



LIECHTENSTEIN-INSTITUT

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The European Economic Area: Achievements and Challenges

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Structure

- EEA as a model of external differentiation
- Conditions of effective external differentiation
- Empirical analysis
- Conclusions – achievements, assessments and challenges



The EEA as a model of external differentiation



Two-coloured Europe ...



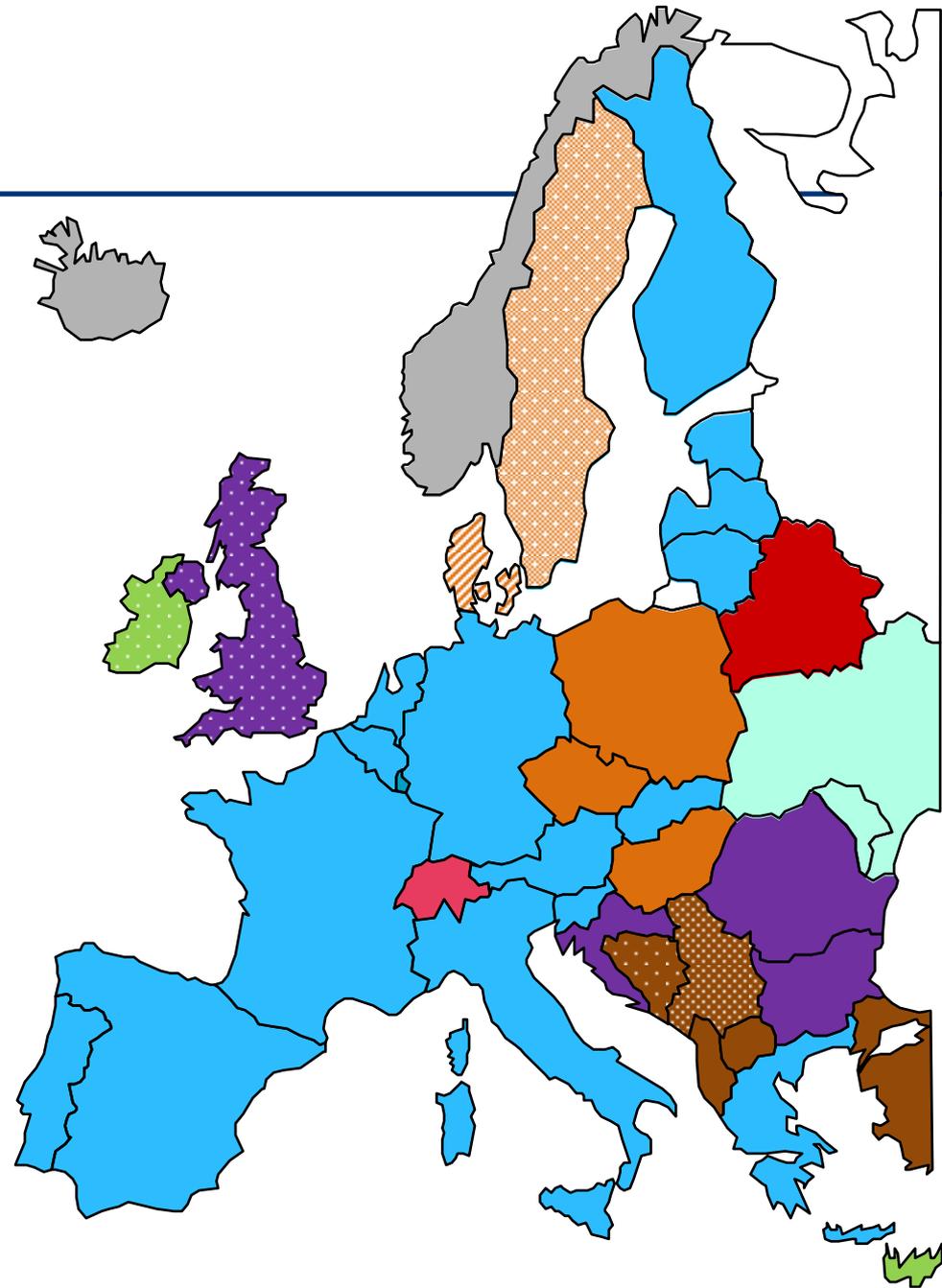
... or colourful Europe

Internal differentiation

- «core Europe»
- EU without Schengen
- EU without Euro
- EU without Euro and Schengen

External differentiation

- candidate countries
- EEA and Schengen
- sectoral Agreements
- Association Agreement
- other arrangements (European microstates)



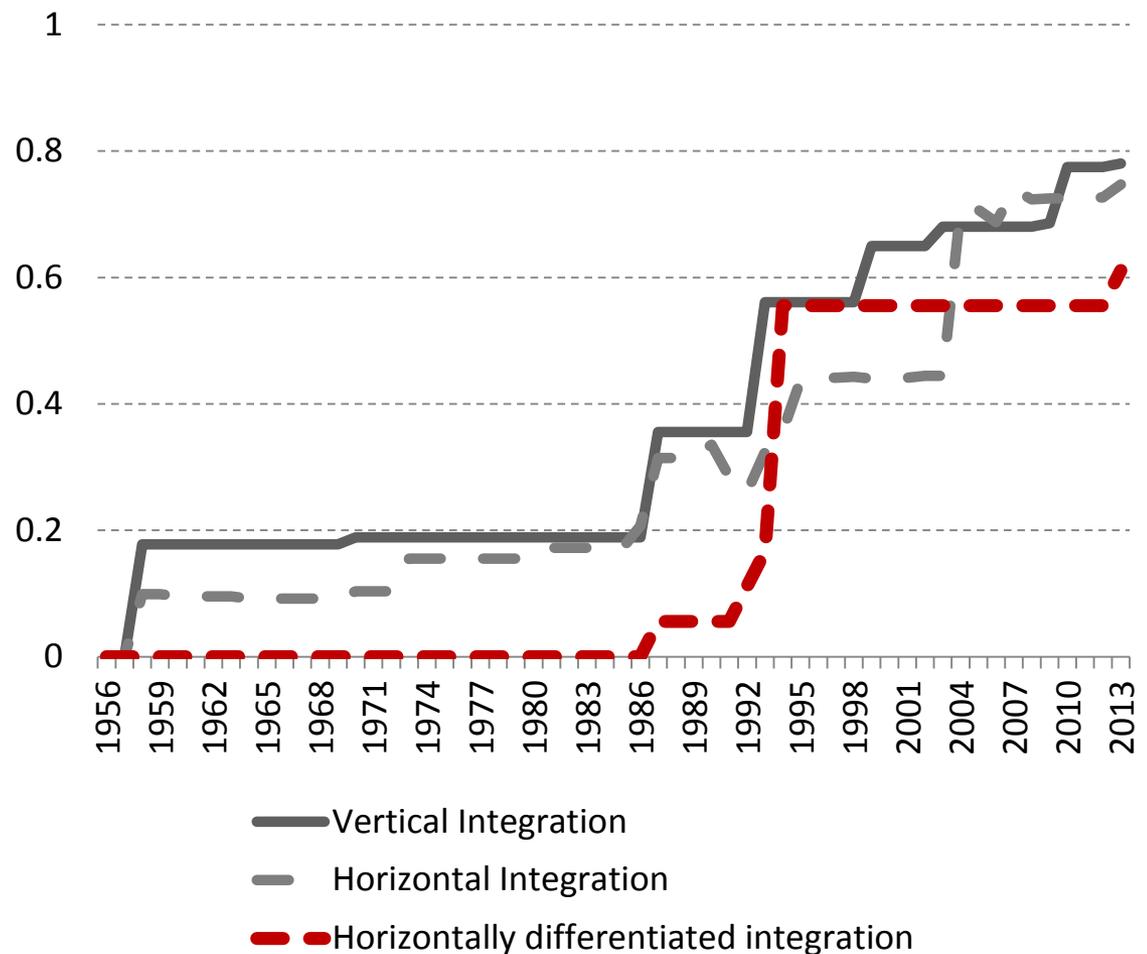
Dimensions of political integration

- level of centralization: transfer of sovereignty and decision-making authority
- functional scope: number of integrated policy areas
- territorial extension: number of member states

EU as a system of differentiated integration

variation across policy areas

- in levels of centralization (vertical differentiation)
- in territorial extension (horizontal differentiation)



Source: Frank Schimmelfennig et al. 2015, Journal of European Public Policy, 2015.

