



LIECHTENSTEIN-INSTITUT

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Decision shaping instead of decision making – Venues for associated neighbouring countries to influence EU law and policies

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How the EEA is mainly seen in the academic literature ...

‘substantial loss of operational sovereignty’

‘self-incurred dominance’

‘homogeneity trumps sovereignty’

‘semi-colonial’

‘hierarchical setting, in which EEA EFTA members have subordinated themselves to “foreign rule” by the EU’

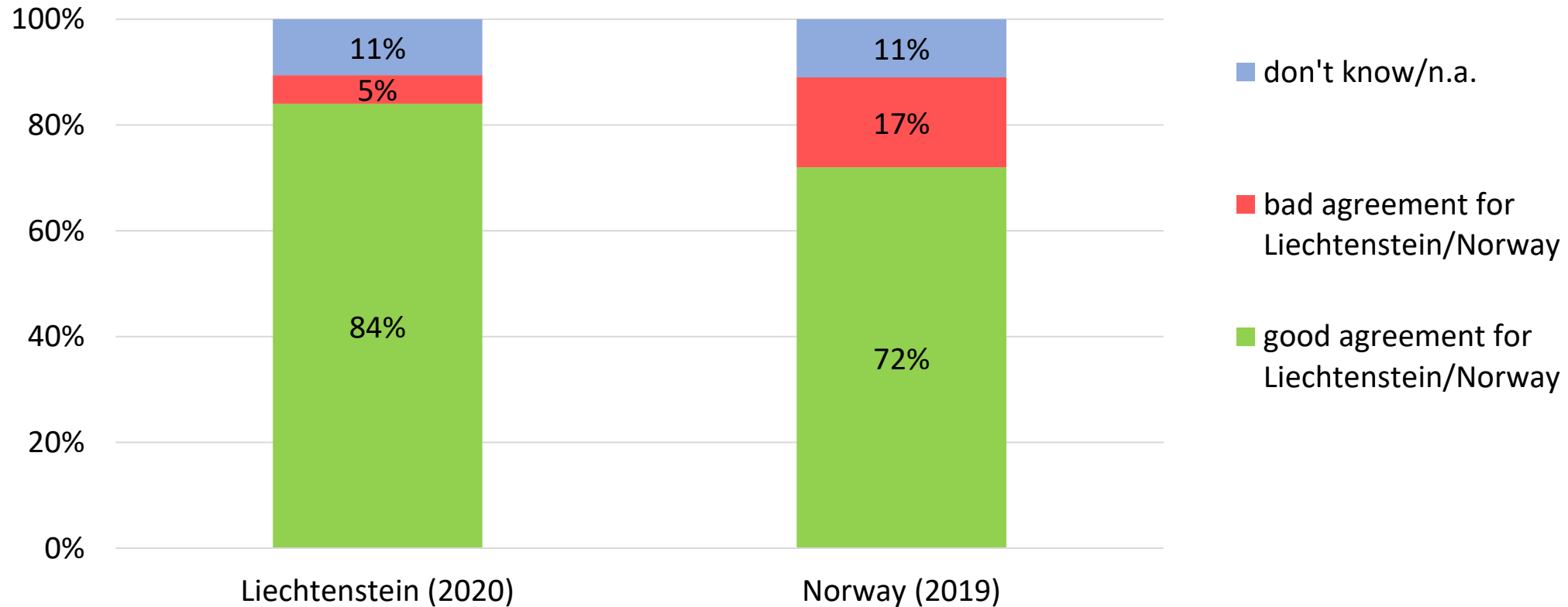
‘second-rate Europeans’

‘legalized hegemony’

‘automatic policy transfer’

