstein 2010a: 56) and the active involvement of all actors in the EU and EEA policy-making process has ensured a high quality of implementation. Nevertheless, due to the smallness of Liechtenstein, the administrative capacity will always remain a big challenge for Liechtenstein's participation in the European integration process.

4. Domestic and external political challenges

The large majority of Liechtenstein's political and economic actors strongly support EEA membership. In most cases, the domestic opposition is limited to a more intense parliamentary debate and a delay of implementation, while the functioning of the EEA Agreement as such is not affected. Issues related to the financial services sector or the free movement of persons have emerged as the most important domestic implementation challenges. Due to the small size and the close relations to the non-member Switzerland, Liechtenstein also holds numerous derogations from the EEA *acquis* in many areas beyond the free movement of persons. Among the external challenges have been delays in the integration process due to the EU's linkage politics. The at times difficult cooperation with the other EFTA countries is addressed in the last chapter.

4.1 The financial services sector

Despite the fact that Liechtenstein has a highly diversified economy with a strong industrial export sector, it is in the international media often reduced to its financial centre. Tax scandals involving banks and trusts in Liechtenstein have attracted international attention and the principality found itself placed on „black lists of uncooperative states“. Most of these issues were tax matters and therefore not directly linked to EEA Agreement. By contrast, Liechtenstein had always a strong interest to be integrated into the EEA financial services market in order to boost efficiency, innovation and legal certainty. But also the EEA *acquis* contains certain problematic aspects, like the combating of money laundering or the strengthening of the national administrative assistance procedure. Furthermore, the high level of integration within the EEA financial market challenges the close relations between Liechtenstein and Switzerland in related issue areas.

4.1.1 Liechtenstein's financial centre and the EEA

In 2009, 17% of all employees in Liechtenstein worked in the financial services sector and generated more than 31% of added value (Liechtenstein 2011a). The success of the financial centre can be explained with locational advantages such as the low level of taxes for domiciliary and holding companies, the strong protection of privacy, and the high quality of services (Liechtenstein 2010a: 158). Although the insurance and investment fund industries have grown considerably over the last few years, the financial centre of Liechten-

stein is still dominated by fiduciary services and private banking. Thereby, most companies are from Liechtenstein or secondarily from Switzerland, whereas only very few companies from third countries have entered the Liechtenstein market (Liechtenstein 2008c: 17).

In the EEA context, the banking sector profited strongly from the „single license principle“ and the „home country control principle“ which have ensured Liechtenstein's access to the EU market for financial services. As a result, the number of banks located in Liechtenstein has increased from five in 1995 to sixteen in 2009 and also their balance sheets and client assets have grown significantly (Liechtenstein 2010a: 167). However, hardly any new banks have been established since 2001 and no large international private bank operates in Liechtenstein. This might be a consequence of the doubtful reputation of Liechtenstein's financial centre regarding tax cooperation and money laundering but there are also barriers to market entry such as the restrictive immigration policy or the limitations of urban planning (Liechtenstein 2008c: 18).

With the 2008 tax scandal involving the CEO of *Deutsche Post* („Zumwinkel affair“) the pressure on the financial centre of Liechtenstein grew further and a policy change in terms of the proclamation of a „white money strategy“ („Weissgeldstrategie“) was deemed necessary (Liechtenstein 2009c). The change of direction has also manifested itself in the conclusion of 20 Tax Information Exchange Agreements (TIEA) and six Double Taxation Agreements until July 2011. The fiduciary services sector is suffering the most from the new standards of tax cooperation but also the banking sector has been forced to establish new business models. In this regard EEA membership could be an advantage for further diversification – like it had already boosted the growth of the insurances and investment fund industries (Liechtenstein 2008c: 7). Liechtenstein is thereby following the example of Luxembourg which under similar locational conditions has positioned itself as Europe's most important fund location (Liechtenstein 2011d).

The financial services sector is highly regulated in the EEA as well as on the national level. Liechtenstein's intense participation in the EEA policy-making process in this field, including committees, consultation and lobbying, underlines its relevance for the national economy. Participation in international committees provides information and improves the international reputation. In addition, it represents an essential requirement for a high-quality implementation of EEA-related rules. To ensure its participation in the

International Organization of Securities and Commissions (IOSCO) as well as the Committee of European Securities Regulators (CESR) Liechtenstein was even willing to adjust its national administrative assistance procedure „in record time“ (Finanzmarktaufsicht Liechtenstein 2011a: 54; Liechtenstein 2010d) although the issue was (is) very controversial with regard to the Constitution of Liechtenstein and the interpretation of bank secrecy (Batliner 2011).

Participation in international cooperation is very resource-intensive but widely accepted among politicians. Despite the strong domestic support for an active contribution and rapid implementation of the EEA financial services *acquis*, Liechtenstein sometimes struggles with the limited resources of a small state when facing a high number of new rules at the same time. It spends much „of its energy in the timely implementation, rather than proactively identifying and prioritizing new opportunities afforded by these rules“ (Liechtenstein 2008c: 23). As a result, the domestic legislation is in the first stage often close to the original directive or the implementation measures of Austria, while more detailed measures follow by government decree at a later date (Interviews 2011).

The lack of resources presents a challenge as well when the incorporation of an EU act into the EEA Agreement requires specific adaptations to the two-pillar structure of the EEA. Such adaptations delay the adoption and implementation of new EU rules on the national level. In the case of the directive on undertakings of collective investment in transferable securities (UCITS IV, Directive 2009/65/EC) the delay impeded Liechtenstein's involvement in the consultation procedure of amending measures as the consultation was already over at the time the implementation process in Liechtenstein began. Currently, Liechtenstein has a strong interest in joining the EU's system of financial supervisors, although it might affect the two-pillar structure of the EEA due to the far-reaching competences of the three European supervisory authorities towards the national regulatory agencies (Finanzmarktaufsicht Liechtenstein 2011b: 2). Interviews with experts from Liechtenstein and the EU have highlighted the importance of taking part since many new legal acts will directly refer to the EU's new supervisory architecture and are therefore to a large degree shaped by its institutions. The fact that the new legal acts on financial supervision had initially not been classified as „EEA relevant“ underlines the dynamic nature of the EEA and again the necessity of active involvement of the EEA EFTA actors to ensure the uniformity of EU and EEA law (Interviews 2011).

However, the two-pillar structure of the EEA gives the EEA EFTA states also the possibility to delay the adoption and implementation of unpleasant EU acts. As a result, the time Liechtenstein needs to adopt and implement an EU act varies strongly: while Liechtenstein implements some rules even before they have been formally incorporated into the EEA Agreement, others encounter a serious delay.

4.1.2 Combating money laundering

One of the most controversial issues within the EEA financial services sector is the fight against money laundering. Based on Council Directive 91/308/EEC, Liechtenstein implemented with its accession to the EEA the „Law on Professional Due Diligence“ (LGBl. 1996 No. 116) aiming to prevent the abuse of the financial system for the purpose of money laundering. Since then, the EEA *acquis* incorporated two additional money laundering directives and the consultation process for a third one is expected to take place soon. In the EEA and on the national level, the adoption of the Second Money Laundering Directive (Directive 2001/97/EC) has generated substantial problems. So far, it is the only case where the European Commission has called for the procedure of Art. 102 EEA Agreement. This procedure allows to suspend the corresponding provisions if there is no agreement on the incorporation of an EU act. Consequently, the opposition of Liechtenstein towards the Second Money Laundering Directive threatened the continuation of the whole financial services *acquis* and forced Liechtenstein to take swift action. This directive expands the catalogue of predicate offences for money laundering by including „fraud affecting the European Communities' financial interests“. It thereby refers to the Convention on the Protection of the European Communities' Financial Interests and other EU acts. During the adoption procedure Liechtenstein doubted the EEA relevance of these references because they mainly refer to tax policy and criminal law (Liechtenstein 2003b: 3). Furthermore, Liechtenstein feared that the inclusion of references to an EU Convention could change the field of application of the Second Money Laundering Directive without the approval of the EEA EFTA states.

The numerous objections of Liechtenstein's government to the EEA relevance have led to several adaptations and three bi- or unilateral declarations of the contracting parties when incorporating the directive into the EEA Agreement (EEA JCD 98/2003). Despite these difficulties, the adoption and implementa-

tion of the Second Money Laundering Directive has not been subject to an unusually long delay. With the possible suspension of the entire Annex IX of the EEA Agreement in mind, all actors were forced to achieve a fast result, and there was also very little opposition during the domestic adoption procedure in Liechtenstein (Landtagsprotokoll 18.12.2003). Liechtenstein was very surprised by the speed with which the European Commission had called for Art. 102 and by the indifference of its EEA EFTA partners Norway and Iceland, since the objections of Liechtenstein referred mainly to the preservation of the two-pillar structure of the EEA and did not challenge the upgrading of the fight against money laundering.

By contrast, the adoption of the Third Money Laundering Directive (Directive 2005/60/EC) went smoothly but has again required a joint declaration of the contracting parties (EEA JCD 87/2006). The declaration states that „references to legal acts concerning police and judicial cooperation in criminal matters“ were without prejudice to the scope of the EEA Agreement. No substantial disturbances emerged during the adoption process in the relations between Liechtenstein and its EEA partners.

Considering its doubtful reputation in the past, the pressure on Liechtenstein to adopt the money laundering directives was indeed justified. Nevertheless, the three money laundering directives did not cause very substantial adjustments of the national legislation since they have not gone much further than the assessments and recommendations of other international players. Especially the Financial Action Task Force (FATF) and the MONEYVAL Committee of the Council of Europe have put Liechtenstein under permanent pressure, which led to several revisions of the national Law on Professional Due Diligence as well as the establishment of an independent Financial Market Authority (Liechtenstein 2004a, 2004b). Also the proclamation of the „white money strategy“ is not directly EU-related but rather initiated by the OECD and the G20 summit in London in 2009.

The government of Liechtenstein has recently announced that a broadening of the predicate offences for money laundering to include tax avoidance is expected (Liechtensteiner Vaterland 2011c: 3; Liechtenstein Banker Association 2011a: 8). Such a broadening could be enforced by a fourth money laundering directive and would therefore have to be implemented by Liechtenstein. An inclusion of tax avoidance in the catalogue of predicate offences for money laundering confirms again the realignment of Liechtenstein's financial

centre to international standards since the distinction between tax avoidance and tax fraud has been the main point of international criticism of Liechtenstein. There is some domestic opposition, in particular from the local fiduciary services, which might force the government to slow down the realignment of the financial centre. Moreover, speed and direction of the future development of Liechtenstein's international cooperation is also affected by the tax policy of Switzerland and the strategy of Luxembourg and Austria when reviewing the Savings Tax Directive (Directive 2003/48/EC).

On the other hand, EEA membership offers an advantage in the field of money laundering and tax cooperation. It ensures a permanent dialogue and protects Liechtenstein from disproportionate sanctions by the EU states. This legal certainty is a key factor for its locational attractiveness and therefore Liechtenstein has an interest in complying with the EU internal market for financial services. For instance, in the case of the delayed incorporation of the regulation on the payer accompanying transfers of funds into the EEA Agreement (Regulation No. 1781/2006), Liechtenstein has initiated a letter of the European Commission to all EEA countries which confirms the willingness of Liechtenstein to adopt the corresponding regulation as soon as possible to prevent further international pressure by these states on the financial centre of Liechtenstein (Liechtenstein 2007a: 12).

The expected broadening of the predicate offences for money laundering to tax avoidance and the improvement of the administrative assistance procedure due to double taxation agreements will consolidate the change of direction of Liechtenstein's financial centre. Nevertheless, the precise consequences of the „white money strategy“ still remain to be seen. The financial centre is very important for the national economy of Liechtenstein and a multitude of actors might complicate domestic decision-making. With regard to the EU's tax policy, the automatic information exchange remains a main divergence to EU standards (see below). The EU's current review of the Savings Tax Directive and its negotiations with third countries like Liechtenstein and Switzerland will mark another milestone for the financial centre. However, these tax matters are not directly part of the EEA financial services *acquis* and should not affect the positive balance of Liechtenstein's EEA membership.