Current and *possible future* models of external differentiation

| | bilateral deep economic integration | | Multilateral deep economic integration | |
|----------------|---|--|--|--|
| | narrow | broad | narrow | broad |
| static | ENP 'hub-and-spoke' model | Swiss sectoral model | | |
| partly dynamic | Turkish customs union model | <i>Turkish customs union model 2.0?</i> | Energy Community | <i>ENP variable geometry NEC?</i> |
| | Small-sized States absorption model | ENP 'hub-and-spoke' model 2.0? | European Common Aviation Area | |
| dynamic | Swiss association air transport and Schengen/ Dublin | <i>Swiss sectoral model with institutional umbrella agreement?</i> | | EEA two-pillar model <i>EEA two-pillar model 2.0?</i> <i>Small-sized States absorption model with multilateral framework association?</i> |

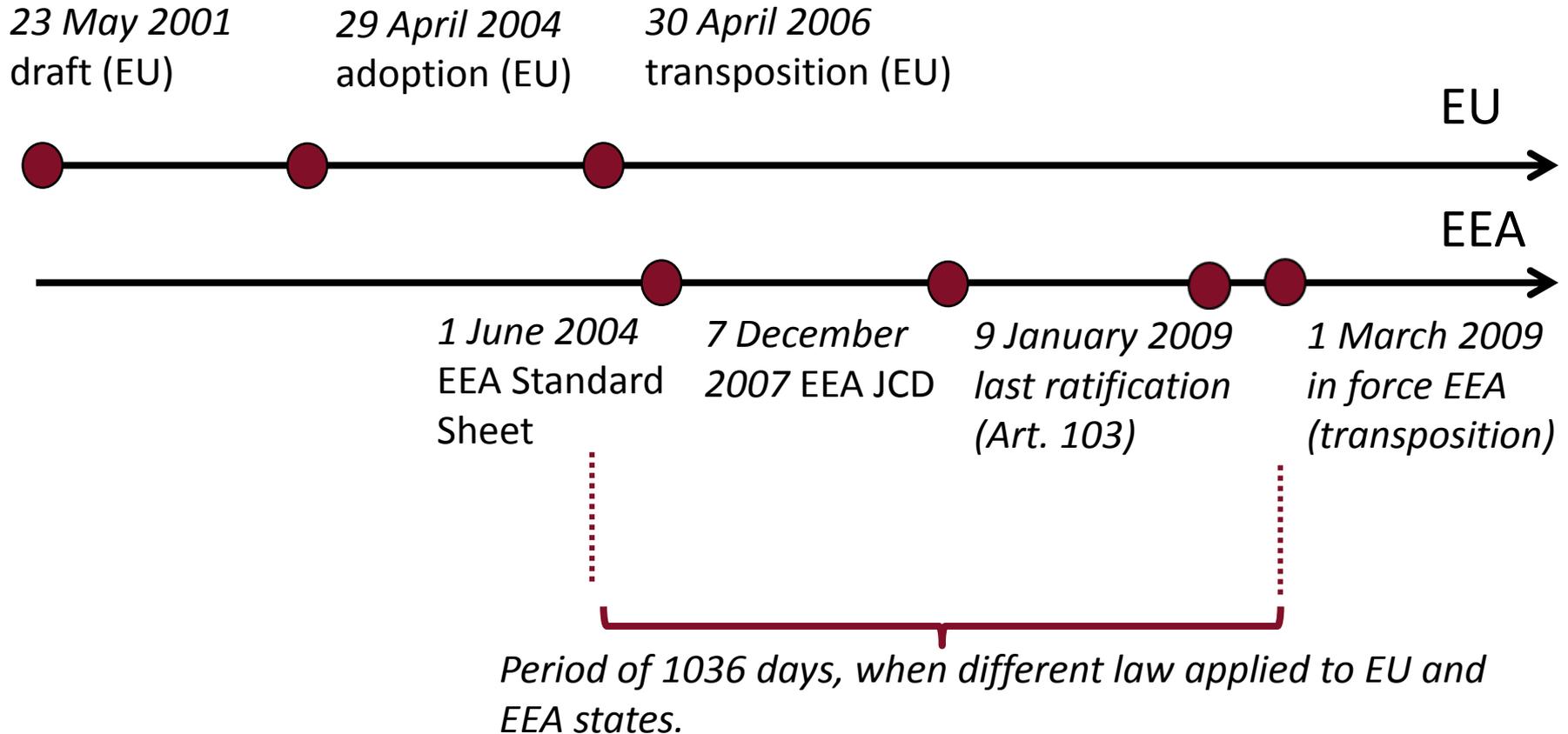
Source: Sieglinde Gstöhl, Journal of European Public Policy, 2015

Indicators for homogeneity across the EEA policy cycle

| Stage | Homogeneity | Operationalization |
|------------------|---|---|
| rule selection | consistent selection of EEA-relevant EU legislation | degree of correspondence of legal bases; officially excluded EU law |
| rule adoption | timely incorporation of EEA-relevant EU legislation into the EEA Agreement complete incorporation of EEA-relevant EU legislation | adoption speed; backlog of adopted EU law; differential validity of EU law across EEA states |
| rule application | timely and correct transposition of EEA-relevant EU legislation correct application of EEA-relevant EU legislation | occurrence of non-compliance; persistence of non-compliance |

Source: author's own compilation based on EFTA Secretariat, Handbook on EEA EFTA procedures

Speed of the EEA: Citizenship directive



Five steps to EEA law

- early assessment of EEA horizontal challenges in Commission proposal
- formal assessment of an EU act upon its publication
- draft of an JCD to incorporate an EU act
- formal adoption of an JCD
- ratification of possible constitutional requirements



EEA horizontal challenges

- material and/or structural impact on EEA law or the EEA institutional framework
 - require adaptations/ declarations to EU law (by a decision of EEA Joint Committee)
- examples for horizontal challenges:
 - fines to be imposed by an EU institution
 - references to criminal sanctions
 - provision addressing the EU's relations with third countries
 - provisions addressing non-EEA relevant policy – potential prejudice to the EEA policy scope
 - delegation of decision-making authority (regulatory agencies/ market authorisation for products)



Conditions of effective external integration



Basic question

- Why do states comply with EU rules and why do some states comply better than others?
 - general factors
 - country-specific factors
 - policy-related factors



General factors: changing environment [1]

| Dimension | Selected changes within the EU |
|-------------------------|---|
| Level of centralization | <ul style="list-style-type: none">• increased pooling of sovereignty• increased delegation of decision-making authority |
| Functional scope | <ul style="list-style-type: none">• integration of new policy areas• increased integration within traditional policy areas |
| Territorial extension | <ul style="list-style-type: none">• enlargement from 12 to 28 member states• new models of external governance• new actors within external governance• more internal differentiation |

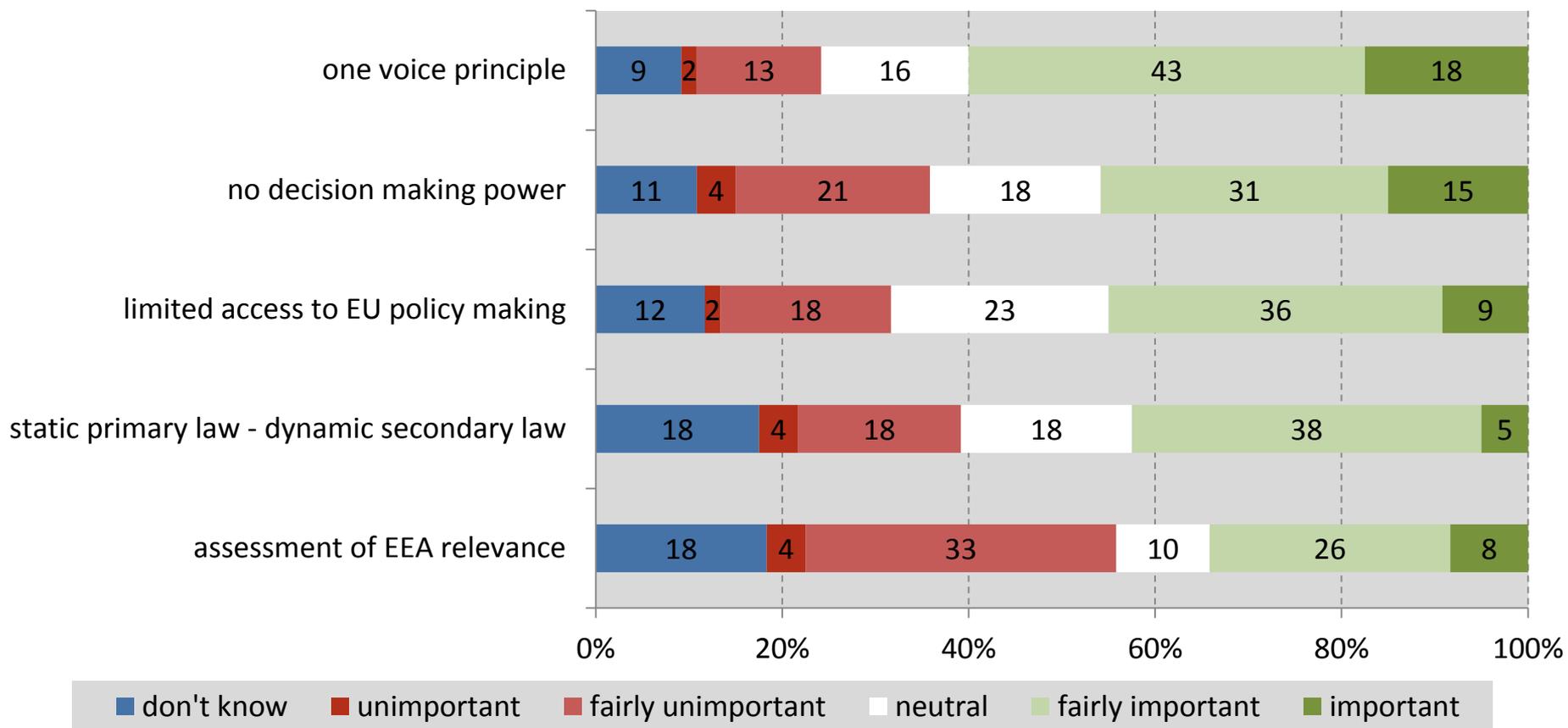
General factors: consequences for EEA EFTA states (selection)