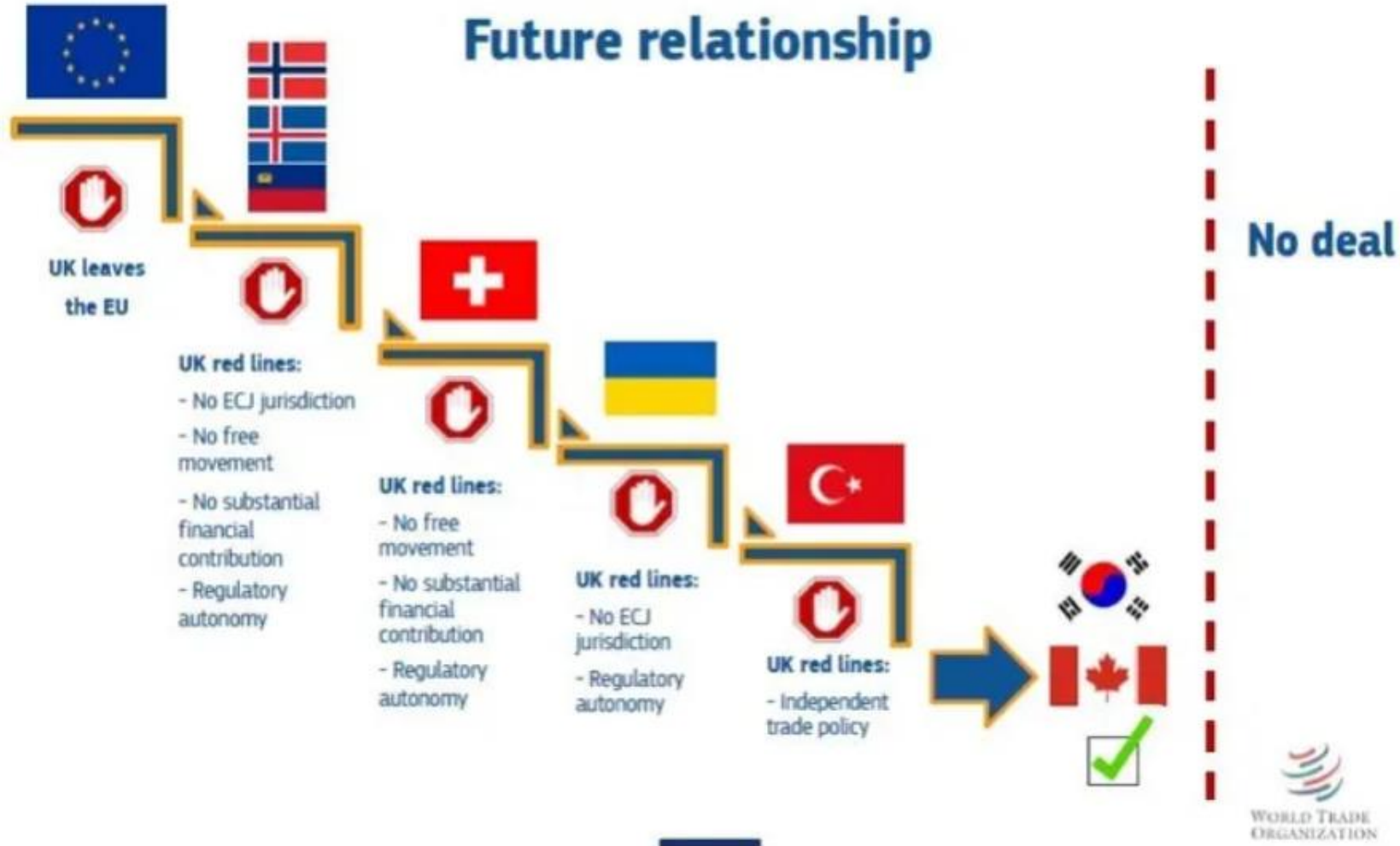


Assessment of the EEA Agreement in Liechtenstein and Norway



Note: LIE: CAWI survey, February 2020, N=869; NOR: NUPI/Sentio CATI survey, January 2019, N=1000

Barnier's staircase – EEA most ambitious model of external DI





Puzzles to get started ...

- The EEA and its consequences on the sovereignty of the EEA EFTA states are often seen very critical in the academic literature.
- *The EEA enjoys high political and public support within the EEA EFTA states.*
- The EEA was initially seen by various experts in the EU and the EEA/EFTA states as an intermediate step towards EU membership.
- *The EEA has established itself as the most comprehensive and institutionally differentiated association agreement between the EU and a non-member state.*