4.1.3 EEA payment services vs. currency union with Switzerland

The Swiss Franc is the official currency in Liechtenstein since 1924. The principality introduced the Swiss Franc as its currency by law without further coordination with Switzerland. An official agreement was only negotiated in 1980 when Switzerland requested the ratification of a bilateral Currency Treaty to ensure the protection of the Swiss Franc and to improve cooperation (LGBL 1981 No. 52). Through the Currency Treaty the entire payment services of Liechtenstein is handed over to Switzerland (Liechtenstein Bankers Association 2011b: 8). This includes money transfers, direct withdrawals and credit card payments (Liechtenstein 2009d: 5). However, due to the different integration levels of Liechtenstein and Switzerland and the enhanced payment services cooperation in the EEA, the close relations between Switzerland and Liechtenstein become more and more problematic.

The Payment Services Directive (Directive 2007/64/EC) provides the legal basis for the creation of an EEA-wide single market for payments, which aims at making cross-border payments as easy, efficient and secure as national payments. At the same time, the directive strengthens the legal platform for the Single Euro Payments Area (SEPA) intended to make the electronic payment in the Euro area as easy as cash payments. Although Switzerland is closely linked to the SEPA and has adopted similar standards like the EEA countries, Switzerland is treated as a third country regarding the application of the Payment Services Directive (Liechtensteiner Vaterland 2010b: 4). Consequently, credit card companies like MasterCard have raised the fees for payments with cards of Swiss origin in Liechtenstein after Liechtenstein implemented the Payment Services Directive in national law (LGBL 2009 No. 271). Since there are no cards of Liechtenstein origin, this has led to a substantial increase in the fees. Due to strong efforts by the Liechtenstein Bankers Association and the cooperation between the National Bank of Switzerland, the SIX Group and the Financial Market Authority of Liechtenstein, a fast solution was found and the introduction of Liechtenstein MaestroCards is expected by the end of 2011 (Liechtenstein Bankers Association 2011b: 8). However, such a card would be classified as a “foreign country card” in Switzerland (Liechtensteiner Volksblatt 2011d: 1).

The “balancing act” (Liechtenstein Bankers Association 2011b: 8) between legal standards of the EEA and of the Liechtenstein-Swiss currency union gained a further dimension by the adoption of Regulation No. 1781/2006. The regulation requires information on the payer accompanying transfers of funds and serves

the implementation of the FATF recommendations into EU law. Until its incorporation into the EEA Agreement, Switzerland has been treated as inland in Liechtenstein, which is why the payment orders have just required a minimum of data. By contrast, since 2008 a cross-border payment to Switzerland would require the full data set of the purchaser, which is not possible with the actual payment infrastructure (Liechtenstein 2007a: 13). According to the Bankers Association, a change of the payment infrastructure would be very expensive (*ibid.*). However, the regulation provides the possibility to treat transfers with third countries as domestic transfers in case the countries concerned form a currency union and have the same payment standards (Art. 17, Regulation No. 1781/2006). Such an agreement has to be authorized by the European Commission or, in case of the EEA EFTA states, by the EFTA Surveillance Authority in consultation with the European Commission. Since Switzerland intends to implement the FATF recommendations, the recognition of transfers between Liechtenstein and Switzerland as inland transfer might be possible (Liechtenstein 2007a: 14). Nevertheless, Liechtenstein still waits for a decision of the ESA and therefore it is uncertain whether the current payment infrastructure can be maintained (Liechtenstein 2009d: 11; Liechtenstein 2010e).

The better the reputation of Liechtenstein’s financial centre, the more it can expect specific adaptations honouring the two-pillar structure of the EEA or its regional cooperation with Switzerland. In the case of the Payment Services Directive (Directive 2007/64/EC) the contracting parties agreed on a joint declaration considering the currency union of Liechtenstein and Switzerland but the actual scope of such a joint declaration remains unclear. Substantial adaptations to the EEA payment services were beyond reach since they would have been interpreted as a weakening of the fight against money laundering and not as an adaptation to ensure smooth payment services with Switzerland. Liechtenstein has to find additional arrangements either with the ESA or with Switzerland to guarantee a correct implementation of EEA rules, taking into account the limited resources and the close relations with its neighbour.

4.2 Free movement of persons

Due to its smallness, the free movement of persons represents a permanent challenge for Liechtenstein. The economic upswing after World War II led to a substantial increase in employment. Whereas in 1950 only 6'338 people worked in Liechtenstein, employment tripled to 19'905 in 1990. In the same time period the population increased from 13'757 to 29'032 although Liechtenstein had applied quantitative restrictions to immigration since the 1960s aiming a balance between the number of nationals and resident foreigners (Liechtenstein 1992a: 38). However, the provisions of the EEA Agreement required the full liberalization of the movement of persons. To prevent an uncontrollable increase of new residents, Liechtenstein requested a transitional period to apply further restrictions to the free movement of persons in the EEA. Due to several extensions, this derogation continues to apply. Still, the free movement of persons remains a crucial issue for Liechtenstein.

4.2.1 Liechtenstein's „special solution“

During the negotiations of the EEA Agreement, the government of Liechtenstein soon realized that an exclusion of the free movement of persons was not feasible and that it had to find other solutions to safeguard its national interests (Liechtenstein 1992a: 37-58). The special regime in Protocol 15 of the EEA Agreement allowed Liechtenstein to temporarily maintain most of the existing quantitative restrictions regarding new residents, family reunification and seasonal workers (Schafhauser 2007: 206). In addition, the contracting parties agreed to take into account the specific geographic situation of Liechtenstein when reviewing the transitional measures. Furthermore, the EEA Council declared that the review measures „might justify the taking of safeguard measures by Liechtenstein as provided for in Art. 112 of the EEA Agreement“ in case an „extraordinary increase“ in the number of nationals from the EEA states was expected (EEA Council Decision 1/1995).

At the same time, the EEA Council stated that „Liechtenstein has a very small inhabitable area of rural character with an unusually high percentage of non-national residents and employees“ and acknowledged „the vital interest of Liechtenstein to maintain its own national identity“ (ibid.). In light of these favourable statements, the government of Liechtenstein envisaged an extension of the transitional measures from the very beginning (Liechtenstein 1995: 81). Nevertheless,

Liechtenstein had to trigger the safeguard clause in 1998 shortly before the transitional period expired.

From an analytical point of view, the conditions of calling up safeguard measures were not given because there was no strong increase of new residents or foreign employees between 1992 and 1997 (Prange 1999: 159). Hence, Liechtenstein's demand for safeguard measures did not find much favour among the contracting parties and provoked long negotiations about the quantitative limitation of new residents, the legal structure of the adaptations and the continuance of the safeguard clause (Liechtenstein 1999: 7). Under Liechtenstein's chairmanship, the EEA Joint Committee finally adopted a decision in December 1999 to extent Liechtenstein's right to apply quantitative restrictions for new residents until 2006 (EEA JCD 191/1999). The „special solution“ for Liechtenstein was integrated in terms of sectoral adaptations in the corresponding annexes and thus avoided a lengthy ratification procedure by every single EEA member state (Schafhauser 2007: 209).

The „special solution“ gained more or less permanent character after the Eastern enlargement of the EEA Agreement as it no longer expires automatically. Instead, every five years an evaluation occurs, taking into account the specific geographic situation of Liechtenstein. Due to these changes, the withdrawal and not the extension requires the agreement of all contracting parties which is why Liechtenstein has now *de facto* a veto right (Liechtenstein 2004c: 36). This substantial re-evaluation can be seen in the context of Liechtenstein's approval of the Eastern enlargement which was highly controversial due to the unsettled relations between Liechtenstein and the Czech and Slovak Republics (see below).

4.2.2 Implementation into national law

According to its „special solution“, Liechtenstein has to ensure that the „net increase“ of the annually available number of residence permits for EEA nationals exercising an economic activity in Liechtenstein is not below 1.75%. A supplementary annual quota of 0.5% has to be available for persons which are economically non-active. For both quotas the reference date is 1 January 1998, which amounts to an annual net increase of 56 permits for economically active and 16 permits for economically non-active persons. On the EU's request, half of these residence permits have to be granted by a procedure which guarantees equal opportunities to all participants. Liechtenstein imple-

mented this requirement through a balloting procedure similar to the US Green Card procedure. In addition to the EEA's „special solution“, the Vaduz Convention (LGBI. 2003 No. 190) extended the free movement of persons between the EU and Switzerland to the EEA EFTA states. Liechtenstein committed itself to grant residence permits to 12 economically active and 5 economically non-active persons of Swiss nationality (but without using a ballot).

In the balloting procedure residence is therefore offered to 28 economically active and to 8 economically non-active persons every year. The ballot takes place twice a year and is divided into a pre- and end-ballot. The participation in the ballot requires EEA citizenship, the correct submission of the application document and the timely payment of the application fee (pre-ballot: CHF 80.-; end-ballot: CHF 200.-). On average close to 300 persons participated in every ballot over the last ten years. The persons drawn by lot obtain the right to a residence permission which, in case it is not used, expires after six months (Schafhauser 2007: 212).

The procedure regarding the distribution of the second half of residence permits is fully up to Liechtenstein as long as it avoids discrimination and distortion of competition. The government takes into account the employment among the different economic sectors but also the allocation of jobs within a specific economic sector (Liechtenstein 2011e: 24). However, due to the principle of non-discrimination, and in contrast to persons from third countries, the distribution of residence permits to EEA and Swiss nationals does not fully rely on the economic interests of Liechtenstein (ibid.: 23).

The „special solution“ has not changed since the EEA enlargement but Liechtenstein had to adjust its national provisions several times as a result of the incorporation of new EU law, in particular the directive on rights of EU citizens (Directive 2004/38/EC) and the association to Schengen. A substantial change, for instance, was the introduction of the right to permanent residence in case an EEA citizen had lived in Liechtenstein for more than five years. This provision also applies to family members who are not EEA citizens (Liechtenstein 2009e: 16). Earlier on, students who study in Liechtenstein have been exempted from the approval procedure for non-economically active persons and are allowed to live in Liechtenstein without restrictions for the period of their studies. Despite these numerous adaptations Liechtenstein managed to keep the net increase of EEA nationals with a residence permit as well as the share of foreigners more or

less constant over the last decade. By contrast, employment in Liechtenstein and the number of cross-border commuters have increased rapidly (see Table 10).

Table 10: Key data on the free movement of persons in Liechtenstein

	1994	2001	2003	2005	2007	2009
Population:						
TOTAL	30629	33525	34294	34905	35356	35894
EEA (EEA-30) *	n.a.	5465 (5566)	5703 (5824)	5888 (6011)	5827 (5836)	5859 (5859)
Switzerland	4789	3750	3653	3617	3606	3595
Third countries	n.a.	2280	2430	2412	2429	2432
Share of foreigners	38.4%	34.3%	34.4%	34.1%	33.6%	33.1%
New immigrants:						
EU/EEA	n.a.	522	432	279	261	233
Switzerland	n.a.	147	92	110	115	125
Third countries	n.a.	180	113	100	91	118
Commuters working in Liechtenstein	7334	12908	13413	14503	16242	16704

Note: *The figures in brackets include nationals from countries which joined the EEA in 2004 and 2007 respectively.

Sources: Liechtenstein 2011a, 2011d.

4.2.3 Recent debate on easing the restrictions

Liechtenstein has since the post-war economic boom been a destination for immigrants and immigrants have strongly contributed to its economic success. But due to the small inhabitable area and the vital interest to maintain its own national identity, Liechtenstein has also pursued a very restrictive immigration policy, aiming to limit the share of foreigners to 33% of the population (Liechtensteiner Vaterland 2011d: 5). In response to recent criticism from several economic actors, the government has raised the quota for 2011 by 15% (ibid.). Consequently, in 2011 the new contingents are 83 residence permits for EEA nationals (65 to economically active persons and 18 to non-economically persons) and 20 permits for Swiss nationals. Nevertheless, limiting the share of foreigners to 33% of the population remains the overarching goal of Liechtenstein's government. As a result, there have been proposals to supplement the increase of quotas with a facilitation of the acquisition of Liechtenstein citizenship, for instance by allowing double nationality (Wirtschaft Regional 2010: 3).