- increase in bi- and multilateral agreements between EEA EFTA states and EU
- linkage of EEA-relevant and non EEA-relevant policies in a single legal act
- functional spillover (in already integrated policy area)
- limited inclusion in EU decision-making (Parliament/ Council)
- institutional spillover (ESA; Commission; Agencies)
- increased dependence of EEA EFTA states (on enlarged Internal Market)
- less impact (due to limited political and economic relevance)
- increase of payments for EU programmes and cohesion funds



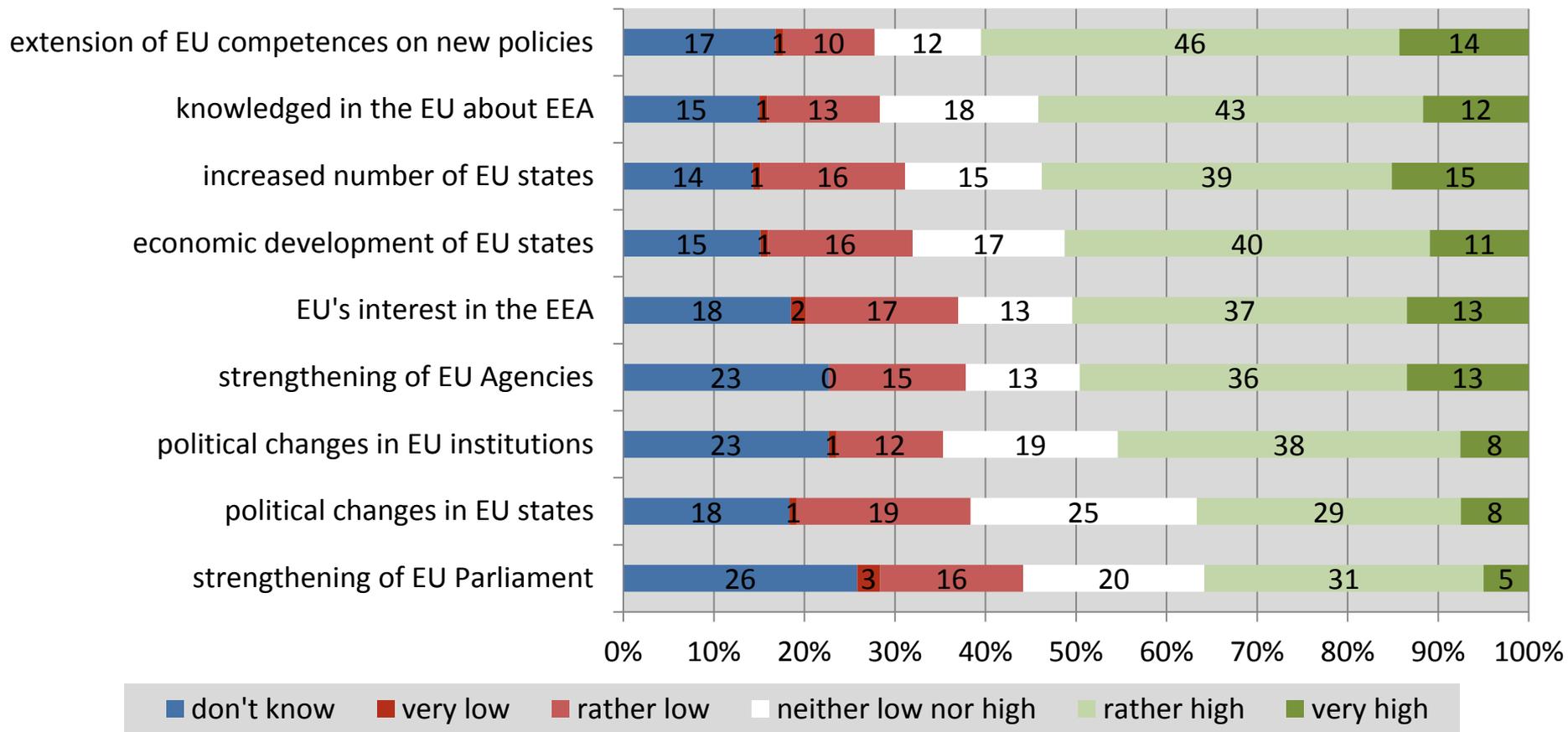
General factors: perception of EEA experts of Liechtenstein [1]

relevance of selected criticism, 2015 (N=123)



General factors: perception of EEA experts of Liechtenstein [2]

Impact of selected factors on the functioning of the EEA, 2015 (N=123)

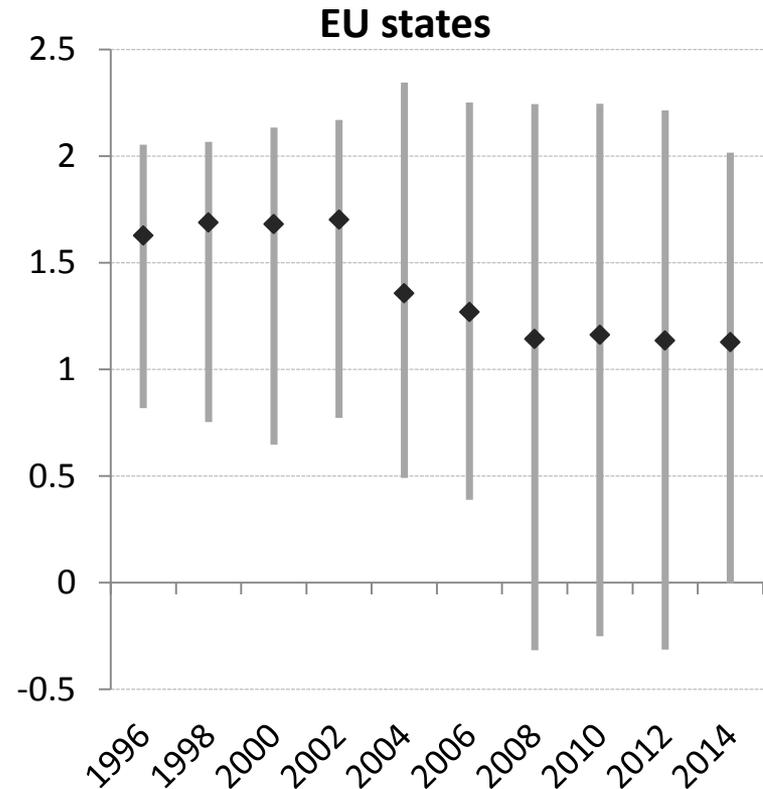
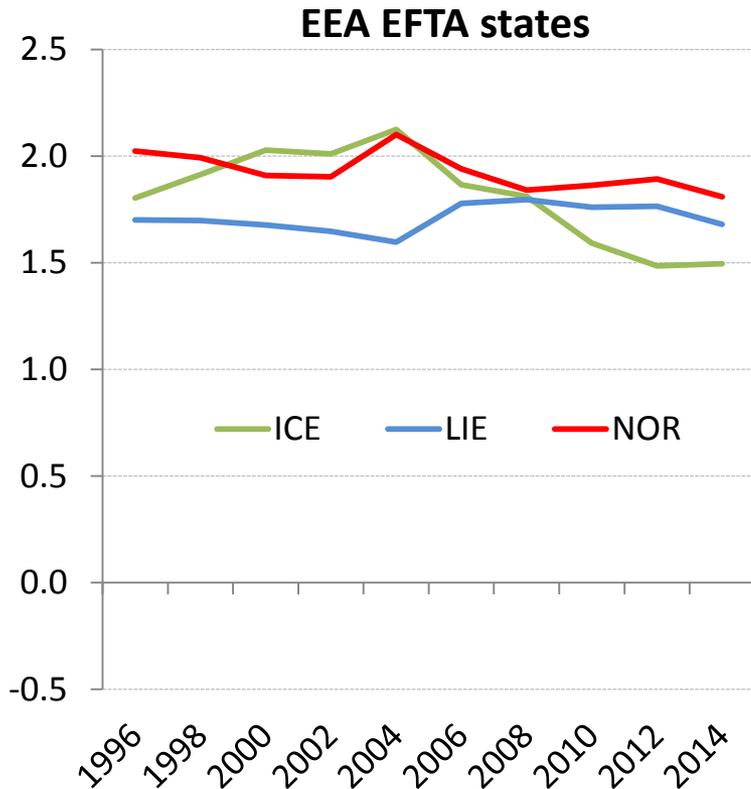


Country-specific factors

- enforcement: (not willing to comply)
 - power of obstinacy
 - power of assertiveness
- management (not able to comply)
 - resource-centered perspective
 - procedure-centered perspective
- legitimacy (comply out of a normative belief)
 - support of rule of law