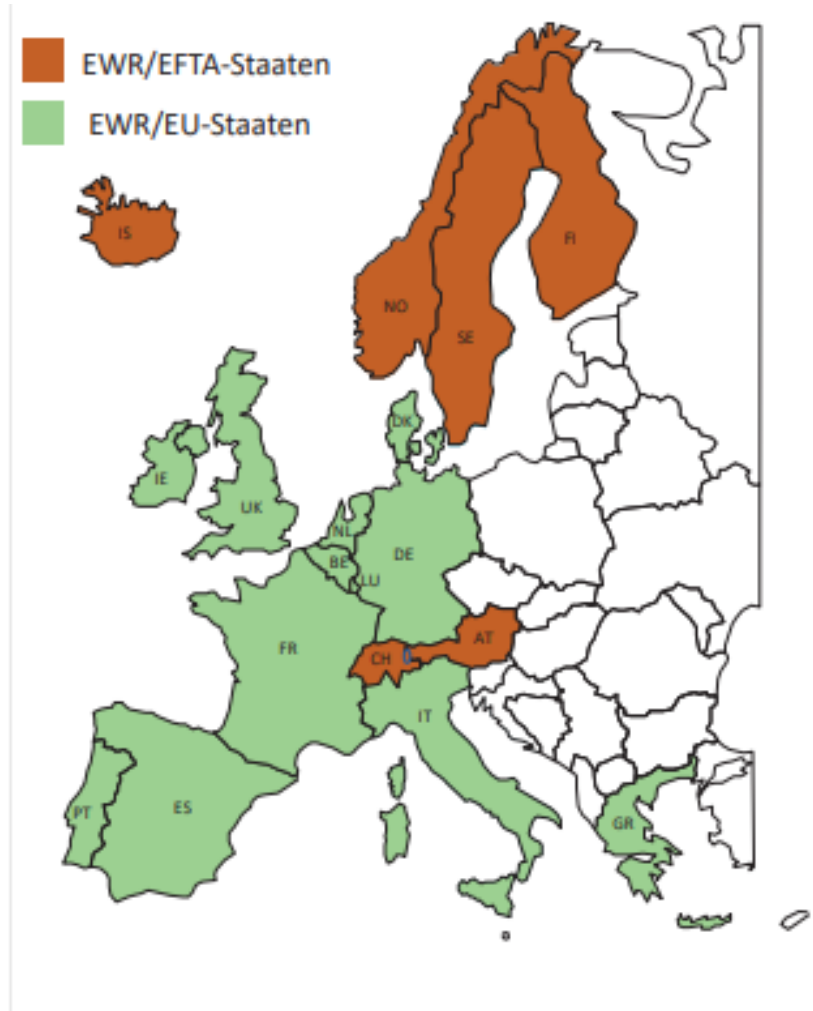


What is the European Economic Area (EEA)?

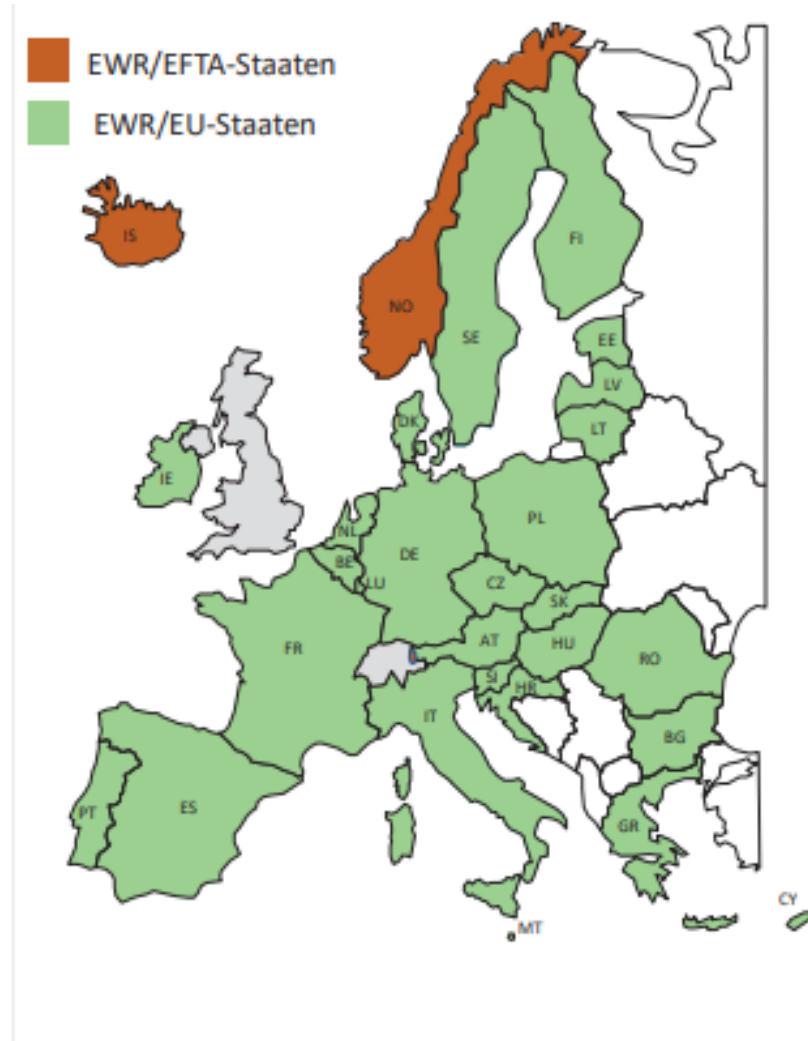




Map of the EEA – 1992 and 2022



EWR/EFTA- und EWR/EU-Staaten bei Unterzeichnung des EWR-Abkommens (Mai 1992).



EWR/EFTA- und EWR/EU-Staaten heute.





Objectives of the EEA

- EEA Agreement extends the EU's internal market to the EEA EFTA states
- “... establishing a dynamic and homogenous European Economic Area, based on common rules and equal conditions of competition and providing for the adequate means of enforcement at the judicial level, and achieved on the basis of equality and reciprocity and of an overall balance of benefits, rights and obligations for the Contracting Parties.”