Several economic actors perceive the quotas for new residents as a big disadvantage for the recruitment of skilled employees on the international job market (Wirtschaft Regional 2010: 3). The share of employees commuting from the neighbouring countries has increased rapidly over the last few years (see Table 10). However, commuting is not very attractive since the transport infrastructure is limited and commuters cannot benefit from Liechtenstein's low taxes (yet they usually benefit from lower costs of living on the other side of the borders). On the other hand, a relaxation of the free movement of persons might lead to social tensions because there is a certain fear of „over-foreignization“ (Liechtenstein 2011e; Liechtensteiner Vaterland 2011e: 9). Most of the foreigners have, however, the citizenship of Switzerland (30%), Austria (17%) or Germany (11%), and several studies confirm a relatively high openness of Liechtensteiners towards foreigners (Marxer 2006: 2008). Still, the government has strengthened its efforts to ensure the best possible integration, in particular by improving the knowledge of the German language which is not the mother tongue of approximately 14% of all residents (Liechtenstein 2011e: 19). Besides the fear of „over-foreignization“, a relaxation of the free movement of persons is challenged by the small inhabitable area and the rural character of the countryside. Due to the limited space and especially due to the low taxation of unused building plots, the housing market is very small and prices are very high in Liechtenstein. After a relaxation of the current restrictions of the free movement of persons the housing and real estate prices could increase even further and sharpen a social gap (Landtagsprotokoll 17.02.2011).

Overall, Liechtenstein's adaptations to the EEA free movement of persons worked well and ensured the political leeway to preserve the national identity (Schafhauser 2007: 224). The consolidation of the sectoral adaptations over time illustrates the persistence of Liechtenstein's diplomacy. However, new challenges in the future cannot be excluded. The increased integration efforts of San Marino, Andorra and Monaco might stimulate the discussion since these states follow very different immigration policies. Whereas San Marino has a lower share of foreigners (14%) than Liechtenstein (33%), it is much higher in Andorra (64%) and Monaco (78%) (Friese 2011: 446). Within the EU, the handling of Luxembourg's adaptation regarding the voting rights of EU citizens in communities with an extraordinary high share of foreigners might also affect the discussion about Liechtenstein's special solution in particular in case of further integration steps.

4.3 Further implementation challenges

In general, domestic opposition is stronger within the horizontal and flanking policies, for instance regarding labour law (parental leave, the equal treatment of men and women) or the environment (air monitoring, environmental impact assessment). Furthermore, the implementation of provisions on the recognition of professional qualifications (Directive 2005/36/EC) or public procurement (Directive 2004/17/EC) may be delayed to protect specific interests in the local economy. However, apart from a more intense parliamentary debate and a postponed implementation these rules have not caused any serious implementation challenges. This section focuses on the application of the telecommunication *acquis* and the EFTA Court's interpretation of tax provisions as state aid. Both examples have stirred a domestic debate but have not affected the EEA's functioning as such. They serve to illustrate the vulnerability of a very small state which may result from an insufficient implementation of international rules (telecommunication) as well as the pressure to adjust to the creeping extension of the EEA Agreement (state aid). Additional challenges are the numerous directives of Annex II of the EEA Agreement where Liechtenstein applies a special implementation procedure to save administrative costs.

Until Liechtenstein's accession to the EEA telecommunication was directly linked with Switzerland („Post- und Fernmeldevertrag“, LGBl. 1978 No. 37). In view of the global trend of liberalization in the telecommunication sector and its EEA membership, Liechtenstein decided to establish its own telecommunication system (Liechtenstein 1996a). The decision to separate from Switzerland was also influenced by the expert opinion of a well-known consulting company which promised Liechtenstein's telecommunication market a great future. In the following years Liechtenstein faced several implementation problems which led to a temporary, but substantial limitation of the telecommunication services in Liechtenstein and a steady increase in prices. The implementation problems within the telecommunication sector have even affected the parliamentary election in 2001 which is why telecommunication is the only EEA-related issue recorded by election analysis between 1997 and 2009. When amending the respective EEA provisions Liechtenstein claimed adaptations in the EEA Joint Committee. Based on these adaptations, the assessment of Liechtenstein's compliance with EEA provisions has to consider „the specific situation of Liechtenstein and the particular circumstances of its very small telecommunications network, its market structure, its limited number of customers, its market potential and

possibility of market failure” (EEA JCD 11/2004). After substantial investments of the government in the telecommunication infrastructure, the functioning of Liechtenstein’s telecommunication market has improved, but the price level remains very high (ESA 2011).

Liechtenstein has a long tradition of competitive taxes that aims to attract foreign investments. The linkage of EEA state aid provisions and national tax provisions therefore presents an implementation challenge for Liechtenstein. In the judgment to the Joined Cases E-4/10, E-6/10 and E-7/10 the EFTA Court of Justice confirmed the decision of the ESA that special tax rules of Liechtenstein applicable to captive insurance companies constituted aid within the meaning of the EEA state aid provisions. Owing to this judgment three insurance companies were forced to repay the benefits that the Liechtenstein Tax Act had granted them between 2001 and 2009. A similar judgment can be expected in the Case E-17/10, which deals with a decision of the ESA regarding the taxation of investment undertakings under the Liechtenstein Tax Act. Although the repayment of more than 20 million Swiss Francs benefits the national budget, the government was not pleased with the judgment (Liechtensteiner Volksblatt 2011e: 13) as it might weaken the country’s locational attractiveness. In the revised Liechtenstein Tax Act (LGBI. 2010 No. 340), the government has made several adjustments to take into account the linkage between state aid and national tax provisions without breaking with the tradition of competitive taxes. To prevent further sanctions by the ESA and to ensure legal certainty for the economic actors, the Liechtenstein government submitted certain structures of the new Tax Act to the ESA. Although the ESA has confirmed, after smaller adjustments by the government (Liechtenstein 2011f), that the new tax structures do not involve state aid, the demand suffers from certain doubts in light of the EFTA Court’s case law (Interviews 2011).

A specific feature of Liechtenstein is the implementation of certain directives of EEA Annex II by so-called modular decrees (“Modularverordnung”, Büchel 1999: 35). Based on the law about the circulation of goods (LGBI. 1995 No. 94), the government enacts a decree that implements a directive on a certain type of goods, for instance the directive on crystal glass (Directive 69/493/EEC, LGBI. 1998 No. 126). However, the government decree includes only the basic principles about the circulation of the corresponding product as well as references to the directive and its position in the annex of the EEA Agreement. In this way the

principality does not have to enact specific implementation measures and the valid edition of the directive arises from the EEA Agreement instead of the decree itself. Hence, there is no need for the government to update its modular decree in case the corresponding directive is amended (Frommelt 2011b: 25). Liechtenstein has currently 32 such modular decrees in force. The renouncement to implement certain directives of Annex II reduces the administrative expenses but also the leeway of the government and it threatens the legal certainty and transparency.

4.3.1 Case handling of the EFTA Surveillance Authority

The case handling of the ESA is another indicator for implementation challenges. The number of pending cases involving Liechtenstein at the end of the year has decreased from 96 in 2004 to 48 in 2008 but has increased again to 61 by the end of 2010 (Frommelt 2011f). In total, the ESA lists 236 cases involving Liechtenstein, compared to 679 cases involving Iceland and 798 cases involving Norway (see Table 11). Liechtenstein’s number of cases is very low within the fields of “goods” and “transport” for which the principality has several derogations (see below). Consequently, the low number of cases is not only the result of a good compliance record but also of the more limited scope of application of EEA law in Liechtenstein. Furthermore, due to its monist approach, EEA regulations are directly applicable in Liechtenstein whereas they have to be transposed into national law in Iceland and Norway. According to the ESA Scoreboard of September 2010, almost half of the pending infringement cases concerned late transposition of regulations (ESA 2010: 2). The high number of Liechtenstein’s cases within the field of “services” underlines again the importance of this policy field.

Table 11: Cases of the EFTA Surveillance Authority by policy field (2004-2010)

	Iceland	Liechtenstein	Norway	Joint Cases	Total Cases
Energy	9	6	11	1	27
Transport	128	5	153	5	291
Capital	43	11	22	0	76
Services	64	69	99	5	237
Persons	37	30	97	3	167
Goods	340	75	304	47	766
Labour law	22	14	19	6	61
Environment	13	11	15	4	43
Competition	23	15	76	7	121
Statistics	0	0	2	0	2
TOTAL	679	236	798	78	1791

Notes: The table includes all cases published in the annex of the annual reports of the ESA between 2004 and 2010 which have been pending by the end of the respective year (no double counting). Cases which have been opened and closed in the same year have therefore not been counted.

Source: <http://www.eftasurv.int/press--publications/annual-reports> (accessed 29 July 2011).

The competences of the EFTA Surveillance Authority to perform on-the-spot “inspections” are mainly related to issue areas such as food and feed safety or aviation security which do not apply in Liechtenstein. The number of management tasks related to telecommunication or product safety is also restricted due to Liechtenstein’s small size and its numerous derogations. Hence, the balance between the different case types in Liechtenstein differs from the one of its EEA EFTA partners (see Table 12). In addition to the low number of inspections and management tasks, Liechtenstein has – similar to Iceland – also a very low number of complaints, defined as the right of “anyone” to “submit a complaint against any of the EEA EFTA states” (ESA 2009: 3). On the one hand, the low number of complaints can be seen as result of a good compliance, but on the other hand it might also express a lack of knowledge about the legal protection in the EEA. Furthermore, the fact that the share of complaints in the total number of cases decreases with state size can also be observed among the EU member states (Frommelt 2011f).

Table 12: Cases of the EFTA Surveillance Authority by case type (2004-2010)

	Iceland		Liechtenstein		Norway		Joint Cases		Total Cases	
	No.	%	No.	%	No.	%	No.	%	No.	%
Complaints	54	8.0	12	5.1	253	31.7	0	0	319	17.8
Non-notifications	173	25.5	74	31.4	48	6.0	0	0	295	16.5
Conformity assessments	83	12.2	66	28.0	101	12.7	0	0	250	14.0
Incorrect implementation	252	37.1	41	17.4	88	11.0	3	3.8	384	21.4
Draft Technical Regulations	49	7.2	30	12.7	133	16.7	0	0.0	212	11.8
Management tasks	25	3.7	6	2.5	90	11.3	52	66.7	173	9.7
Inspections	33	4.9	3	1.3	70	8.8	12	15.4	118	6.6
Others	10	1.4	4	1.7	15	1.9	11	14.1	40	2.3
TOTAL	679	100	236	100	798	100	78	100	1791	100

Notes: see Table 11 above.

Source: <http://www.eftasurv.int/press--publications/annual-reports> (accessed 29 July 2011).

Liechtenstein might have a low number of cases but the share of cases subject to reasoned opinions or referrals to courts is very high. Between 2004 and 2010 19% of all cases involving Liechtenstein which had complaints, non-notifications, conformity assessments or incorrect implementations as an origin, have been subject to reasoned opinions and 8% have been referred to the EFTA Court. By contrast, only 12% of all ESA cases with the above mentioned origin have required a reasoned opinion and only 3% have been referred to court (Frommelt 2011f). In this time period, Liechtenstein has relatively more cases at the EFTA Court than at the ESA. In total, the ESA has since 1994 brought 14 actions against Liechtenstein to the EFTA Court of which 11 were non-notifications and 3 cases of incorrect implementation (see Table 13). However, in all cases Liechtenstein has notified the implementation shortly after or even before the judgment of the EFTA Court.

Table 13: Cases at the EFTA Court by case type (1994-2011)

	Iceland	Liechtenstein	Norway	Total cases
Actions by the ESA	12	14	18	44
Actions against the ESA	2	4	15	21
Advisory Opinions	15	11	39	65
TOTAL	29	29	72	130

Source: <http://www.eftacourt.int/index.php/cases> (accessed 29 July 2011).

4.3.2 Liechtenstein's derogations in the EEA

Besides the above mentioned restrictions of the free movement of persons, Liechtenstein has several derogations in different policy fields. An analysis of Liechtenstein's derogations has to consider both the EU and the domestic dimensions. In the EU context the question is whether derogations initiate a special treatment of Liechtenstein and whether such a special treatment threatens the homogeneity of the EEA. By contrast, the domestic dimension focuses on the need of derogations, their acceptance and potential savings. The following sections describe Liechtenstein's derogations and provide a statistical overview on differentiation within EEA law. Most of Liechtenstein's derogations can be attributed to its small size and close relations with Switzerland. In addition, most of them were initially transitional periods but have gained permanent character over time. In July 2011, a total of 1056 EEA acts did not apply or applied just under certain conditions in Liechtenstein (see below). This high number seems to challenge the confidence in Liechtenstein's implementation capacity and willingness and the uniformity of EEA law. However, except from the free movement of persons most derogations are of a very technical character and do not affect the functioning of the EEA Agreement as such.