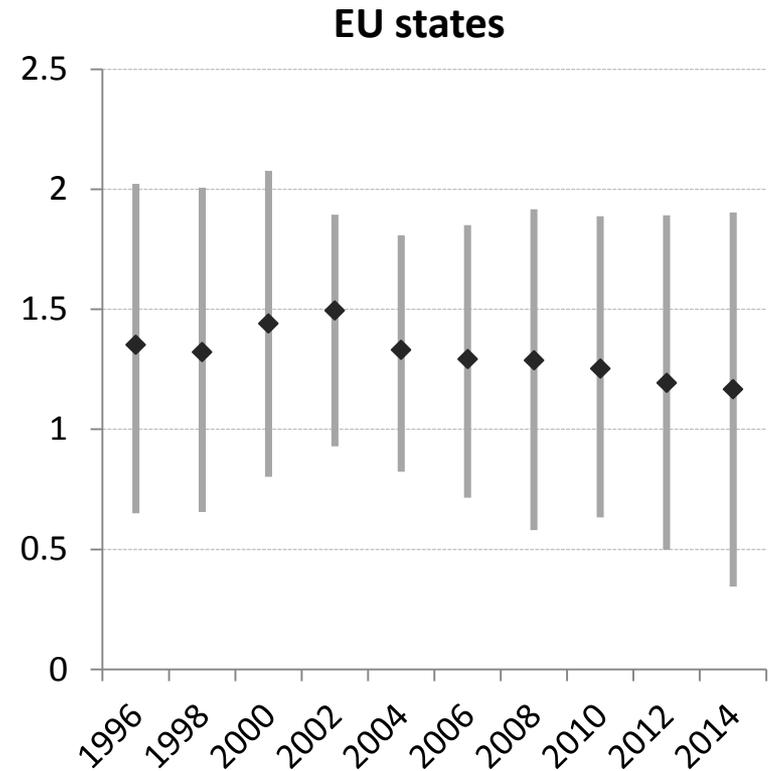
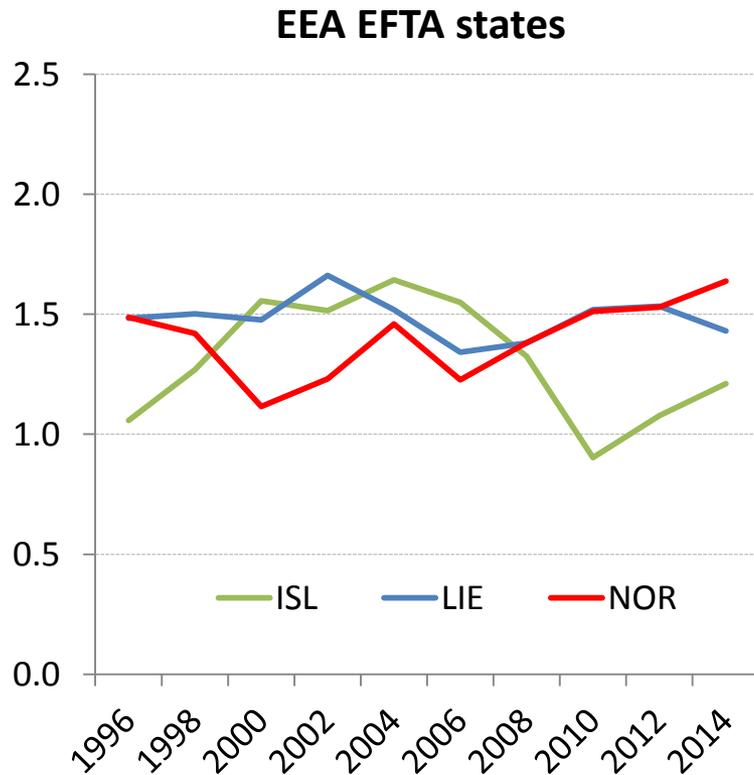
Source: Börzel et al. (2010), Comparative Political Studies 43:1363.

Capacity: government effectiveness (WGI)



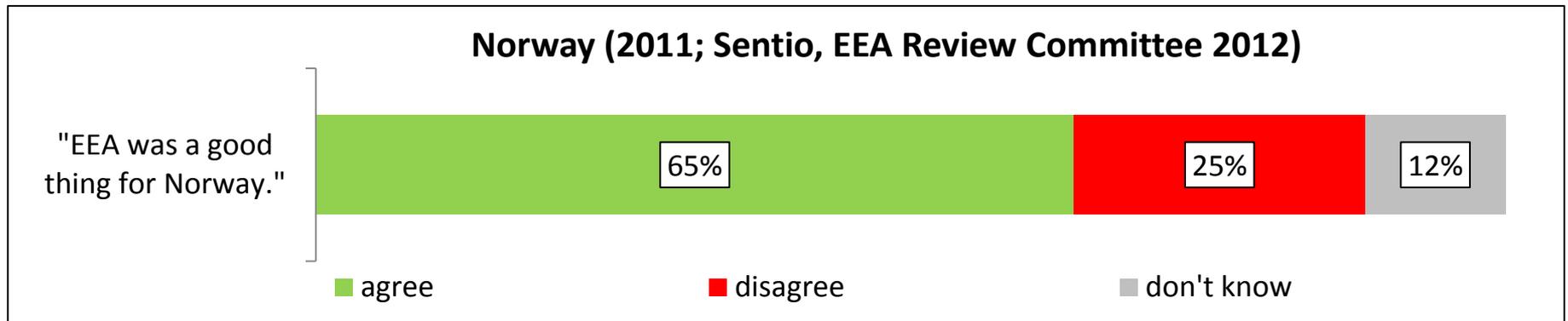
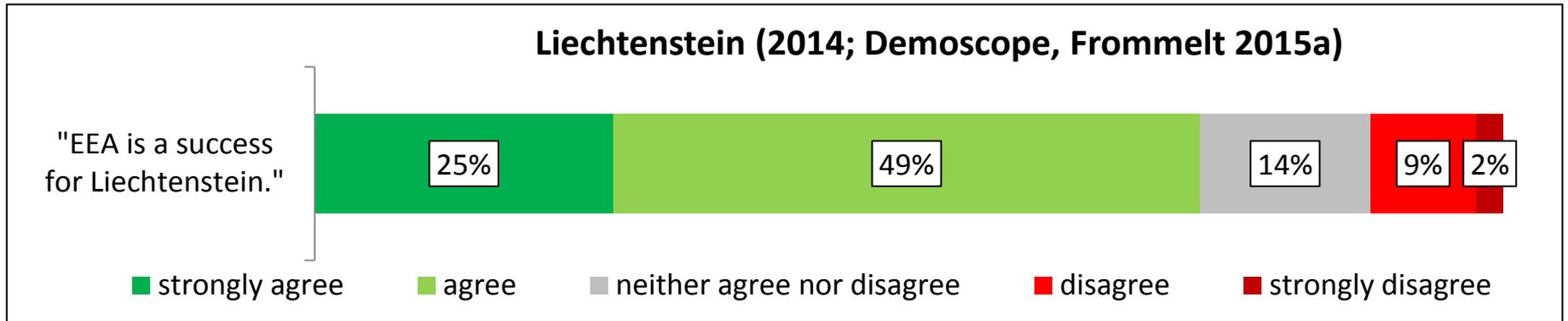
Source: own compilation based on worldwide governance indicators

Capacity: regulatory quality (WGI)



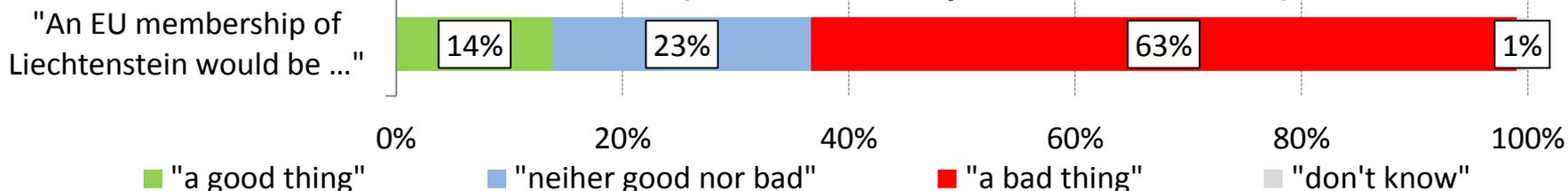
Source: own compilation based on worldwide governance indicators