Another puzzle: the incompatibility of the EEA EFTA states' wishes and the EU's requirements

EEA EFTA States („wish“)

Institutions: no pooling of sovereignty; no delegation of decision-making authority
Scope: access to EU internal market

Policy-specific integration with permanent opt-outs

Wish to participate in EU internal market; fear of being left out

EU („requirements“)

Institutions: autonomy of EU decision-making; integrity of EU legal order
Scope: indivisibility of the four freedoms; level playing field

Global approach to integration and balance of rights and obligations

Extending EU internal market beyond EU





Historical and political context

- EEA as model of differentiated integration
 - Goal: Homogenous and dynamic economic area
 - Purpose: Managing diversity
 - Context: Asymmetric relationship
- Interlaken principles based on speech of Willy De Clercq, member of the EU Commission, May 1987
 - ‘Community integration comes first’
 - ‘Community’s decision making autonomy must be preserved’
 - ‘Balance between benefits and rights’
- EEA Agreement:
 - No right to vote for EEA EFTA States
 - No right for initiative of EEA rules
 - Very limited access to the EU legislators
 - BUT: intergovernmental cooperation and no formal transfer of competences





The two models

The EU model

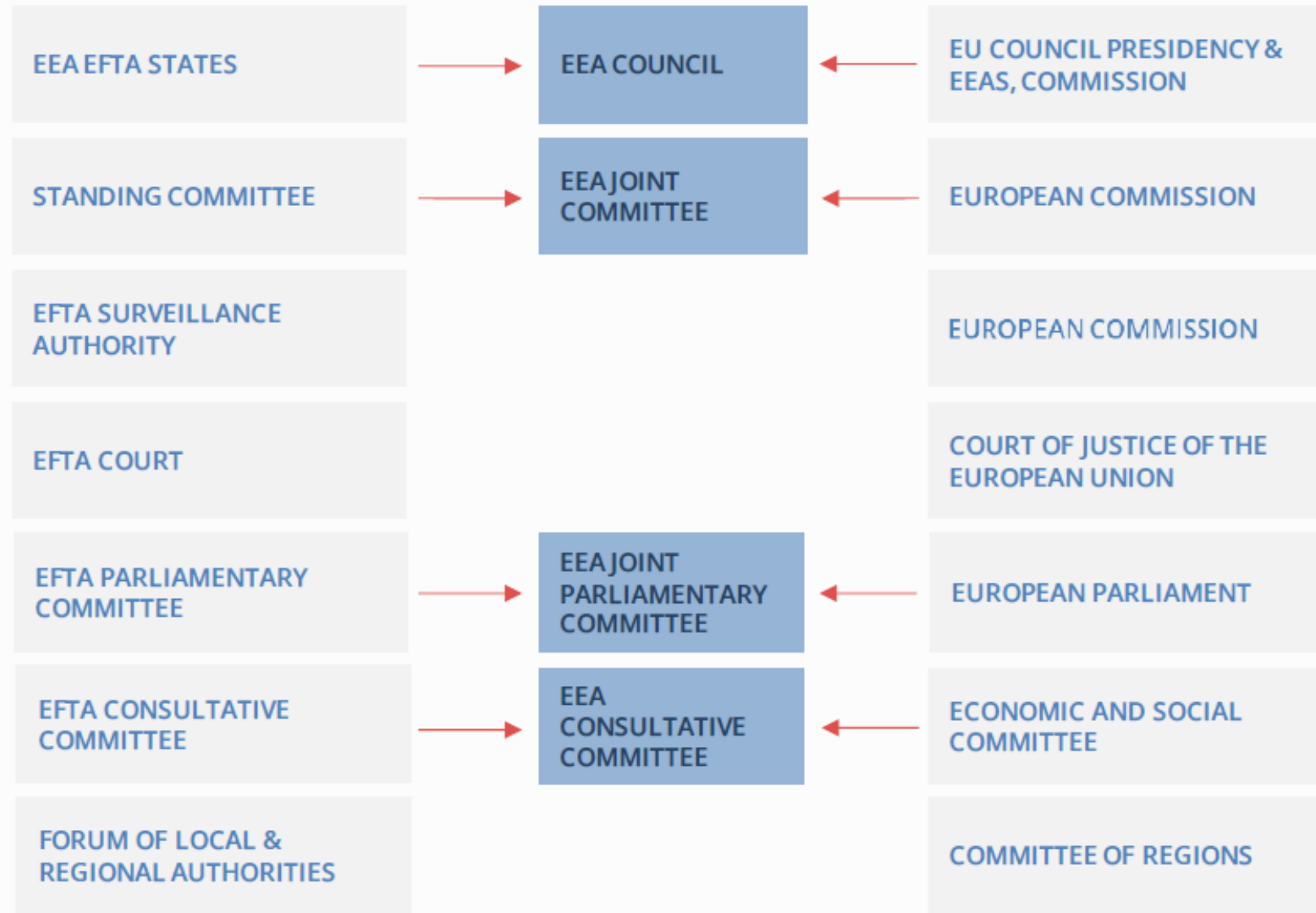
- Supranational organisation – transfer of competence
- Binding decisions by EU institutions (Commission – European Parliament – Council)
- Important concern: Preserving decision-making autonomy of the EU

The EFTA model

- Intergovernmental cooperation – no transfer of competence
- Decisions taken by consensus between the governments of the EEA EFTA states
- Important concern: Preserving sovereignty



The two pillar structure of the EEA



This diagram illustrates the management of the EEA Agreement. The left pillar shows the EFTA States and their institutions, while the right pillar shows the EU side. The joint EEA bodies are in the middle.