4.3.3 The principle of parallel marketability

The distinction between derogations due to the relations with Switzerland and derogations due to the small size of Liechtenstein is not clear-cut. Most cases include elements of both categories which is why the following grouping of Liechtenstein's derogations cannot be interpreted as a precise classification. The derogations can also be categorized differently by distinguishing between a „sectoral approach“ and an „ad hoc approach“ to derogations. In the sectoral ap-

proach derogations are anchored in the introductory part of the corresponding annex and apply, in terms of systematic adaptations, to all acts referred to in the corresponding annex. By contrast, the *ad hoc* approach requires a decision of the EEA Joint Committee to stipulate a specific adaptation to an EU act before incorporating it into the EEA Agreement or a decision by the ESA whether an implementation is necessary or not.

In December 1994 the EEA Council concluded that the good functioning of the EEA Agreement was not impaired by the regional union between Switzerland and Liechtenstein. This conclusion anticipated several adjustments to the EEA Agreement following an EEA Council Decision in March 1995 (EEA Council Decision No. 1/1995). The EEA Council stipulated sectoral adaptations to Annex I and Annex II as well as transitional periods to Protocol III and Protocol IV. The adaptations ensured the parallel marketability that allows the circulation of products covered by the corresponding annexes and protocols when meeting either EEA or Swiss requirements (Baur 1996). For Liechtenstein these adaptations have been essential to enable it to join the EEA. The principality created a market surveillance and control system to prevent the export of EEA goods from Liechtenstein to Switzerland which do not match the Swiss import requirements. This includes products with different tariff rates in the EEA and in Switzerland, like certain fish products, as well as different classifications of dangerous substances, for instance fertilizers with a high share of cadmium (Liechtenstein 2011g). In addition, an independent evidence of origin was introduced to facilitate the export of EEA goods from Liechtenstein to other EEA countries.

The cooperation between Switzerland and Liechtenstein is based on an additional agreement to the Customs Treaty (LGBI. 1995 No. 77) that obliges the customs authorities of Switzerland to control the border traffic between Liechtenstein and Austria and to report all imports to Liechtenstein to the corresponding government office in Vaduz („Amt für Handel und Transport“). According to the Liechtenstein government, the parallel marketability works without any problems and the administrative costs are rather low since Switzerland has continuously been aligning its legislation to the EU *acquis* (Liechtenstein 2010a: 77-79).

The regional union's compatibility with the EEA was strengthened when the transitional periods of Protocol III and Protocol IV were converted into permanent solutions (EEA JCD 38/2003; EEA JCD 177/2004), based on Liechtenstein's integration into the amending agreement between Switzerland and the EU on Protocol No. 2 of the 1972 Free Trade Agreement. For example, Liechtenstein could draw on the parallel application of Swiss and EEA regulations when EU rules on the recovery of hazardous waste have been incorporated into the EEA Agreement (Regulation No. 1013/2006, EEA JCD 73/2008; Decision 532/2000, EEA JCD 9/2002).

4.3.4 Additional Agreement to the Swiss-EU Agreement on Agriculture

In September 2007 the EEA Joint Committee suspended Liechtenstein from all provisions of Annex I („Veterinary and Phytosanitary Matters“) as long as the Agreement on Agriculture between Switzerland and the EU is applied to Liechtenstein. The decision includes also Chapters XII („Foodstuffs“) and XXVII („Spirit Drinks“) of Annex II and Protocol 47 („Trade in Wine“), and it consolidates several *ad hoc* derogations and transitional periods into merely three sectoral adaptations. The extension of the Agreement on Agriculture to the principality is based on the Additional Agreement between the EU, Switzerland and Liechtenstein, and it aims to ensure “a consistent application of a single set of rules for the whole food chain” (EEA JCD 97/2007; LGBL 2007 No. 257). The low political relevance of the issue area as well as the similarity (or equivalence) of the legal standards in Switzerland and the EU have facilitated the agreement. Nonetheless, the high number of 870 legal acts (without amending law) covered by the derogations justifies a closer look. Furthermore, Iceland failed to transform its transitional period regarding the first Chapter of Annex I (“Veterinary Issues”) into a permanent derogation and therefore depends on *ad hoc* decisions by the EEA Joint Committee.

When Liechtenstein joined the EEA, the contracting parties agreed on a transitional period regarding the application of the first Chapter of Annex I (EEA Council Decision 1/1995). The transitional period was renewed by the EEA Joint Committee in 2001 (EEA JCD 54/2001) and transformed into a permanent derogation in 2003, when extending the application of Annex 11 of the Swiss-EU Agreement on Agriculture to Liechtenstein (EEA JCD 1/2003). By contrast, a similar transition period on foodstuffs (Chapter XII,

Annex II) was not extended and Liechtenstein had to implement the corresponding provisions into national law by a government decree (LGBL 1999 No. 247). Already in 1996, Liechtenstein had issued a decree on the circulation of feedingstuffs (LGBL 1996 No. 167) to comply with the corresponding EEA *acquis* (Chapter II, Annex I). These provisions lost their relevance through the above mentioned decision of the EEA Joint Committee (EEA JCD 97/2007). Hence, Liechtenstein was in the paradoxical situation that it had to repeal its independent implementation measures of the EEA provisions to ensure a smooth enforcement of the Swiss legislation.

The agricultural sector has very low relevance for Liechtenstein's economy and the administrative costs of the implementation of the EEA veterinary provisions would have been inappropriate compared to the benefits for Liechtenstein (Liechtenstein 2010d: 81). In addition, due to the Customs Treaty, all provisions of the Swiss-EU Agreement on Agriculture would have applied in Liechtenstein anyway. Against this background the permanent suspension of the application of the first Chapter of Annex I was evident, although the EU had refused a first request in 1999 (Liechtenstein 2005b: 75).

Unlike in veterinary matters, Liechtenstein had prospering enterprises in the field of feedingstuffs (Chapter II, Annex I) and foodstuffs (Chapter XII, Annex II), and the discrepancy between the corresponding Swiss and EEA law was high. These differences prevented a prolongation of the original transitional periods and forced Liechtenstein to create the administrative capacity to implement the EEA *acquis* in its own right. Liechtenstein's implementation was even subject to several inspections and audits of the ESA which criticized the lack of human resources of the responsible government office and the strong orientation to Switzerland but did not doubt the implementation quality as such (Liechtenstein 2005b: 77). However, as a result of the negotiation of the Swiss-EU Agreement on Agriculture signed in 1999 and of the autonomous adoption of EU provisions by Switzerland, the Swiss legislation in this area increasingly concurred with the *acquis*. Aiming at a consistent application of a single set of rules for the whole food chain, Liechtenstein applied for a “trilateralization” of the Agreement on Agriculture.

Liechtenstein's experts for foodstuffs and veterinary issues identify hardly any differences between the respective EEA and Swiss standards (Interviews 2011). Consequently, the suspension of EEA law did not

imply a divergence of legal rules between Liechtenstein and its EEA EFTA partners. The functioning of the arrangement is appreciated by all contracting parties (Liechtenstein 2010a: 86). Still, the „trilateralization“ has a negative connotation since it weakens Liechtenstein's possibilities to contribute to EU law as well as its access to information. Moreover, it creates a potential integration model in case of a future dissolution of the EEA Agreement that is unfavourable for the principality. Liechtenstein abandoned the independent implementation of the EEA food provisions and accepted a more or less automatic policy transfer from Switzerland. Indeed, Liechtenstein can participate in the two joint committees of the Swiss-EU Agreement on Agriculture but has no longer access to the respective EU institutions, for instance the European Food Safety Authority which is part of the EEA Agreement but not of the Agreement on Agriculture. After all, the Swiss-EU arrangement lacks common mechanisms of jurisdiction and development of law and is linked to other bilateral agreements by a „guillotine clause“ (Tobler and Hardenbol 2010).

4.4 Further derogations due to Liechtenstein's close relations with Switzerland

Beyond the above mentioned sectoral adaptations to Annex I and Annex II, the EEA Joint Committee has freed Liechtenstein from the application of several legal acts or has at least connected their application to certain conditions. In view of the patent union between Liechtenstein and Switzerland (LGBl. 1980 No. 31; LGBl. 1995 No. 80), Liechtenstein is released to deliver Supplementary Protection Certificates (SPCs) for plant protection products or medicinal products, whereas certificates delivered by Switzerland „shall take effect in Liechtenstein as from the entry into force of the relevant legislation in Switzerland“ (EEA Council Decision 1/1995; EEA JCD 59/1997; EEA JCD 20/2003).

In 2003, the European Court of Justice (ECJ) received a request for a preliminary ruling from the High Court of England and Wales as well as one from Luxembourg's *Cour administrative* concerning the calculation of the term of protection of SPCs for medicinal products approved by Switzerland (ECJ 21.4.2005, C-207/03 and C-252/03). According to the ECJ, the date of permission in Switzerland that is automatically approved in Liechtenstein presents the first circulation of a product in the EEA and thus constitutes the reference date for the calculation of the term of

protection. The ECJ followed the argumentation of the European Commission and several EU states, whereas Liechtenstein, its EEA EFTA partners and the ESA argued that in consideration of a strict distinction between the two economic areas the term of protection cannot start earlier than the formal access of the corresponding product to the EEA market (Liechtenstein 2010a: 39f). Liechtenstein has refrained from calling for safeguard measures based on Art. 112 of the EEA Agreement since a fast solution with Switzerland was found (Liechtenstein 2005a: 41) which was later consolidated in a supplementary agreement between the two countries (LGBl. 2009 No. 141). According to this agreement, an automatic approval of Swiss permissions for products with new active substances applies in Liechtenstein no earlier than 12 months after such permissions have been granted in Switzerland (Liechtenstein 2011h).

In the context of the recognition of medicinal products (Directives 2001/82/EC and 2001/83/EC), Liechtenstein received further adaptations which ensure the validity of the Austrian marketing authorizations in Liechtenstein (EEA JCD 61/2009). The incorporation of the corresponding EU acts into the EEA Agreement was linked to a bilateral agreement between Liechtenstein and Austria about the exact modalities of the marketing authorizations (LGBl. 2010 No. 339). The incorporation of the corresponding EU act into the EEA Agreement was delayed for several years due to opposing positions on the question whether there should be an automatic recognition of the Austrian products or just one upon the request of Liechtenstein's marketing authority. The challenge was again to find a solution that respects Liechtenstein's sovereignty but also considers its limited administrative capacity. It is worth mentioning that in the negotiations on possible adaptations for Liechtenstein to the above mentioned directives the European Commission referred to the arrangements of the smallest EU member states Malta and Cyprus to constrain Liechtenstein's claim for a preferential treatment (Interviews 2011).

Together with Switzerland Liechtenstein applies a performance-related Heavy Vehicle Fee (HVF). The HVF was subject to the negotiations between the EU and Switzerland about the Land Transport Agreement (1999), and the compromise found between Switzerland and the EU eased the incorporation of the taxation-related transport acts into the EEA Agreement as well (Directive 1999/62/EC, EEA JCD 5/2002). Thereby, some specific adaptations to Liechtenstein should ensure the compatibility of EEA and Swiss law. Nonetheless, Liechtenstein feared serious societal and

environmental difficulties due to an uncontrolled increase of the volume of traffic of heavy goods vehicles. Finally, Liechtenstein was until 2002 exempted from the implementation of the civil aviation *acquis* (Annex XIII). After the transitional period expired, Liechtenstein has issued a law on civil aviation (LGBl. 2003 No. 39) although there is hardly any regulatory need. Several *ad hoc* derogations and a supplementary agreement with Switzerland (LGBl. 2003 No. 40) flank Liechtenstein's implementation of the relevant *acquis*.

4.4.1 Derogations due to the small size

Whereas most of the derogations due to the close relations with the non-member Switzerland refer to the parallel marketability, derogations due to the smallness have a much higher variety. In brief, they can be linked to the small market size, the limited administrative capacity or the lack of a regulatory need. Again, most of the derogations are related to technical issue areas and have rarely implied any delay of the acts' incorporation into the EEA Agreement or created legal uncertainty within the EEA. Hence, the derogations of Liechtenstein have not affected the functioning of the EEA Agreement as such. Nevertheless, from a domestic point of view the derogations of Liechtenstein are not always a direct result of its small size or the close relations with Switzerland but aim at a lean administration as well as a low regulatory density.