Taking stock after 20 years of EEA membership in Norway and Liechtenstein

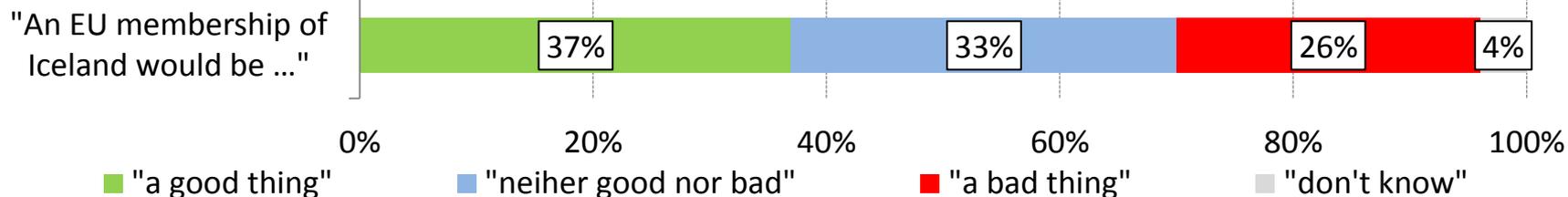


Public attitude towards EU membership in the EEA EFTA states

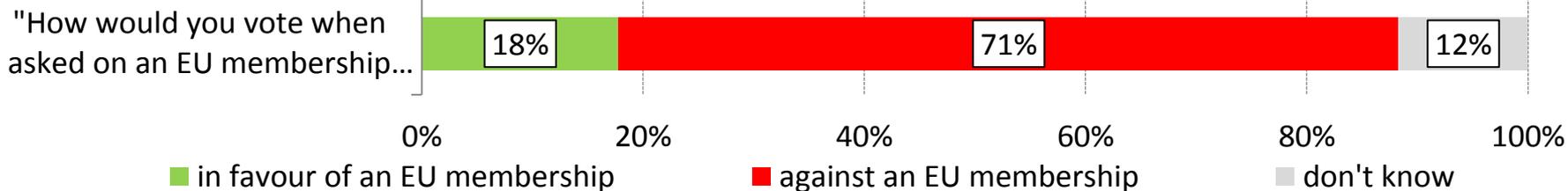
Liechtenstein (2014; Demoscope, Frommelt 2015a)



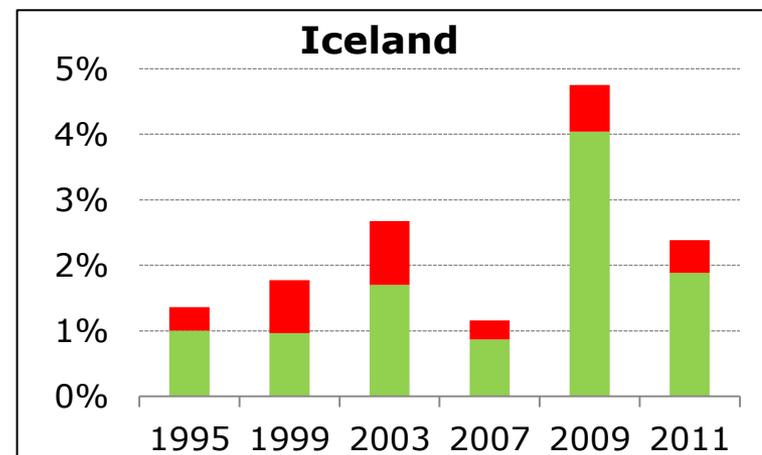
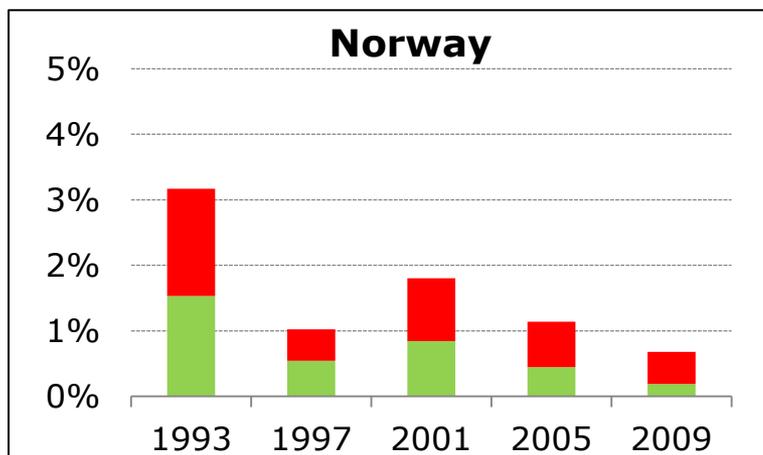
Iceland (2014; European Commission 2015)



Norway (2014; Sentio, Klassenkampen.no 2016)

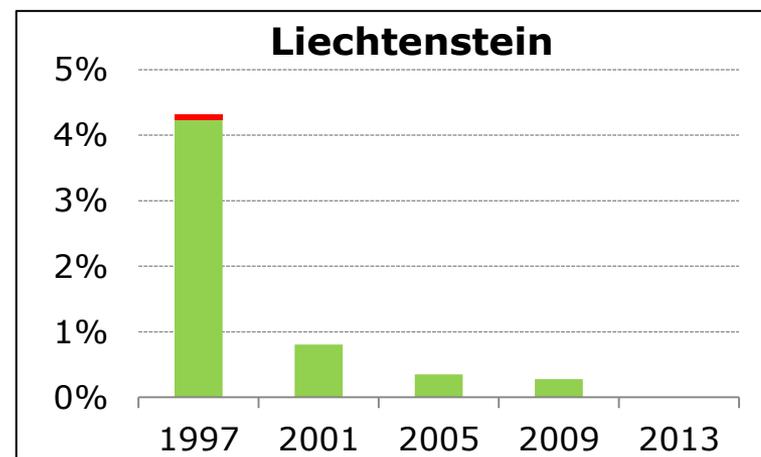
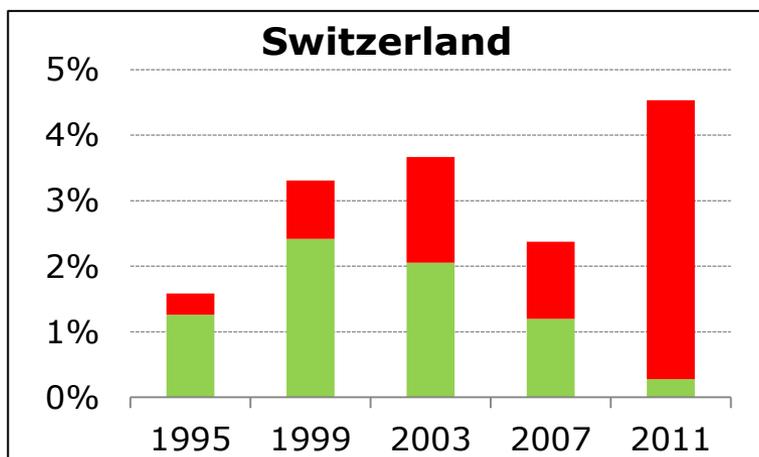


Low politicization of EEA membership by political parties (manifesto)



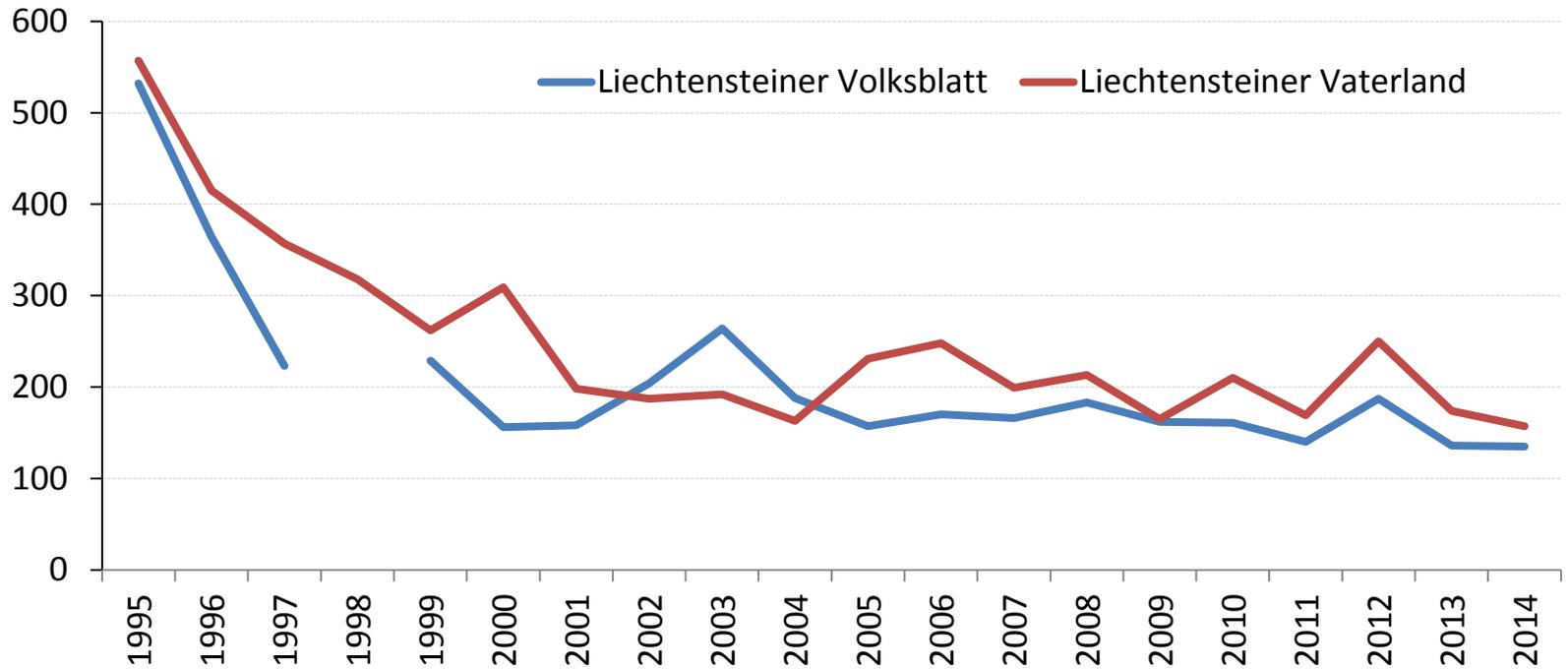
■ share of EU negative quasi-sentences

■ share of EU positive quasi-sentences



Low politicization of EEA matters in Liechtenstein media [1]