The scope of the EEA

"Four Freedoms"

- > Free movement of goods
- > Free movement of services
- > Free movement of capital
- > Free movement of persons

Horizontal Policies

- > Environment
- > Social policy
- > Consumer protection
- > Statistics
- > Company law

Common Rules

- > State aid
- > Competition
- > Public procurement

Cooperation

- > EU programmes
- > EU agencies

Cohesion

- > EEA and Norway Grants



How EU law becomes EEA law ...



Text with EEA relevance – First indication

25.10.2022

EN

Official Journal of the European Union

L 275/1

REGULATION (EU) 2022/2036 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 19 October 2022

amending Regulation (EU) No 575/2013 and Directive 2014/59/EU as regards the prudential treatment of global systemically important institutions with a multiple-point-of-entry resolution strategy and methods for the indirect subscription of instruments eligible for meeting the minimum requirement for own funds and eligible liabilities

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 114 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Central Bank ⁽¹⁾,

Having regard to the opinion of the European Economic and Social Committee ⁽²⁾



Decision by the EEA Joint Committee

DECISION OF THE EEA JOINT COMMITTEE

No 144/2013

of 15 July 2013

amending Annex XIII (Transport) to the EEA Agreement

THE EEA JOINT COMMITTEE,

Having regard to the Agreement on the European Economic Area ('the EEA Agreement'), and in particular Article 98 thereof,

Whereas:

- (1) Commission Regulation (EU) No 383/2012 of 4 May 2012 laying down technical requirements with regard to driving licences which include a storage medium (microchip)⁽¹⁾ is to be incorporated into the EEA Agreement.
- (2) Annex XIII to the EEA Agreement should therefore be amended accordingly,

HAS ADOPTED THIS DECISION:

Article 1

The following is inserted after point 24f (Directive 2006/126/EC of the European Parliament and of the Council) of Annex XIII to the EEA Agreement:

'24fa. **32012 R 0383**: Commission Regulation (EU) No 383/2012 of 4 May 2012 laying down technical requirements with regard to driving licences which include a storage medium (microchip) (OJ L 120, 5.5.2012, p. 1).

The provisions of the Regulation shall, for the purpose of this Agreement, be read with the following adaptation:

In point III.4.2 of Annex III, the following shall be added to letter (a) regarding the distinguishing numbers:

- “— 14 for Iceland
- 15 for Liechtenstein
- 16 for Norway”

Article 2

The text of Regulation (EU) No 383/2012 in the Icelandic and Norwegian languages, to be published in the EEA Supplement to the *Official Journal of the European Union*, shall be authentic.

Article 3

This Decision shall enter into force on 16 July 2013, provided that all the notifications under Article 103(1) of the EEA Agreement have been made (*).

Article 4

This Decision shall be published in the EEA Section of, and in the EEA Supplement to, the *Official Journal of the European Union*.