Due to a lack of regulatory need, many EU acts do not apply in Liechtenstein. For instance, Liechtenstein has no inland waterways and so there is no reason to implement the corresponding *acquis* into national law. The same applies for maritime transport or some parts of the aviation *acquis*. These derogations are not recorded by the EEA Joint Committee and therefore do not appear in the corresponding annexes but are documented in the implementation database of the ESA. As the EU transport *acquis* is highly regulated, including a wide transfer of competences to the ESA as well as provisions of criminal and civil law which have initially not been part of the EEA Agreement, Liechtenstein follows the incorporation process closely to prevent a precedent for the remaining parts of the EEA Agreement. Furthermore, Liechtenstein's revision of the law on railways illustrates that the existence of regulatory need can change over time (LGBl. 2011 No. 182; Liechtenstein 2010f).

In the field of statistics, Liechtenstein has 59 derogations. In the 2009 version of the Statistical Yearbook of Eurostat Norway was included in 88% and Iceland in 69% of all indicators presented, while Liechtenstein was only included in 22% (EFTA Secretariat 2010: 52). The high number of derogations in the field of statistics has several reasons. First, since there are no implementing measures required in certain issue areas, for instance in maritime transport, there is no need to implement the related statistical acts either. Second, due to the customs union with Switzerland, Liechtenstein is exempted from collecting data on foreign trade. Third, the small population might raise privacy concerns and the lack of human resources can hamper the data collection. Thanks to a very active and competent involvement of the responsible government office in the decision-shaping process, Liechtenstein's EEA partners have a good understanding of its specific conditions.

Liechtenstein's geography and infrastructure explains derogations concerning the registration for crude oil imports (Regulation No. 2964/95, EEA JCD 5/97), the promotion of electricity produced from renewable energy sources (Directive 2001/77/EC, EEA JCD 102/2005), the emissions of large combustion plants (Directive 2001/80/EC, EEA JCD 147/2002) or aviation activities (Directive 2008/101/EC, EEA JCD 6/2011) and the release into the environment of genetically modified organisms (Directive 2001/18/EC, EEA JCD 127/2007). In contrast to the above mentioned derogations in the fields of inland waterways or maritime transport, these derogations are recorded in the respective EEA annexes and have been subject to negotiations. Most of them are partial derogations that are subject to certain conditions and will be abandoned when these conditions change. The same applies to derogations and restrictions which take into account the small market size of Liechtenstein by qualifying the obligation to unbundle transmission system operators within the internal market of gas (Directive 2003/55/EC, EEA JCD 146/2005) and electricity (Directive 2003/54/EC, EEA JCD 146/2005) or the compliance assessment regarding the access to electronic communication networks (Directives 2002/19/EC and 2002/22/EC, EEA JCD 11/2004). Due to the small inhabitable area, the access of EEA nationals to the property market is confined to EEA nationals with a residence permit in Liechtenstein. This restriction on the free movement of capital is anchored in the national law of Liechtenstein and accepted by the ESA since Liechtensteiners also face certain restrictions on the property market (Liechtenstein 2007b; Interviews 2011).

4.4.2 Statistical overview

Table 14 includes all legal acts with permanent or partial derogations based on the 22 annexes of the EEA Agreement and the implementation status database of the EFTA Surveillance Authority. The table does not cover amending law or adaptations that have been made for all EEA EFTA states due to the limited scope or the two-pillar structure of the EEA Agreement (see below). The comparison of the three EEA EFTA states illustrates that the number of derogations correlates with the size of states. Liechtenstein has clearly the highest number of derogations, followed by Iceland and Norway. Nonetheless, the size of states is just one explanatory factor and most of Liechtenstein's derogations are partial derogations as well since they are tied to bilateral agreements with Switzerland or Austria or result from the lack of a regulatory need. For instance, the suspension of the EEA foodstuff *acquis* has required the extension of respective Swiss law to Liechtenstein and the exemption from regulating the emissions from large combustion plants will be terminated when Liechtenstein puts such plants into operation.

Derogations are particularly frequent within policy fields with a rather technical character like trade of goods and transport, whereas EEA provisions related to the free movement of services or persons are rarely covered by country-specific derogations (see Table 14). Due to the varying political and economic relevance of derogations, the number of derogations as such cannot be taken as an indicator for the level of integration of the EEA EFTA countries or the functioning of the EEA Agreement. After all, most derogations are related to decisions and regulations and only 197 of Liechtenstein's derogations concern directives. Nevertheless, Liechtenstein's high number of derogations is unique in the EEA and concerns nearly 45% of legal acts in the EEA Agreement.

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Table 14: Legal acts involving derogations by policy field (June 2011)

	Iceland	Liechtenstein	Norway	Total derogations	Total legal acts
Energy	4	5	1	7	39
Transport	68	74	21	122	240
Capital	2	0	1	2	30
Services	4	4	2	7	169
Persons	1	7	1	7	101
Goods	246	876	18	882	1302
Labour law	3	8	2	8	85
Environment	6	12	2	13	168
Competition	1	4	1	4	61
Statistics	14	59	6	67	177
TOTAL	349	1056	55	1119	2372

Notes: The table includes all legal acts with country-specific derogations based on the 22 EEA Annexes and the implementations status database of the EFTA Surveillance Authority. *Amending law has not been considered.* The total number of legal acts is based on the list of Celex numbers provided by the EFTA Secretariat (as of June 2011). In the case of Liechtenstein, the legal acts of Annex II subject to the parallel marketability have not been counted as derogations.

Source: compiled by C. Frommelt.

The EU itself is well aware of the specific requirements of Liechtenstein since the smallest EU member state Malta has more than 10 times the population of Liechtenstein. Liechtenstein benefits also from the fact that apart from very few exceptions (for instance the derogation regarding the recognition procedure for medicinal products), its derogations have not delayed the incorporation of EU acts into the EEA Agreement. Liechtenstein has also complied well with the EEA Agreement in terms of a fast adoption and correct implementation (see above). Finally, the case law of the EFTA Court (e.g. E-4/11) and the dialogue with the ESA (e.g. 605/08/COL) have limited the scope of application of Liechtenstein's derogations.

A more detailed overview of Liechtenstein's derogations is available in the annex of this report. Table 16 in the annex illustrates again that most of Liechtenstein's derogations are subject to clear conditions which limit the divergence of legal rules between Liechtenstein and its EEA EFTA partners and prevent a preferential treatment of Liechtenstein in the EEA.

Against expectations, the delays that Liechtenstein has encountered in the integration process were not a result of disputes over requested special derogations but of politically motivated linkage politics by individual EU member states.

4.5 Delays due to linkage politics

Like other third countries, Liechtenstein is not immune against EU linkage politics. So far, mainly two instances have given rise to politically motivated issue linkage involving the principality: the EU's Eastern enlargement due to an unsolved bilateral problem between Liechtenstein and former Czechoslovakia and Liechtenstein's Schengen/Dublin association which became an EU bargaining leverage for more tax cooperation.

4.5.1 Historical legacy and Eastern enlargement

According to Art. 128 EEA Agreement, any state joining the Union must apply to become party to the EEA Agreement as well. Each EU enlargement thus implies an EEA enlargement with the terms to be negotiated with the EU and EFTA members of the EEA. However, Liechtenstein and the Czech and Slovak Republics maintained no diplomatic relations because in the aftermath of World War II the Czechoslovak Beneš Decrees were applied to property of Liechtenstein nationals, including the Princely family. Although Liechtenstein managed to remain neutral throughout the war, property owned by Liechtensteiners was treated as German enemy property and confiscated. This issue has so far not been settled despite several court rulings.

For Liechtenstein the improper extension of the Beneš Decrees means denying its sovereignty. Therefore, the principality protested several times during the Eastern countries' accession negotiations and in 2003, supported by Norway and Iceland, delayed the signing of the EEA enlargement agreement. Yet Liechtenstein came under heavy political pressure not to jeopardize the politically important „big bang“ enlargement process. The Czech and Slovak Republics remained stubborn out of fear that any review and/or compensation regarding Liechtenstein property might lead to further claims such as from Sudeten Germans or Hungarians. It is noteworthy that the European Union was not interested in discussing this unresolved dispute with a neighbouring country during the pre-accession phase nor the two candidate countries' refusal to accept any judicial settlement of this dispute (Maresceau 2011:

514-520). Only in 2009 did the principality and the Czech and Slovak Republics establish diplomatic relations. Moreover, Liechtenstein and the Czech Republic set up a Historical Commission to examine the joint history of Bohemia, Moravia, Silesia and the House of Liechtenstein, as well as the relationship between the two countries in the 20th century.

4.5.2 Schengen/Dublin association and tax cooperation

Regarding the second issue of linkage politics, Liechtenstein had expressed its wish to join the Schengen/Dublin area in 2001, shortly after Switzerland. The accession protocols were initialled in June 2006 (the EU-Switzerland agreement was already signed in October 2004). The plan for a parallel accession of Liechtenstein was delayed as the principality was required to first conclude the Agreement on the Taxation of Savings Income. However, after this was achieved, certain EU member states, in particular Germany and Sweden, insisted on negotiating as well an Anti-Fraud and Tax Information Exchange Agreement with Liechtenstein. The European Commission and Liechtenstein concluded the negotiations of this additional agreement in 2008.

A few months earlier a highly publicized tax scandal erupted in Germany involving sizeable tax evasion from German taxpayers, in particular through „Stiftungen“. The German intelligence service BND was directly involved in the investigations by purchasing data stolen from a Liechtenstein bank. The German government accused the principality of encouraging Germans to break the law by offering such financial services and threatened to block Liechtenstein's entry into the Schengen area (Maresceau 2011: 522-523). As already mentioned, the Council requested further improvements to the draft agreement in 2009.

In June 2009 the opposition in the Swedish Parliament obstructed Liechtenstein's accession to Schengen as the government coalition parties did not have the required majority to adopt the necessary national law. After the parliamentary elections in September 2009 the Swedish reservation was withdrawn. In addition, Liechtenstein has since its declaration of March 2009, in which it committed itself to the OECD's global standards of transparency and exchange of information, negotiated many bilateral tax information exchange agreements, including with Germany, Sweden and the other Nordic countries (Liechtenstein 2009c).

However, in October 2009 Austria and Luxembourg blocked the adoption of the Anti-Fraud and Tax Information Exchange Agreement in the Council of Ministers because they feared disadvantages for their own financial centres resulting from the transition to an automatic direct exchange of information. They also blocked new negotiations with Switzerland for which the EU-Liechtenstein agreement was supposed to serve as a model. Austria and Luxembourg link these two agreements to the revision of the EU Directive on the taxation of savings interest, and they insist that third countries should also pass to an automatic exchange of information instead of only upon request. At the time of writing, no solution has been reached.

Despite the positive assessment of 16 years of EEA membership future change is unavoidable. First, the EU itself is subject to processes of widening and deepening which also shape the functioning of the EEA Agreement. Second, the prospects of Liechtenstein in Europe are affected by the integration strategies of the other EFTA countries as well as the other very small states and the members of the European Neighbourhood Policy (ENP). Finally, Liechtenstein's assessment of its EEA membership might change when the misfit of certain policies between the EU and Liechtenstein, for instance regarding the bank secrecy, diminishes. Based on the preceding detailed analysis, the following chapter therefore outlines relevant tendencies as well as possible future scenarios for Liechtenstein's integration in Europe.

5. Future perspectives

Exploring Liechtenstein's future perspectives has to take into account at least three dimensions: first, the ability and willingness of Liechtenstein to participate in the European integration process; second, the integration policy of its EFTA partners and other European non-EU countries; and third, the scope and institutional setting of the potential integration models. There is a political consensus that Liechtenstein should in the future avoid a „step back“ and „at least keep the level of integration already achieved“ (Liechtenstein 2010g: 12, authors' translation). The options below an internal market association comparable to today's EEA have lost their appeal – all the more so since any „niche policy“ (e.g. as a tax haven) is no longer realistic. Nor would it be desirable to indirectly include Liechtenstein in the Swiss bilateral agreements since such a „trilateralization“ would lead back to a dreaded „mediatization“ of the principality without own immediate relations with the EU.

For the time being, the European Economic Area is still considered to be the best choice for Liechtenstein. Yet, the EEA might further develop by expanding in membership and/or issue areas or it might altogether have to be replaced by alternative settings. This chapter addresses both the domestic and the European dimensions of the challenges that such developments are likely to entail.