Number of references to the EEA in the Liechtenstein media



Source: own compilation based on vaterland.li and volkblatt.li

Policy-related factors (on the level of the EU act)

| Explanatory factor | Reason for varying degree | Homogeneity in the EEA |
|--------------------------------------|--|------------------------|
| degree of institutional requirements | different levels of centralization in the EU and the EEA | positively correlated |
| degree of functional scope | different range of policy in the EU and the EEA | positively correlated |
| degree of interdependence | different economic incentives for integration | positively correlated |
| degree of salience | different political constraints to integration | negatively correlated |

First summary

- EU as system of differentiated integration
- EEA as benchmark of external differentiation
- homogeneity as indicator of successful external differentiation
- highly dynamic context of integration – functional and institutional spillover
- EEA EFTA states a «world of law observance» - favourable precondition for high homogeneity



Empirical data



Facts on rule selection [1]

- decreasing number of EU acts adopted by the EU but increasing number of EU acts incorporated into the EEA
- share of EU acts incorporated into the EEA Agreement remains low (maxima 33 per cent) – *high differences depending on type and author of an EU act*
- many EEA-relevant EU acts are officially excluded – *mostly due to formal reasons such as “no longer in force in the EU”*
- degree of correspondence differs across policy areas – *legal bases not necessarily an adequate indicator for EEA-relevance*
- share of EU law in force in the EEA from total EU law in force increased slightly – *rather stable level of integration*



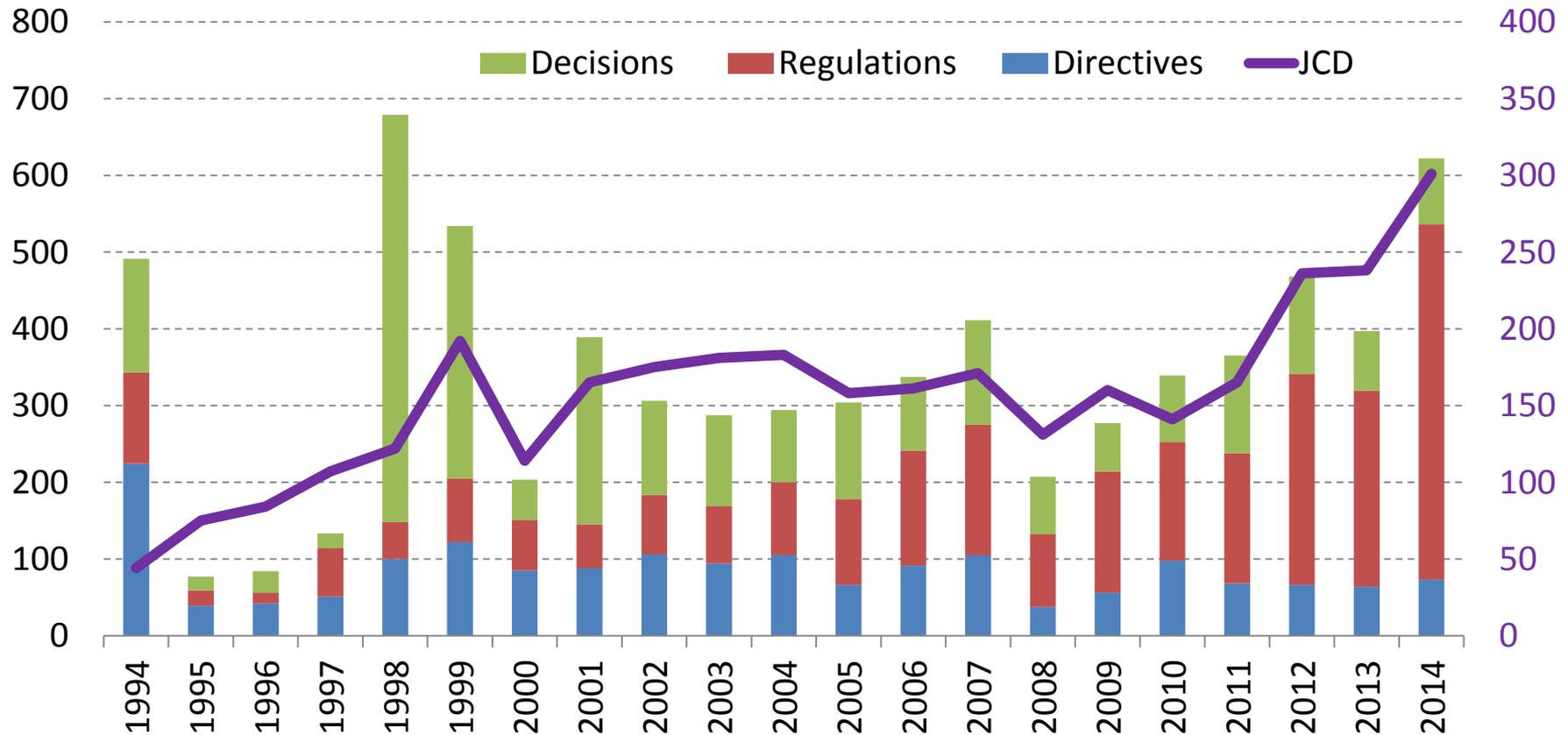
Facts on rule selection [2]

- signs of inconsistency
 - divergent degree of correspondence
 - high number of officially excluded EU acts
- signs of consistency
 - stable share of EU law in force in the EEA
 - specific properties of non-incorporated EU law
- *An EU act is more likely to be selected if (i) it is a basic act which (ii) does not address institutional matters of the EU but (iii) applies to all EU member states and (iiii) which does not have a fixed term.*



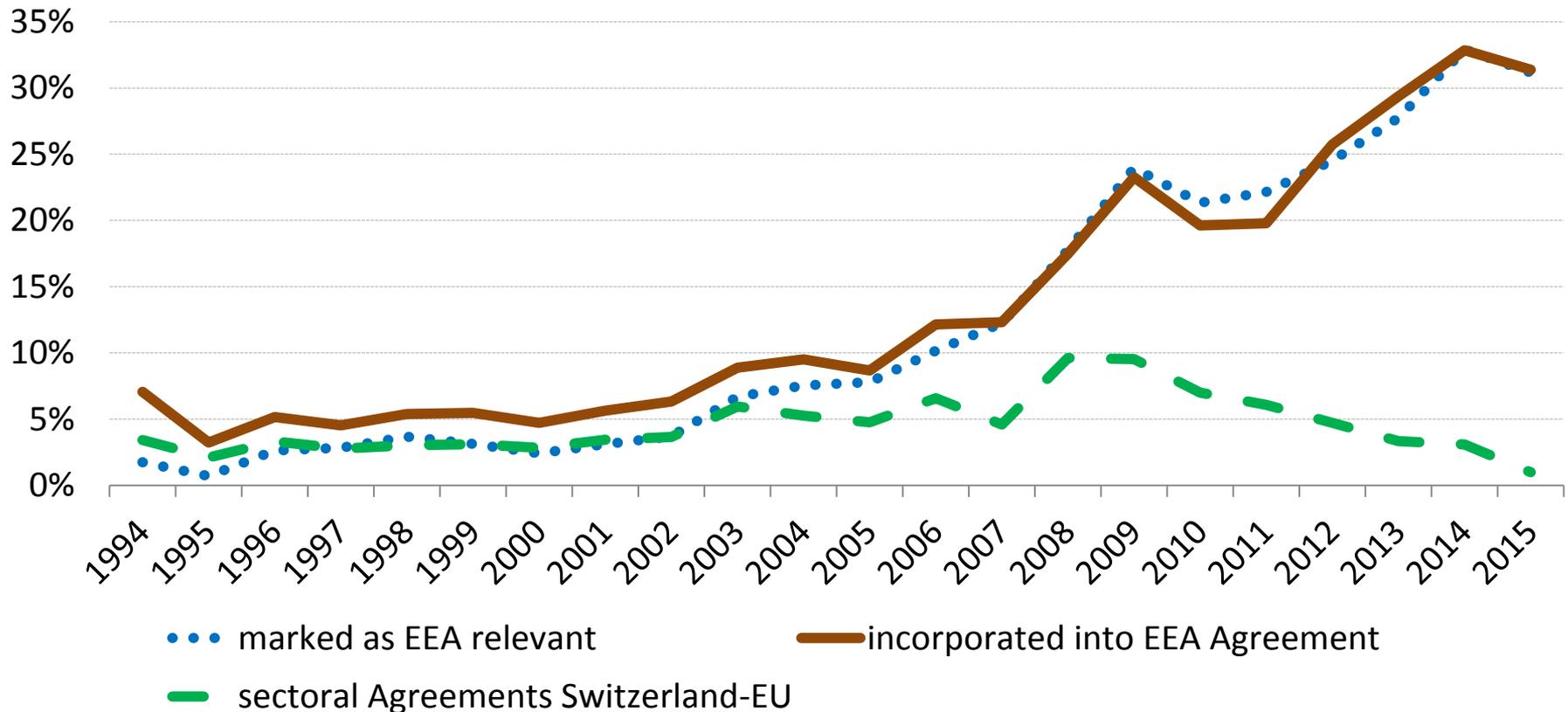
The number of EU acts incorporated into the EEA Agreement increased over time.