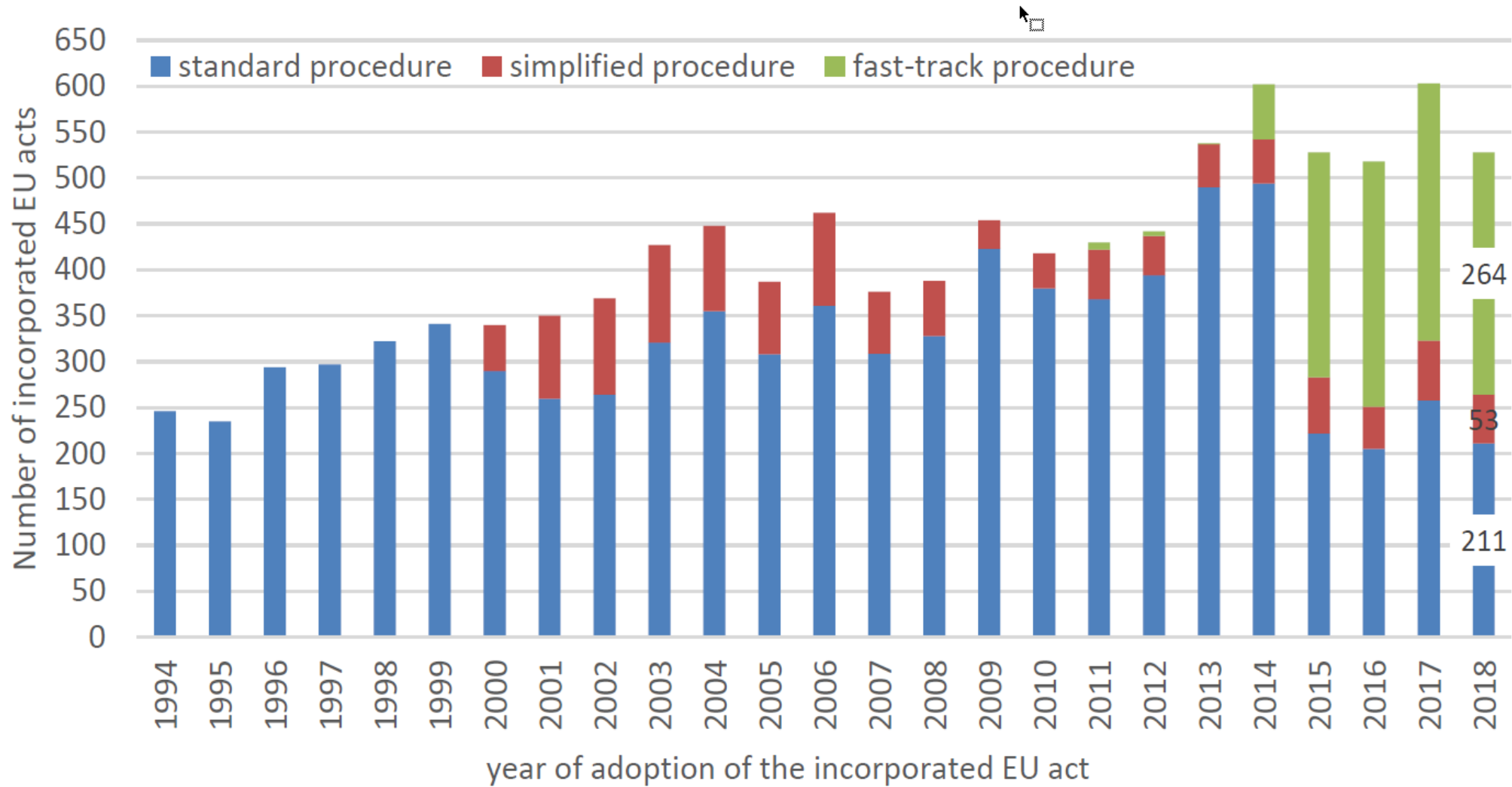
Done at Brussels, 15 July 2013.