5.1 The absence of a Europe debate in Liechtenstein

Although Liechtenstein's government does in the long run not exclude any option of integration, including an accession to the EU, „in view of a reliable and consistent foreign policy“, it refrains from publicly presenting alternative scenarios (Liechtenstein 2008a: 118-120, authors' translation). The government hopes for continuity in its relations with the European Union, and there is no public debate on possible political choices „after the EEA“. The current Foreign Minister Aurelia Frick is more outspoken: in a newspaper interview she classified an EU membership of the principality as „not compatible with its size“ and claimed that it would not be acceptable if half of Liechtenstein's public administration would work for the EU (Neue Zürcher Zeitung 2010, authors' translation). The Reigning Prince, Hans Adam II von und zu Liechtenstein, is against an EU membership because of the high costs this would entail, and he would, if need be, prefer to transform the EEA into a bilateral agreement with the EU (Lie:Zeitung 2011: 7).

It is worth noting though that back in 1992 the government of Liechtenstein had issued a report – in view of the membership bids of almost all EFTA countries, including Switzerland, at the time – on the conditions and consequences of a possible EU accession (Liechtenstein 1992b). Sooner or later, the domestic debate will have to address the following issues: in case the EEA needs to be replaced, what are the advantages and disadvantages for Liechtenstein of the available alternatives and how are these options ranked? How important is participation in European decision-making and what concessions would Liechtenstein's society be ready to make – and, if necessary, in exchange for which derogations from the *acquis*?

While the policy choices are not publicly discussed, the government has in recent years adopted a more proactive strategy. Its approach is now more pragmatic and flexible regarding the scope of the EEA Agreement. Nevertheless, Liechtenstein's government lacks a communication strategy that would prepare the population and economic actors for a future policy change.

5.1.1 Deepening and broadening the EEA

The EU has gone through considerable changes since the EEA Agreement was signed. In no less than four Treaty revisions the EU has integrated new policy areas and has strengthened its competences vis-à-vis the member states. The EEA's approach towards the deepening and broadening of the EU has been ambiguous: whereas the EEA EFTA states incorporate every year more than 300 EU acts, the EEA Agreement itself has remained rigid. This ambivalence forces the contracting parties and their institutions into a permanent dialogue on the actual scope and depth of the EEA Agreement. Thereby the EFTA Court of Justice and its case law have played a key role (Fredriksen 2010). The controversy includes the selection of EU acts by the EEA Joint Committee („EEA relevance“) as well their domestic adoption and implementation (Frommelt 2011e).

The EEA internal market legislation “is often blurred with other policies that fall outside the scope of the EEA Agreement” (Tobler and Hardenbol 2010: 7). This leads to a creeping extension of the reach of the EEA Agreement but impedes the participation of the EEA EFTA states in the relevant decision-shaping process. In addition, several EU acts vest the European Commission or EU agencies with the competence to assess the compliance of member states which is not consistent with the two-pillar structure of the EEA

Agreement. As a result, the incorporation of new EU acts into the EEA Agreement requires more and more adaptations by the EEA Joint Committee. Such adaptations and declarations honour the limited scope of the EEA Agreement and its two-pillar structure but might weaken the homogeneity of EEA law since they create a different scope of application as well as a different surveillance intensity among the EU and EEA EFTA states.

A research project at the Liechtenstein-Institut shows an increasing number of adaptations over time. More than 33% of all legal acts and nearly 40% of all directives in the field of services have required adaptations. Institutional adaptations in terms of allocating competences between the European Commission, the EFTA Surveillance Authority and the authorities of the member states due to the different institutional setting are the most frequent adaptations. Additional adaptations concern the limited scope of the EEA Agreement when excluding aspects related to the EU's relations with third countries or the EU's justice and home affairs (Frommelt 2011e). These adaptations can delay the adoption of an EU act by the EEA EFTA states. Table 15 illustrates that there is a substantial time lag between the adoption of a legal act by the EU and the EEA EFTA states which leads to a different compliance date of directives for the EU and the EEA EFTA states. A directive has to be transposed by the EEA EFTA states on average 257 (services) respectively 341 (environment) days later than in the EU. However, the comparison of these two policy fields shows a different picture: whereas since 1994 the respective time difference has decreased for environment, it has increased for services. The EEA Agreement does not cover the entire environmental policy of the EU. Nevertheless, due to the increasing relevance of the issue the scope of application of the EEA Agreement has been steadily extended and therefore several older EU acts have been incorporated into the EEA Agreement. On the other hand, the growing transfer of competences to the EU or EFTA organs explains the increasing time difference in services.

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Table 15: Different speed in the EU and the EEA

Time period	Services		Environment	
	Directives	All acts	Directives	All acts
1994-1998	232	594	208	738
1999-2003	171	602	450	714
2004-2008	429	652	199	553
Average	257	623	341	641

Notes: All acts: number of days between the date the EU issued a legal act and the date the respective JCD entered into force. Directives: number of days between the compliance dates of the EU states and the of EEA EFTA states. The classification by time period is based on the EU act. Country-specific prolongations of the transitional period have not been considered.

Source: Frommelt 2011e.

These first results in two policy fields confirm the conclusion of a report of the EEA Joint Parliamentary Committee that the evolving forms of EU governance will make the EEA increasingly difficult to manage and that “the EEA EFTA States will be faced with a choice between either a *de facto* broadening of the scope of the agreement if new cross-sectoral rules are incorporated or attempting to exclude them” (Júlíus-dóttir and Raeva 2008: 12). Despite the dynamic nature and the principle of homogeneity of the EEA, there is a growing gap between developments in the European Union on the one hand and in the EEA EFTA countries on the other. This mismatch could be tackled by a deepening and/or broadening of the European Economic Area. While a deepening of the EEA implies more (quasi-)supranationality, a broadening of the EEA means that new issue areas would be integrated. A broadening would in particular take into account the EU’s Treaty revisions since the Treaty of Maastricht as well as new developments beyond the primary law or even policy fields that were originally left out of the EEA.

Renegotiating (parts of) of the EEA Agreement – instead of *ad hoc* concluding bilateral agreements between individual EEA EFTA states and the EU – would constitute an ambitious objective. Of course, aspects such as the taxation of savings, the Schengen/Dublin associations or EFTA’s participation in EU agencies could be formally included into the multilateral Agreement. However, what interest could the Union have in such an endeavour? Expanding the scope of the two-pillar system would not necessarily simplify relations, nor solve the issue of EEA relevance, and integrating new policy fields might encourage further

unwanted requests for *à la carte* integration. Besides, the experience with the Swiss model clearly demonstrates the limits of a sectoral approach (see below).

Moreover, would a revision of the EEA Agreement with a view to broader and/or deeper integration be in the interest of the EEA EFTA countries? Adding more supranationality without adding more voice in the decision-making process would make the EEA less and EU membership more attractive for the EFTA countries. Revisiting the EEA Agreement might also involve the risk that the Union would want to include or revise politically sensitive areas (e.g. fishing quotas, taxation). Unless the EEA would be enlarged by sizeable new members, the EEA EFTA states would find themselves in a position of *demandeurs vis-à-vis* the European Union. Still, the current EEA EFTA states lack a consensus on a renegotiation of the EEA Agreement. In general, cooperation among the EEA EFTA countries has been very good. To a large extent Norway, Iceland and Liechtenstein have supported each other’s positions vis-à-vis the European Union. However, two main sources of tension can be identified: the question of “EEA relevance” and the temptation to act alone that Norway sometimes faces.

The decision about the EEA relevance of new *acquis* has sometimes been a bone of contention, that is whether new EU rules are relevant for the EEA and should thus be incorporated or not. For example, in Liechtenstein labour law is – unlike in Scandinavia – not very well developed which is why the principality refused the incorporation of directives on equal treatment in employment and occupation (Directive 2000/78/EC) or between persons irrespective of racial or ethnic origin (Directive 2000/43/EC). In this regard, a recent shift of positions can be observed: whereas Norway originally pursued an integrationist strategy with a political approach to the EEA, it has since a few years become more reluctant. A further deepening and/or broadening of the EEA might bring its substance too close to an EU membership without having a real say in decision-making. Liechtenstein, by contrast, always had a pragmatic, non-political approach to the EEA. While the principality was first satisfied with the status quo and has delayed or even blocked the incorporation of new EU acts into the EEA Agreement, it is since a few years more proactively in favour of deepening and broadening the EEA (Interviews 2011). For instance, Liechtenstein accepts – under certain circumstances – the incorporation of EU acts referring to criminal law provisions, and it did not question the compatibility of the EU’s system of financial supervisors with the two-pillar structure of

the EEA. Iceland locates itself in between these two positions. The Icelandic government had started to press for a revision of the EEA Agreement in the late 1990s, but was disappointed that “the Norwegian government showed little or no interest in revisiting the agreement” (Bergmann 2010: 16). After the financial crash in Iceland in 2008, EU membership took priority. Although Iceland is negotiating its accession to the EU, membership remains uncertain due to the lack of domestic support. Should Iceland fail to join the EU, it might well be more interested again in broadening the EEA Agreement.

From the perspective of Norway’s smaller partners, the Norwegian government sometimes tends towards a “big power behaviour” in terms of unilateral action instead of prior EFTA consultations (e.g. Bergmann 2010: 17). Liechtenstein appreciates very much the big efforts, both in terms of human resources and finances that Norway puts into the good functioning of the EEA. It could not run the EEA in its current shape alone together with Iceland. However, this cannot hide the fact that the focal points of interest of the two countries – an energy-rich Nordic NATO member and a small neutral Alpine state with an important financial centre – are not always identical. In this context, it should be mentioned that the role of the EFTA Secretariat is much more important for Liechtenstein and Iceland than for Norway which can rely more on its own infrastructure and expertise. The smaller partners work with shorter official channels and less internal coordination and thus can sometimes gain the impression that the Norwegians spend first much time with their own internal consultation procedures and then with the EU, even though EFTA consultations are to stand in between.

“Sometimes, problems have occurred, in incorporation, in transposition and in implementation, Norway being especially concerned, given its special interests (gas) and probably also its relative ‘big power’ status among the three countries” (European Parliament 2004: 10).

Hence, given the lack of a genuine interest on both sides, new negotiations appear only as a realistic option in combination with a widening of the EEA.

5.1.2 Widening the EEA

A widening of the EEA aims at the inclusion of new members on the side of the EFTA pillar. The most plausible groups of candidates for such an EEA enlargement are currently Switzerland, the European

microstates and the more advanced of the 16 countries of the European Neighbourhood Policy.

Switzerland rejected EEA membership in 1992 in favour of a bilateral approach to integration. According to Art. 128 EEA Agreement, the Swiss Confederation may at any time apply to become a contracting party. The Federal Council regularly includes the EEA in its integration policy reports as one possible scenario besides the bilateral approach (with or without an institutional framework agreement) and EU membership (with or without derogations) (Switzerland 2010a). For the institutional reasons mentioned above, the think tank *Avenir Suisse* in a recent study sees little future for Switzerland’s bilateral policy since the continuous adoption of EU law without noteworthy participation undermines legal certainty in Switzerland and ultimately its sovereignty (Gentinetta and Kohler 2010). Instead, the discussion about an accession to the EEA or EU membership has been relaunched. However, for the time being, the government’s focus is on exploring the possibility of adopting a holistic and coordinated approach which would address the institutional dimension.

Switzerland’s increasing difficulties with its sectoral integration policy reveal the limits of a static but comprehensive approach. With over 100 bilateral agreements in place, usually managed by joint committees and based on the equivalence of laws of both sides, amendments are a cumbersome undertaking. In December 2010 the Council of the Ministers clearly denounced the legal uncertainty which the Swiss model entails: „Due to a lack of efficient arrangements for the take-over of new EU *acquis* including ECJ case-law, and for ensuring the supervision and enforcement of the existing agreements, this approach does not ensure the necessary homogeneity in the parts of the internal market and of the EU policies in which Switzerland participates” (Council of the European Union 2010: para 42). The Council concluded that the current system had become too complex and unwieldy to manage. “As a consequence, horizontal issues related to the dynamic adaptation of agreements to the evolving *acquis*, the homogeneous interpretation of the agreements, an independent surveillance and judicial enforcement mechanisms and a dispute settlement mechanism need to be reflected in EU-Switzerland agreements” (ibid.: para 48). The EU is thus demanding that Switzerland automatically adopts relevant developments of the *acquis*. Switzerland, on the other hand, insists for sovereignty reasons that the adoption of *acquis* be compensated through an appropriate

degree of participation in the EU's decision shaping (Switzerland 2010a: 69-73).