Number of incorporated EU acts, 1994-2015



The share of EU law incorporated into the EEA Agreement from the total EU law adopted by the EU increased.

Share of EU law incorporated by the EEA EFTA states and Switzerland from total EU law, 1994-2015



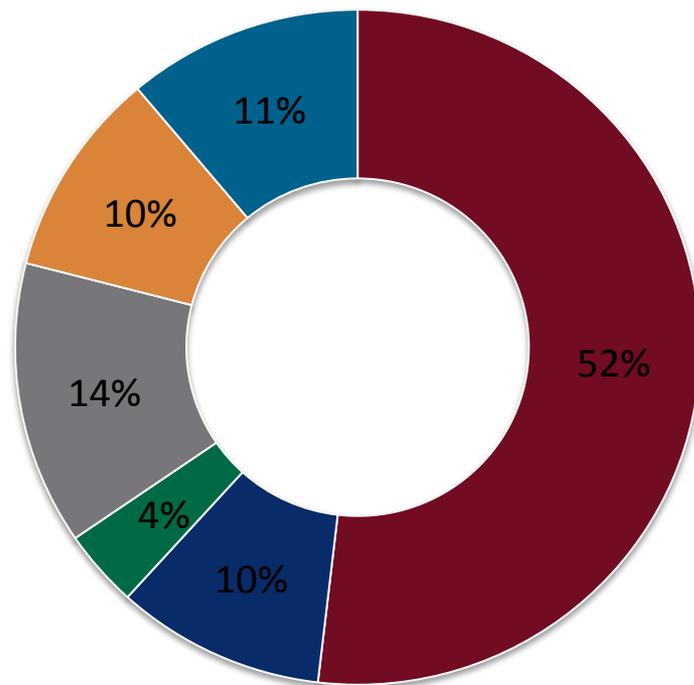
The figure indicates how many percentages of the adopted EU law has been incorporated by the EEA EFTA states (only EEA Agreement) or Switzerland. Regarding the EEA the figure includes also EU law of which the incorporation is awaited.

Rule selection in the EEA and Swiss EU relations

| | Not incorporated | incorporated | Awaited |
|--------------------------------------|------------------|--------------|---------|
| Total (N=45'943) | 88.8 % | 10.2 % | 1.0 % |
| Council (N=3'899) | 90.9 % | 8.9 % | 0.1 % |
| Parliament (N=1'345) | 32.0 % | 59.7 % | 8.3 % |
| Commission (N=40'699) | 90.5 % | 8.7 % | 0.8 % |
| Directive (N=2'104) | 20.7 % | 75.7 % | 3.6 % |
| Regulation (N=43'839) | 90.1 % | 7.1 % | 0.9 % |
| Marked EEA-relevant (N=41'517) | 97 % | 2.8 % | 0.2 % |
| Not marked EEA-relevant (N=4'426) | 11.9 % | 79.3 % | 8.7 % |

EU secondary law incorporated into the EEA covers less than 50 per cent of the EU's functional scope.

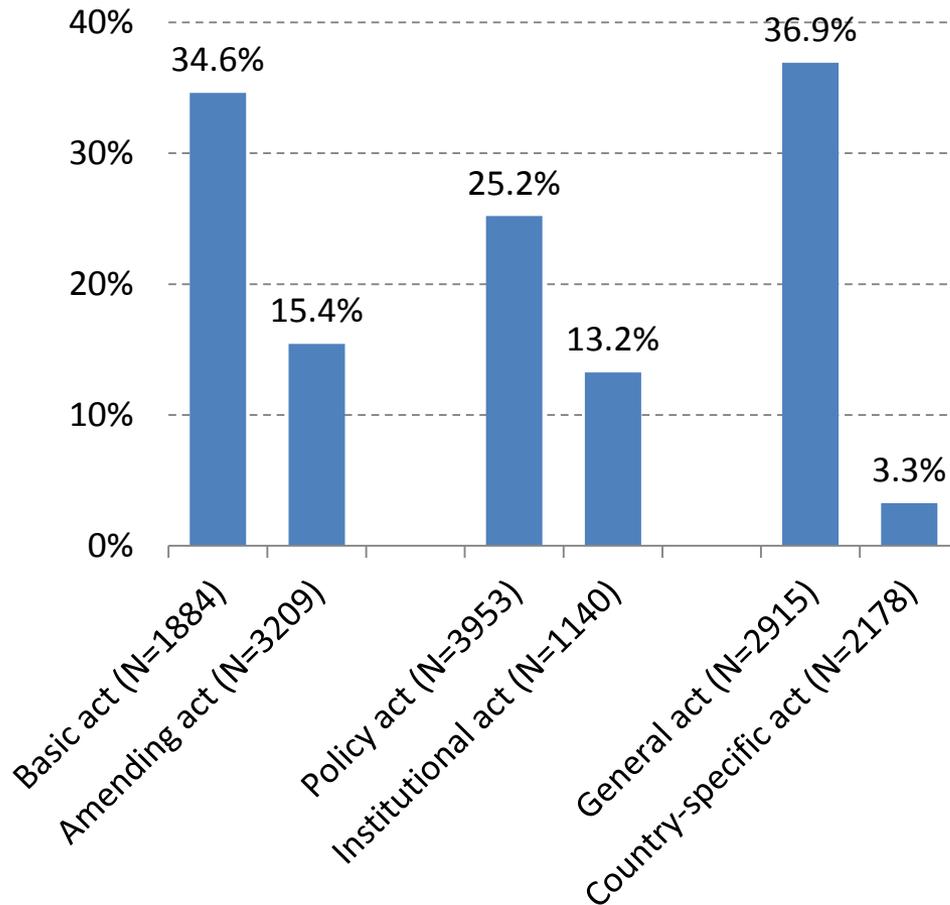
degree of correspondence with EU legal bases
(excluding institutional provisions, N=81)



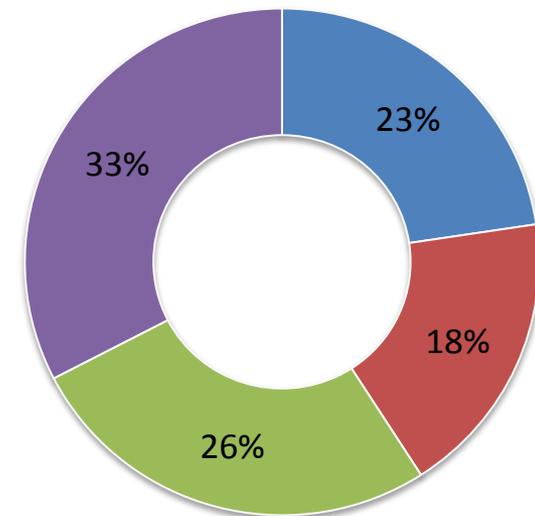
- 0% correspondence
- < 25% correspondence
- < 50% correspondence
- < 75% correspondence
- < 100% correspondence
- 100% correspondence

Various explanations for non-incorporation of EU law

Share of incorporated EU law by specific characteristics



Officially excluded EU acts by reason (N=1193)