For the EEA Joint Committee
The President
Thórir IBSEN



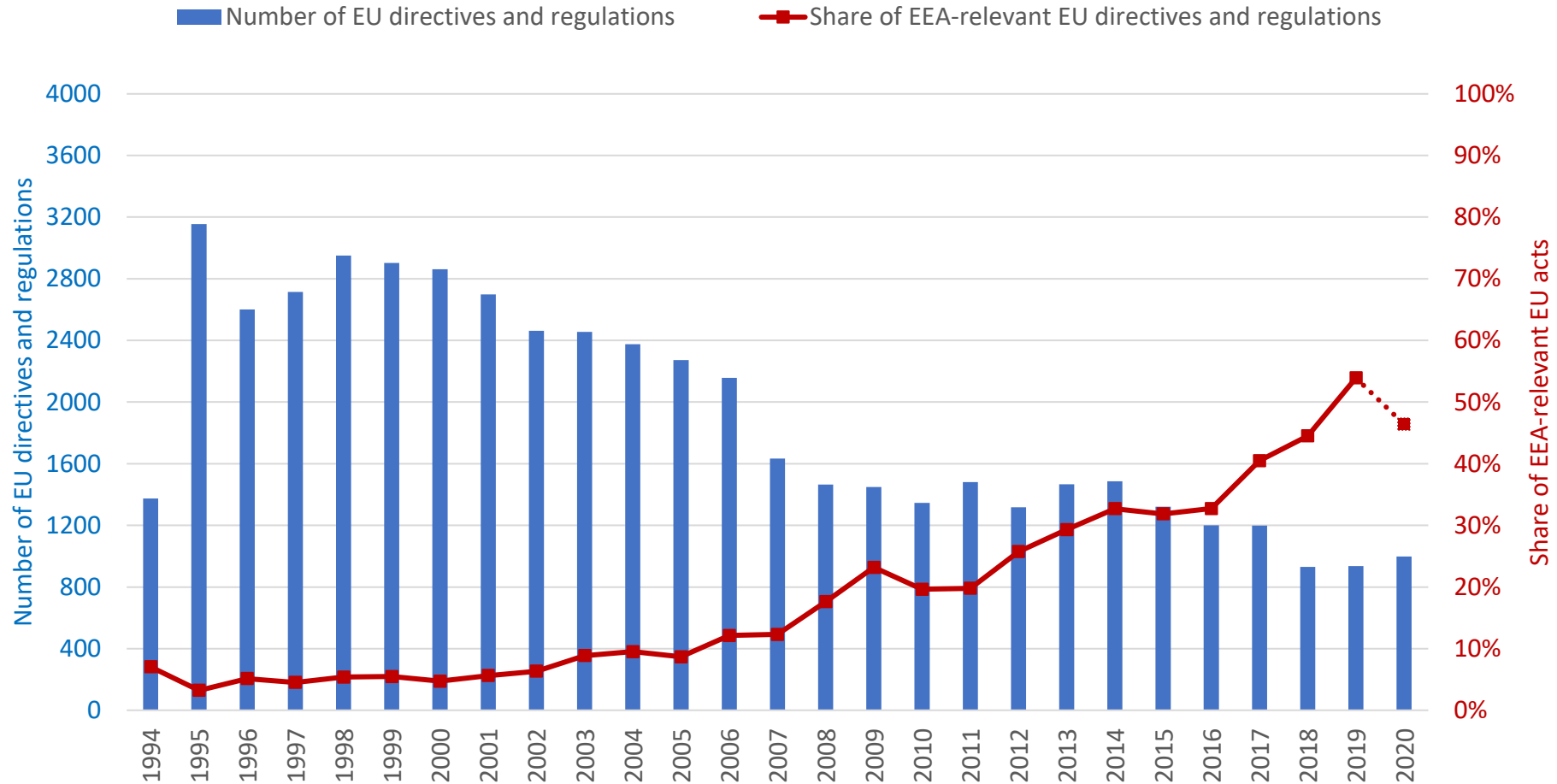


High number of incorporated EU acts



Source: Own data collection based on Eur-lex and EEA lex

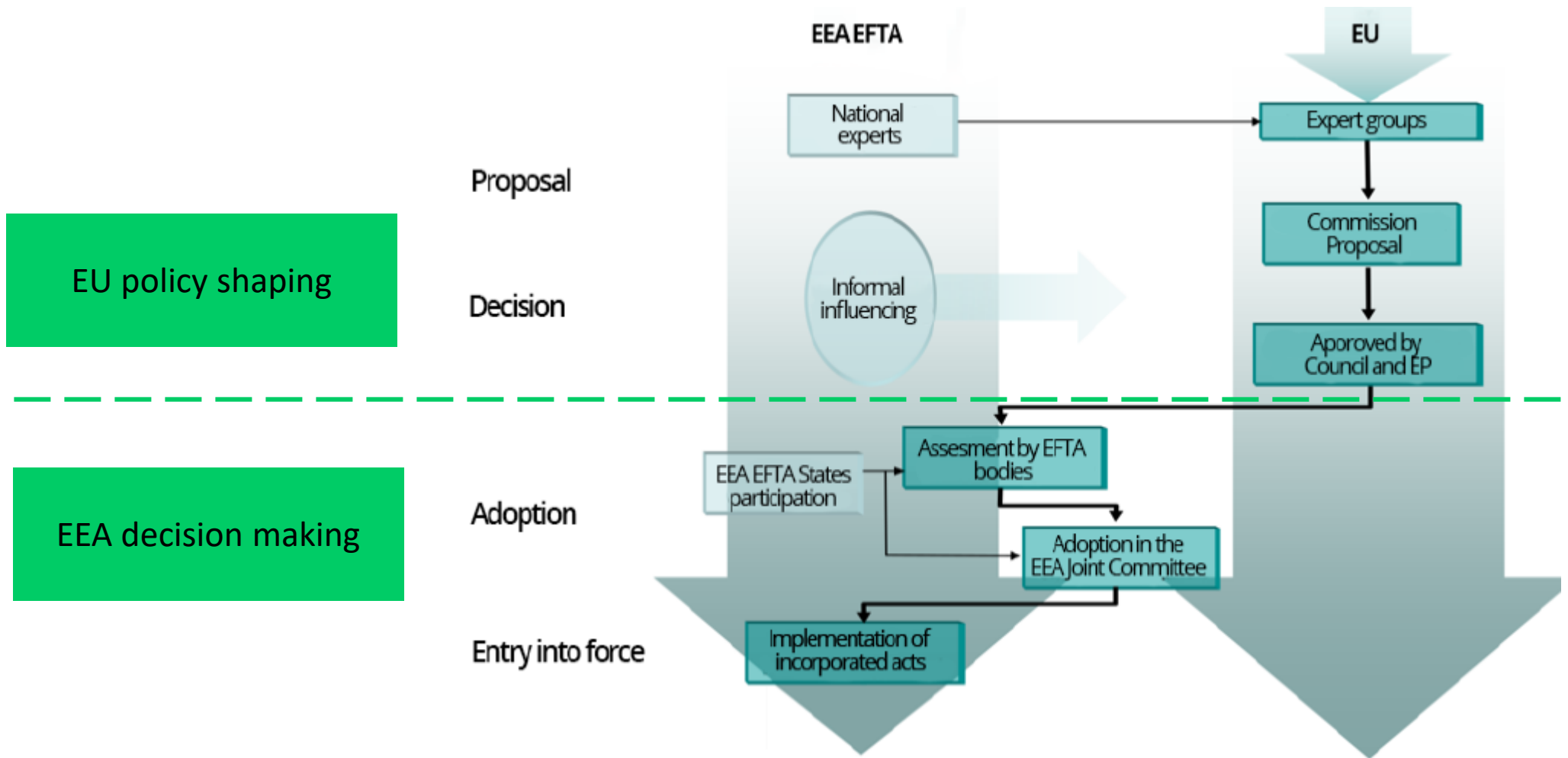
Rule transfer over time



Source: Own data collection based on Eur-lex and EEA lex; EEA-relevant means EU acts incorporated into EEA Agreement or incorporation is awaited; Share of EEA-relevant EU in the year 2020 might still increase as not all EEA-relevant EU acts have been identified.