In recent years, the question has been raised whether the EEA could be a choice for the European microstates willing to integrate further. At least Andorra and San Marino have expressed an interest in joining the EEA. This means that they would first have to be accepted as members of EFTA. Despite the fact that these are relatively rich countries, „EFTA has no intention to enlarge itself“ (Switzerland 2010a: 27, authors' translation). The Norwegian government considers that enlarging the EEA by Andorra, San Marino and Monaco „would not be appropriate for these states“ (Norway 2011). Adding microstates with a little diversified economic structure would make speaking with one voice more difficult for the EFTA pillar. Moreover, they would not improve the financing of the complex institutional set-up with an own Court of Justice and Surveillance Authority. Nevertheless, the EU's review of the functioning of the EEA Agreement is to examine as well „possible developments in the membership of the EEA“ (Council of the European Union 2010: para 35). Whereas Andorra was particularly keen on the EEA, the new government in place since May 2011 seems to have a preference for a bilateral association agreement. Emerson (2007: 18) finds that „[f]rom an Andorran perspective, looking ahead for a model for the next decade, the EEA could be viewed as both too much (excessive detail with the 1,000 directives) and too little (in excluding new areas of EU policies)“. Finally, it is highly questionable whether the EU has an interest in prolonging the life of the EEA by letting the microstates join instead of offering them an institutionally less demanding and expensive form of association. More interesting might be certain larger, advanced countries of the European neighbourhood.

When the European Commission launched the ENP in 2003, it proclaimed that „all the neighbouring countries should be offered the prospect of a stake in the EU's Internal Market and further integration and liberalisation to promote the free movement of – persons, goods, services and capital (four freedoms)“ (European Commission 2003: 10). Its long-term goal was „to move towards an arrangement whereby the Union's relations with the neighbouring countries ultimately resemble the close political and economic links currently enjoyed with the European Economic Area“ (ibid.: 15). In 2006 the European Commission introduced instead the concept of „a longer-term vision of an economic community emerging between the EU and its ENP partners“, which „would include such points as the application of shared regulatory

frameworks and improved market access for goods and services among ENP partners, and some appropriate institutional arrangement such as dispute settlement mechanisms“ (European Commission 2006: 5). The core of the Neighbourhood Economic Community would consist of deep and comprehensive free trade agreements which cover substantially all trade in goods and services as well as ‚behind-the-border‘ issues such as technical, sanitary and phytosanitary standards, competition policy, industrial policy, research cooperation, intellectual property rights, trade facilitation measures, company law, public procurement and financial services. These tailor-made FTAs will be embedded in bilateral association agreements as well as increased intra-regional integration between the ENP partners themselves.

As argued elsewhere, the Neighbourhood Economic Community is likely to develop into a system of bilateral „FTA plus“ and/or „internal market minus“ associations, without direct participation in the EU institutions, and with a mere thematic multilateral dimension at best (Gstöhl 2011). The Eastern Partnership envisages in the long term that „the EU and its partners may reflect on a broader regional trade approach establishing a Neighbourhood Economic Community, taking inspiration from the European Economic Area where appropriate“ (European Commission 2008: 10). Based on the EEA experience, the European Commission (2007: 8) considers „the possibility to let partners have a voice in policy-shaping“.

Nevertheless, there are many differences between the ENP and the EEA. Whereas the EFTA states are small, rich and highly industrialized democracies eligible for EU membership and organized in a common intergovernmental organization, the ENP countries are very heterogeneous and (with the exception of Israel) noticeably below the EU average in terms of GDP per capita or the degree of democratization (Gstöhl 2008). Unlike the ENP, the EEA Agreement does not contain a human rights clause, and there is no political conditionality in EU-EFTA relations. Most ENP countries lack the necessary institutional and administrative capacities for an EEA-like internal market association, even in the more distant future. Moreover, the EEA excludes many areas that are of great interest to the ENP countries such as the common agricultural, fisheries and transport policies, financial assistance and regional policy, justice and home affairs, economic and monetary policy as well as the EU's external relations. Finally, the structure of the EEA Agreement is multilateral, whereas the legal bases of the ENP are bilateral. Even though the Union for the Mediterranean and the

Eastern Partnership intend to develop their respective multilateral dimensions to some extent, an EEA-like set-up for the ENP neighbours (respectively their participation in the EEA) would raise many institutional concerns. The EEA Agreement is a dynamic agreement which foresees the continuous adoption of new *acquis* in the relevant fields based on an elaborate two-pillar system. While the EEA attempts to ensure a homogeneous market and uniform application of the *acquis*, and is thus predominantly based on legally binding acts, the ENP aims at differentiation and tailor-made solutions based on political Action Plans.

Widening the EEA might not be an attractive political choice, but what would be the alternatives in case the EEA would lose members and thus would have to be replaced?

5.1.3 Replacing the EEA

Iceland's accession to the EU would raise serious questions about the functioning of the EEA and of EFTA. Since the EFTA Court of Justice and the ESA take their decisions by simple majority, a solution would have to be found for the decision-making process to avoid deadlocks. With only two EFTA countries left the EEA would further lose in political importance. Moreover, Liechtenstein and Norway would be highly unequal partners – already today Liechtenstein pays only 1% of the costs of the EEA (Switzerland 2010a: 27). Both Norway and Liechtenstein favour an institutional adaptation of the EEA should Iceland join the EU (Neue Zürcher Zeitung 2010). This implies in particular a simplification of the decision-making procedure and a downsizing of all bodies. For example, the number of joint meetings of the Joint EEA Committee could be reduced, or the ESA and the EFTA Court of Justice might still have three members but not necessarily of different nationality or nationalities of EFTA countries. During the first few months of 1995, after the accession of Austria, Finland and Sweden to the EU and before Liechtenstein's accession to the EEA, the Finnish member of the ESA College continued to participate in the Authority's decision-making (Gstöhl 2001a: 204).

Should there be no political agreement to largely maintain the EEA structures, the next best option would be to safeguard the substance of the EEA in bilateral associations with the EU. An association usually comprises an association council (at ministerial level), an association committee (at senior officials level) and various committees, often including a parliamen-

tary committee, a joint consultative committee and a dispute settlement procedure which normally foresees the appointment of arbitrators. The institutional set-up of a „bilateral EEA“ would have to be radically simplified: instead of an independent ESA the EU would probably suggest to extend the competences of the European Commission and of the EU Court of Justice to Liechtenstein. By accepting the authority of these EU bodies, Liechtenstein would endorse principles of EU law such as direct effect, primacy and state liability. This would certainly raise sovereignty concerns that could only be accepted under certain conditions such as an own selective representation.

The EFTA Court of Justice could become an *ad hoc* court or Liechtenstein could appoint an *ad hoc* judge in the Court of Justice of the European Union (Frommelt 2010: 243ff). Like for all EU member states, the presence of a judge who is familiar with the national legal order is also crucial for Liechtenstein, not the least for the domestic acceptance of such a system. In return for this concession, in order to ensure uniform interpretation and application of EU law, Liechtenstein's highest courts could refer questions to the EU Court of Justice and accept the binding effect of preliminary rulings. The alternative would be an arbitration procedure, but the maintenance of a course of law with direct access of citizens and enterprises would be preferable. The principality would no longer be able to rely on the expertise of the EFTA Secretariat to assess the relevance of new EU legal acts. The EFTA Secretariat in Brussels might even be closed down. Hence, more human and financial resources would have to be allocated to Liechtenstein's integration policy.

In terms of substance, some of the areas where Liechtenstein has obtained derogations might be left out of a bilateral agreement, while other areas of mutual interest might be integrated. For instance, Liechtenstein has a strong interest to adopt the directive on the common system of taxation applicable in the case of parent companies and subsidiaries of different member states (Directive 90/435/EEC) which is not part of the EEA Agreement but could release Liechtenstein from negotiating double taxation agreements. The renunciation of decision-making power would need to be compensated, for example through „special solutions“ in terms of derogations or more leeway in implementation. As the EEA experience has shown, Liechtenstein's monist legal tradition as regards international law allows a lighter legislative procedure than, for example, in Norway, whose parliament requires explicit legislation for each act. Liechtenstein also faces no translation burden since all legal texts already exist in German.

A dynamic association could lead to a creeping expansion of the *acquis* and thus come close to a partial membership. So far, the relevant Directorates-General of the European Commission have marked an EU act as EEA relevant, however, within the EU there is little coordination and standardization how to define the EEA relevance of EU acts (Interviews 2011). As a result, the EEA EFTA states have excluded numerous acts from the list of “EEA relevant” EU acts provided by the European Commission but have instead included EU acts which they considered relevant (Frommelt 2011e). When replacing the EEA, Liechtenstein would no longer be able to rely on the experts of its EEA EFTA partners or the EFTA Secretariat to evaluate whether an EU act has to be incorporated or not. This would lead to a substantial increase of the administrative costs for legal expertise. Any institutional concessions from the EU are probably easier to obtain in accession negotiations than in a “bilateralization” of the EEA. The EU might also be afraid of setting a precedent for other countries, in particular the ENP partners.

From the EU’s perspective, a consolidation of its relations with those European countries that do not wish to become members would probably be desirable. Already today the (potential) candidates, the EFTA countries, the ENP partners and in the future most likely also the microstates are dealt with in groups. In the declaration on Art. 8 TEU the European Union promises to „take into account the particular situation of small-sized countries which maintain specific relations of proximity with it“. The article can be interpreted as *lex specialis* to Art. 217 TFEU on the conclusion of association agreements. The EU seems to be steering its relations with Andorra, San Marino and Monaco in this direction (Council of the EU 2011: para 13). However, the question for Liechtenstein is to what extent an advanced association could go beyond the present status quo. Any further integration “could well result in a further one-way-street approach, based on unilateral EU requests, if not EU diktats”, which would not be the most attractive option for the principality (Maresceau 2011: 527).

5.1.4 The EU’s (lack of a) strategy towards very small states

In August 2007 San Marino had informed the EU Presidency of its wish to deepen integration „and to further discuss the possibility of submitting its candidature for membership of the European Union“ or at least to achieve a new status for San Marino (quoted in Emerson 2007: 91). Already in October 2002, the San

Marino government had in an *aide-mémoire* addressed to the Danish Presidency, the Commission President and the President of the European Convention at the time underlined the importance “to thoroughly consider all implications – which the Republic cannot and does not intend to circumvent – of a possible membership in the European Union for a Country which, in terms of territorial extension and population, is a microstate and wants to preserve its own identity” (San Marino 2002). Yet, an official reply to this demand is still missing.

Upon request of the Council of Ministers, the European External Action Service (EEAS) and the European Commission are only now preparing a strategy for the European microstates which is to be presented in 2012. The analysis of the future relationship „should include exploring further a possible new institutional framework for relations, taking into account the importance of a coherent approach for all three countries, while respecting the particularities of each country in accordance with the Union’s declaration on Art. 8 of the TEU“ (Council of the European Union 2011: para 14). Their progressive integration should give due attention to „the institutional, political and economic impact of a possible new framework, in particular in view of the need to ensure the integrity of the Internal Market“ (ibid.). It is worth mentioning that already in 1989, in view of the completion of the internal market, the European Parliament had adopted a resolution in favour of very small European states, calling for their participation in areas such as the free movement of goods or persons (European Parliament 1989: 329). The resolution was primarily addressed to Andorra, Monaco and San Marino, while Liechtenstein was not mentioned.

As a possible side effect, the high level of integration already reached and the considerable political pressure that the EU and individual EU member states have exerted on Liechtenstein „might lead the country to contemplate the option of applying for EU membership“ (Maresceau 2011: 526). Many observers consider a full membership out of reach and rather envisage to explore „a *sui generis* EU Member State status for the very small states“ (ibid.). The position of Liechtenstein’s politicians is somewhat ambiguous: although they resist any a comparison with the other European microstates, many of them question at the same time the country’s administrative and financial capacity to join the EU.