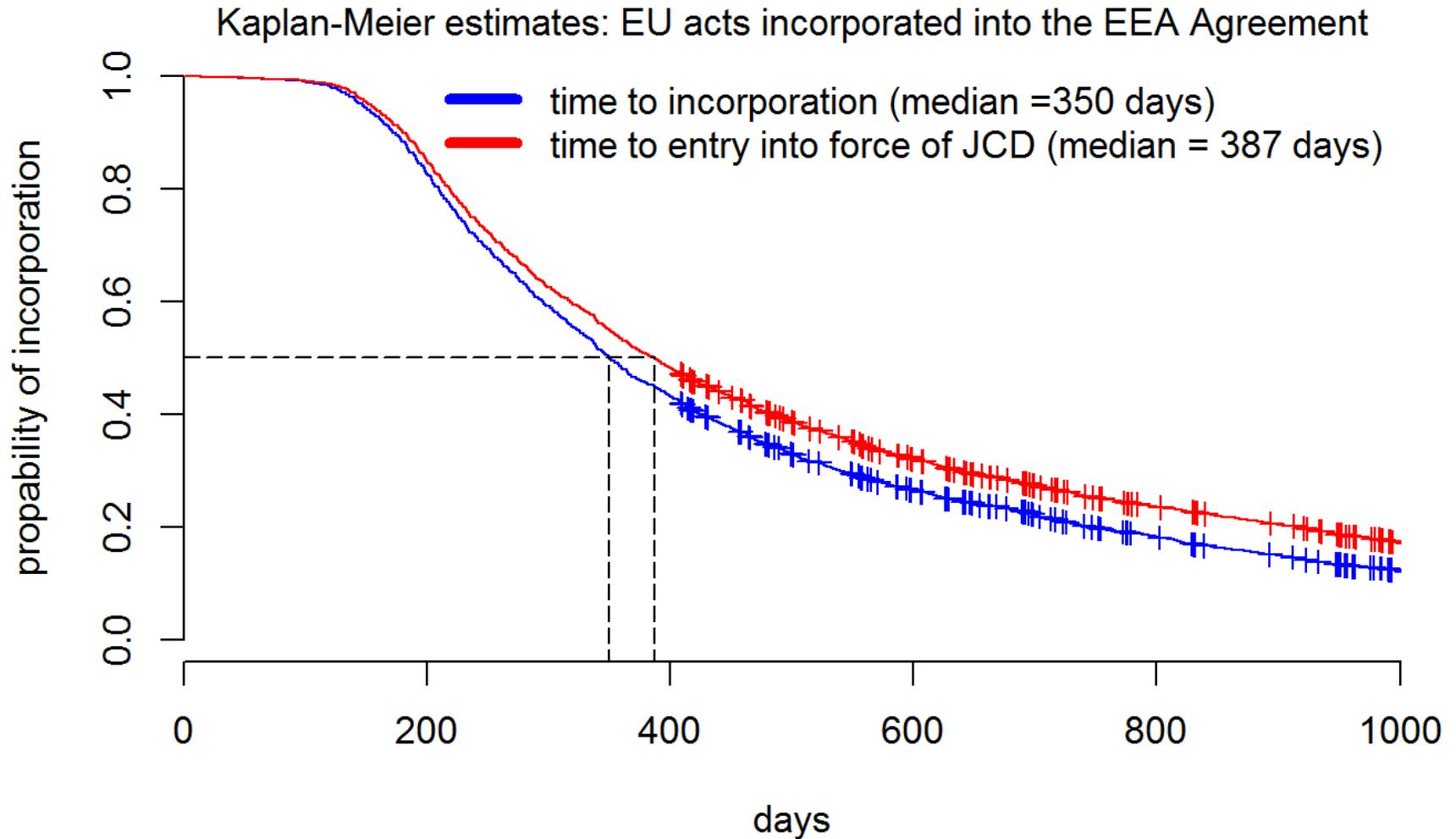
- Opt out
- Scope
- Specific or deriving act
- No longer applicable

Facts on rule adoption

- serious delay of incorporation
 - Speed and backlog vary over time and across policy areas
- differential validity of EU and EEA law due to delayed entry into force in the EEA
- various adaptations to EU law – numerous opt-outs (in particular for Liechtenstein)



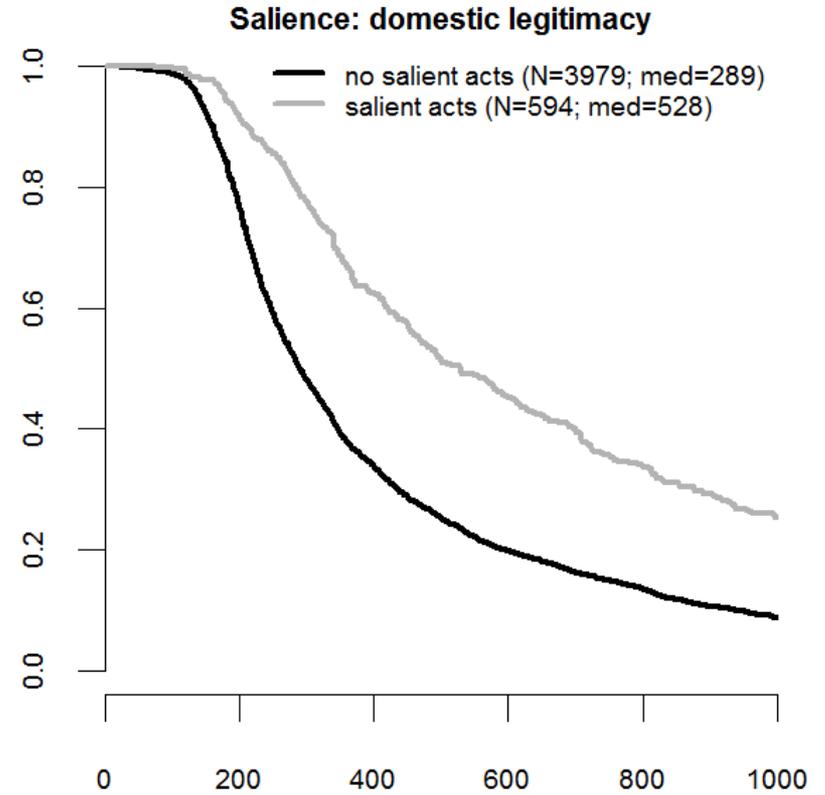
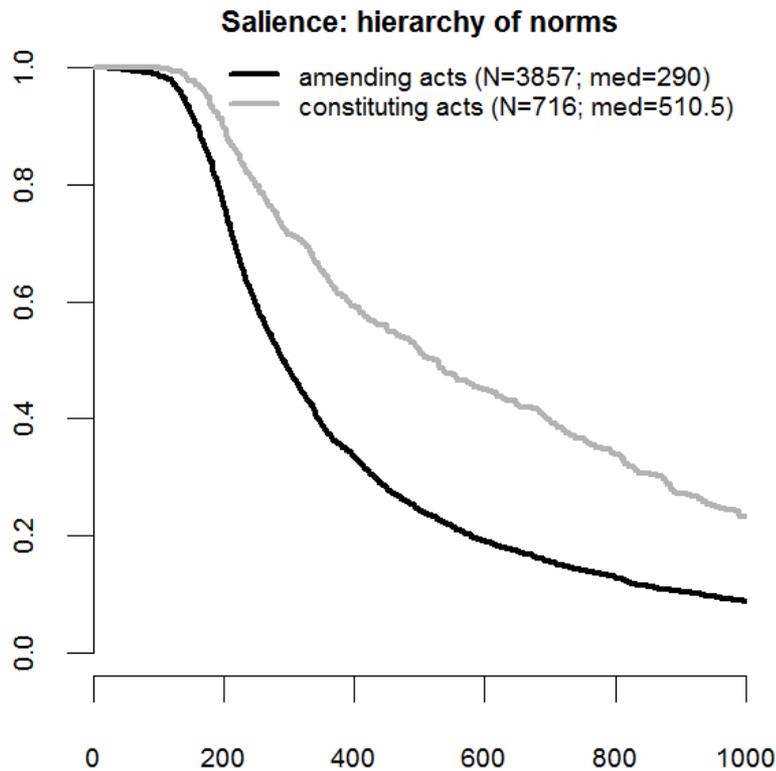
Median time to adoption is 350 days



Survival rate (time to adoption) at selected stages

| days | share of EU acts not yet incorporated | share of EU acts not yet in force |
|------|--|--------------------------------------|
| 180 | 89 % | 90 % |
| 360 | 48 % | 53 % |
| 540 | 30 % | 36 % |
| 720 | 21 % | 26 % |
| 900 | 15 % | 21 % |
| 1080 | 11 % | 15 % |

Conditions of effective external differentiation: salience of an EU act



Conclusions



Achievements

- market access and level playing field
- same integration level as 1992
- same institutional framework and basic principles as 1992
- higher flexibility than in the EU (opt-outs; adaptations) – in particular smallness of Liechtenstein
- continuous institutional and functional spillover – very little (too little?) political spillover
- no increase in public support for European integration
- limited contribution to an integrated and democratic Europe – limited responsibility for economic and political success of Europe



Assessment [1]

- EEA functions well, because ...
 - EEA EFTA states provide favourable preconditions.
 - EEA EFTA states and EFTA institution use their leeway to interpret the EEA dynamically.
 - EFTA institutions have continuously increased their capacity (and legitimacy).
 - legislation and administration of EEA EFTA states are strongly Europeanized.
- Assessment of the EEA are mainly positive, because ...
 - other models function worse.
 - EEA EFTA states have little economic and political relevance for Europe.
 - the EU has bigger problems than the effectiveness of the EEA.



Assessment [2]

- Does the EEA have a democratic deficit?
 - inherent democratic deficit
 - potential democratic trap
 - lack of a democratic idea or vision
- Is the EEA a model to export?
 - highly complex model – member states have to fulfill specific preconditions
 - external differentiation is more harmful for European integration than internal differentiation – less leeway and more static



Challenges

- access to EU policy making by the Council and the Parliament
- taking part in EU decision making (even without the right to vote)
- balancing of output legitimacy (homogeneity/ efficiency) and input legitimacy (inclusion/deliberation)
- limiting institutional and functional spillovers when facing a changing EU (static vs. dynamic)
- ensure the legitimacy of national European politics and the credibility of the EEA EFTA institutions (*in order to guarantee a certain political leeway*)
- find the right partners in the EU as a system of differentiated integration





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**Thank you very much
for your attention!**

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