5.1.5 Partial vs. full EU membership?

The treatment of a potential membership application from Liechtenstein might *inter alia* depend on whether Switzerland, another EEA EFTA country or another very small state apply at the same time. However, some challenges will remain the same. The principality has reached the integration level of an EEA member, yet structurally it is still a microstate. While EU membership, compared to the EEA, would improve the participatory rights, the principality might – due to its size – not be able to benefit from all these rights or to fulfil all the obligations of a full member.

In his study on Andorra and the EU, Emerson (2007: iii-iv) envisages a „virtual membership“ with a „full functional participation in the EU, with full rights for citizens and enterprises, but with a special institutional arrangement to avoid congestion in EU decision-making“. Concerning the fulfilment of the *Copenhagen criteria*, he affirms that “the example of Liechtenstein in the European Economic Area shows that a very small state can adopt the whole single market *acquis* without insuperable difficulty” (ibid.: 19-20). The main concern with regard to a hypothetical accession of very small states would therefore not arise over democracy, the rule of law and human rights or the capacity to implement the *acquis* and to stand the competition in the internal market, but rather over the EU’s own “integration capacity” and the adequacy of its institutions to function with a growing number of member states (ibid.: 20). Nonetheless, the scarce resources and limited administrative capacities of very small states certainly deserve close attention as well.

In the case of EEA member Liechtenstein, the state administers already around 60% of the EU’s *acquis* with less than 5% of the persons employed in the economy (Frommelt 2011b). A lot of the remaining *acquis* concerns the Common Agricultural Policy which is not of crucial importance to Liechtenstein. The principality already uses certain “outsourcing instruments” of cooperation or delegation which save resources in less important issue areas, such as the 2010 agreement with Austria on the automatic recognition of in Austria registered human and veterinary medicinal products. Moreover, certain areas excluded from the EEA such as monetary policy, trade or indirect taxes are currently subject to a direct policy transfer from Switzerland and would thus in case of EU membership not lead to a further loss of sovereignty – on the contrary, Liechtenstein might (re)gain some influence in these fields.

Yet membership would strongly increase the costs for human resources and the principality would most likely become a net payer in the European Union. On the other hand, Liechtenstein would gain guaranteed equal access to the important EU market and, through the EU’s common commercial policy with its many trade agreements, basically also worldwide preferential market access. The principality would have to replace the Swiss Franc by the Euro, which seems – despite the lack of any monetary autonomy in both cases – at least in the medium term less attractive, in particular due to the expected higher interest rates in the Euro area (Baltensperger 2010). Moreover, Liechtenstein would benefit from a „protection bonus“ as a member of a powerful larger entity and „have a seat at the table“ with voting rights. Liechtenstein citizens would enjoy the rights of EU citizens (beyond the EEA) and they would be eligible to become European civil servants.

Partial membership would help avoid excessive administrative costs and allow for a certain differentiated integration, while still ensuring the flow of information, participation in decision-shaping, legal certainty and efficient implementation. It should, however, go beyond a pure observer status and not be perceived as a second-class membership. Any special arrangement would need to respect the status as a sovereign state.

According to the Lisbon Treaty (Art. 17:5 TEU), the Commission shall as from 1 November 2014 consist of a number of members corresponding to two-thirds of the number of member states, „unless the European Council, acting unanimously, decides to alter this number“. The Commissioners shall be chosen based on a system of equal rotation that reflects the demographic and geographical range of all member states. However, after the Irish voters had rejected the Lisbon Treaty in a referendum in 2008, Ireland was *inter alia* promised that the size of the College of Commissioners would not be reduced. While the principle of a reduced future Commission is still valid, it is an open issue how exactly this would happen and look like. In any case, very small or partial members are likely candidates for renouncing a “national” Commissioner – keeping in mind that the Commission shall promote the general interest of the Union and that Commissioners shall be completely independent and not take instructions from any government or other body.

In the European Parliament the current minimum number of seats allocated to a (full) member is six. Emerson’s (2007: 22) suggestion to grant only one seat to Andorra or to even allow only one Andorran

observer seems, from the point of view of democratic legitimacy, problematic.

The major problem, however, poses itself in the Council of Ministers, independent of the fact that the Lisbon Treaty foresees a redistribution of the member states' voting weights, phased in between 2014 and 2017: qualified majority voting based on a „double majority“ of 55% of member states, accounting for 65% of the EU's population. Several innovative solutions have been imagined such as a representation in the Council by another member state, selective attendance in case of issues of vital importance, or sharing a rotating seat with other very small members. Many of these have in the past already been discussed – and in the end been dismissed – in the context of the „microstate debate“ in the United Nations. Prince Hans Adam II recently called an „EU membership light“, where Liechtenstein's interests would be represented by another EU member state, as unacceptable for a sovereign state (Lie:Zeitung 2011: 7).

Drawing the line of discrimination will be a difficult political decision: should only the population be taken into consideration or also other criteria? In addition, any incomplete institutional representation would require a compromise in terms of financial or substantial compensatory concessions. To what extent would partial members, as compared to full members, be entitled to differentiated integration? And what consequences would this entail for the European Union?

6. Conclusions

This report aimed to analyze the impact of Liechtenstein's relations with the European Union and in particular of the European Economic Area. It is safe to conclude that the principality's economy, society, legal order, parliamentary work and national public administration have in the past two decades to a large extent become Europeanized. On the one hand, the EEA has strengthened the legal certainty and transparency of Liechtenstein's legal order and, on the other hand, the principality was able to manage the regulatory density by using specific implementation strategies. The involvement of Parliament as well as of social and economic actors in the EU-related legislation confirms Liechtenstein's pragmatic approach and weak political constraints. In addition, the public administration has proven its capacity to comply with international requirements despite limited human and financial

resources. However, in the perception of the small and medium-sized enterprises as well as the Members of Parliament, the close relations to Switzerland are still considered more important than EEA membership.

The main challenges that Liechtenstein has faced with regard to the domestic implementation of the *acquis* were in the areas of the free movement of persons and financial services, the latter not just as a result of the integration process but of international political pressures more generally. Most of Liechtenstein's derogations have a limited scope of application and have therefore not affected the good functioning of the EEA Agreement. The combination of derogations which take into consideration the small size of the country and its close relations with the non-member Switzerland and the development of specific, resource-saving implementation strategies have allowed Liechtenstein to successfully participate in the EEA.

Liechtenstein has in the past repeatedly made positive assessments of its EEA experience, and it is interested in keeping the EEA Agreement in one form or another. However, due to developments beyond its reach, the principality will sooner or later face new political choices. While the EEA is not likely to widen its membership (unless Switzerland would reconsider its policy in this regard), nor to deepen its integration, it could further broaden its scope if areas of mutual interest are identified. Alternatively, the EEA might have to be replaced if Iceland would join the European Union. This option would involve intricate institutional questions: while the substance of the EEA could be safeguarded in a downsized or even „bilateralized“ EEA, how could an equivalent solution for the elaborate institutional set-up look like? For Liechtenstein the most interesting scenarios in such a case would be either an advanced bilateral association or a (full or partial) EU membership. Their political feasibility would be a matter of negotiations and their desirability tested in a public referendum.

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8. Annex

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Table 16: Liechtenstein's most important derogations by policy fields (June 2011)

	Description	Condition	Cause	Approach
Transport	Taxation system for heavy vehicles	Changes of the derogation only after consultation with and approval by the EEA Joint Committee	Relations with Switzerland	<i>Ad hoc</i>
	Inland waterways	X	No regulatory need	ESA (sectoral)
	Maritime transport	X	No regulatory need	ESA (sectoral)
	Information on civil aviation occurrences	Integration in registry of Switzerland	Administrative capacity	<i>Ad hoc</i>
	Civil aviation security, safety of third-country aircraft using, air travel of disabled persons	Derogation applies only to the existing civil aviation infrastructure	No regulatory need	<i>Ad hoc</i>
	Framework of single European sky, European Air Traffic Management network	X	Administrative capacity; No regulatory need	<i>Ad hoc</i>
	Recognition of driving licences	Transitional period of 5 years in case of accession of new member states	Relations with Switzerland	<i>Ad hoc</i>
Persons	Residence permits, rights of establishment, free movement of workers	Transition period reviewed every five years	Small inhabitable area	Protocol, Sectoral
Goods	Parallel marketability of certain products	Limited to exports/imports between Liechtenstein and Switzerland	Relations with Switzerland	Sectoral
	Suspension of veterinary and phytosanitary matters, foodstuffs, spirit drinks, wine	Extension of the Swiss-EU Agreement on Agriculture	Relations with Switzerland	Sectoral
	Recognition of medicinal products	Bilateral Agreement with Austria required	Administrative capacity	<i>Ad hoc</i>
	National helpdesk of the European Environment Chemical Agency	Link to the German helpdesk required	Administrative capacity	<i>Ad hoc</i>
	Noise emission from subsonic jet airplanes	X	No regulatory need	ESA
	Dangerous Substances	X	Regulatory misfit	ESA
	Judgments in civil and commercial matters (Lugano Convention)	Equal protection has to be guaranteed by national law	Regulatory misfit	<i>Ad hoc</i>
Services	Access of electronic communications networks; Universal service of electronic communications networks	Assessment of compliance under certain reservations	Small market size	<i>Ad hoc</i>
	Admission of securities to official stock exchange		No regulatory need	ESA
Labour law	Working condition in railway, shipping, fishing and other sectors	X	No regulatory need	ESA
	Parental leave and Great Britain	X	Regulatory misfit	ESA

.....
Table 16 cont.

	Description	Condition	Cause	Approach
Environment	Emissions of large combustion plants	Until large combustion plants are put into operation	No regulatory need	<i>Ad hoc</i>
	Emissions of aviation activities	Until relevant aviation activities take place	No regulatory need; Relations with Switzerland	<i>Ad hoc</i>
	Disposing and recovering hazardous waste		Relations with Switzerland	<i>Ad hoc</i>
	List of hazardous waste, exports of waste for recovery	Swiss legislation is limited to hazardous waste disposed of or recovered in Switzerland	Relations with Switzerland	<i>Ad hoc</i>
	Market placing of GMOs	X	Administrative capacity	<i>Ad hoc</i>
Capital	Property market	X	Small inhabitable area	ESA
Competition	No delivery of SPC	Bound to Patent union with Switzerland	Relations with Switzerland	<i>Ad hoc</i>
	Designation of a competition authority	X	Administrative capacity	Protocol
Statistics	Statistics on transport, regional accounts, fisheries, environment	No application, exempted from data collection	No regulatory need; privacy concerns	<i>Ad hoc</i> , ESA
	Statistics on business, economy, demography, tourism, information society, science and technology	No application, exempted from data collection	Administrative capacity; privacy concerns	<i>Ad hoc</i> , ESA
	Statistics on agriculture, foreign trade	No application, exempted from data collection	Relations with Switzerland; privacy concerns	<i>Ad hoc</i> , ESA
Energy	Crude oil imports and deliveries	For the time Liechtenstein does not import crude oil	No regulatory need	<i>Ad hoc</i>
	Renewable energy sources	X	Limited natural resources	<i>Ad hoc</i>
	Unbundling within the electricity or gas market	X	Small market size	<i>Ad hoc</i>
Protocols	Management structure of the European satellite radio-navigation programmes; European satellite navigation programmes	X	Administrative capacity	<i>Ad hoc</i>

Source: compiled by C. Frommelt.

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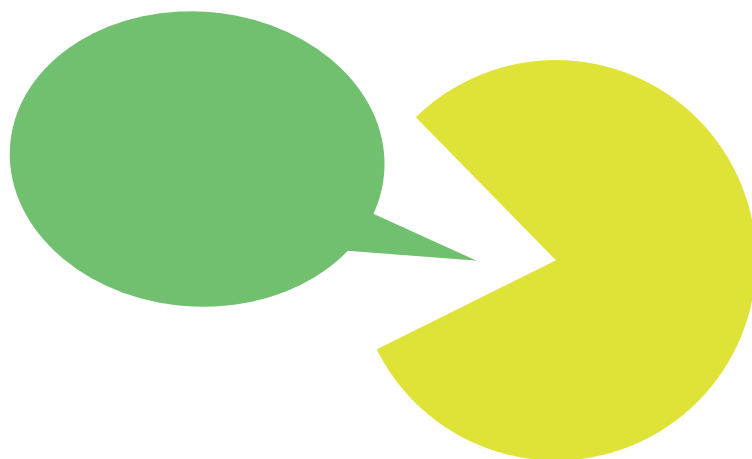
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