Policy cycle of the EEA



Source: EFTA Secretariat (text boxes added by the author).

Access to EU policy making





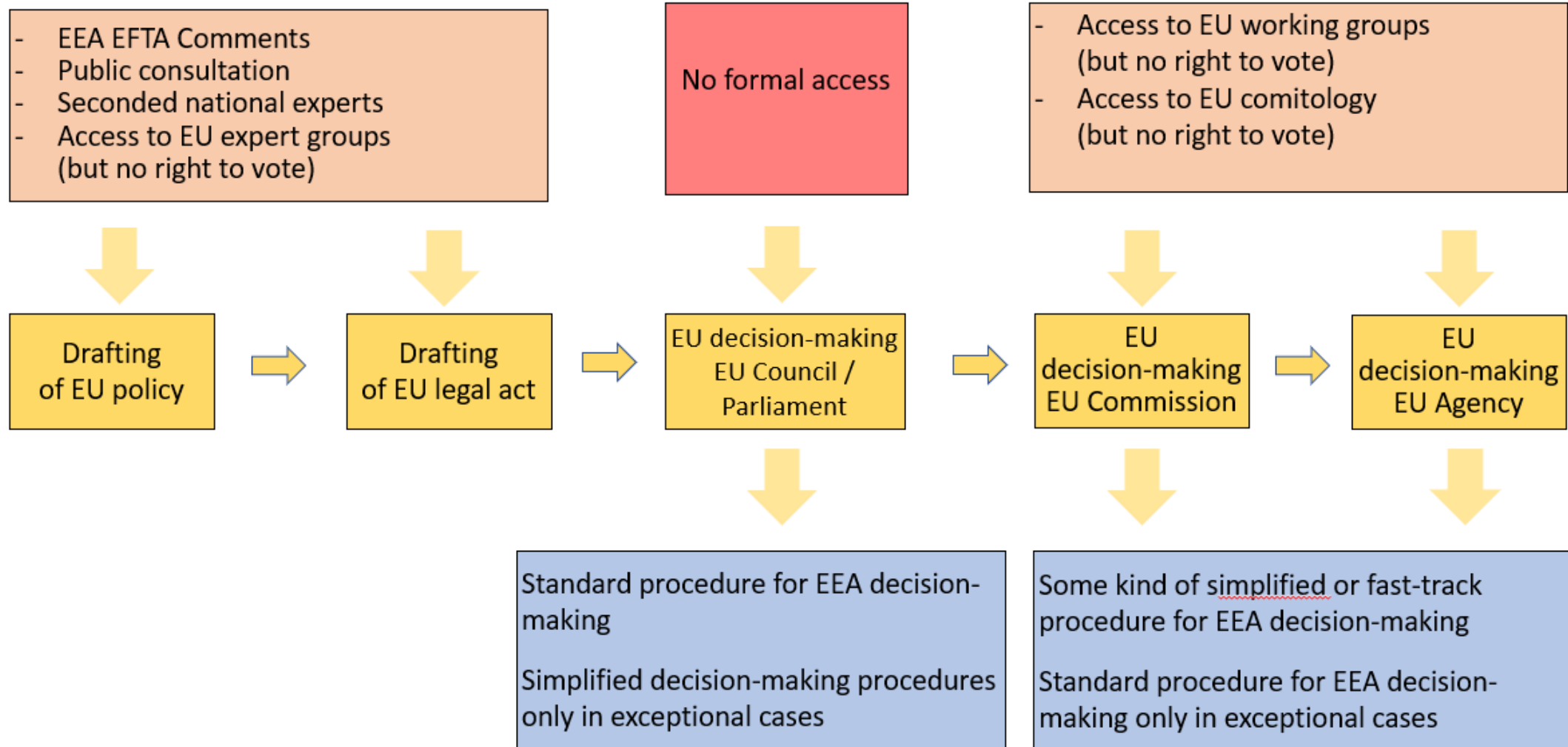
Institutional venues for influence

Joint bodies	EU bodies	Other institutionalised venues
Transgovernmental bodies	Expert groups of EU Commission	Seconded national experts
Joint/mixed committees	EU programme committees	Access to EU consultation
Association Council	EU agencies	Written comments
	EU comitology committees	Parliamentary cooperation
	EU Council Working groups	Judicial dialogue
	EU COREPER	
	Informal Council meetings	





How can the EEA EFTA States influence EU law?



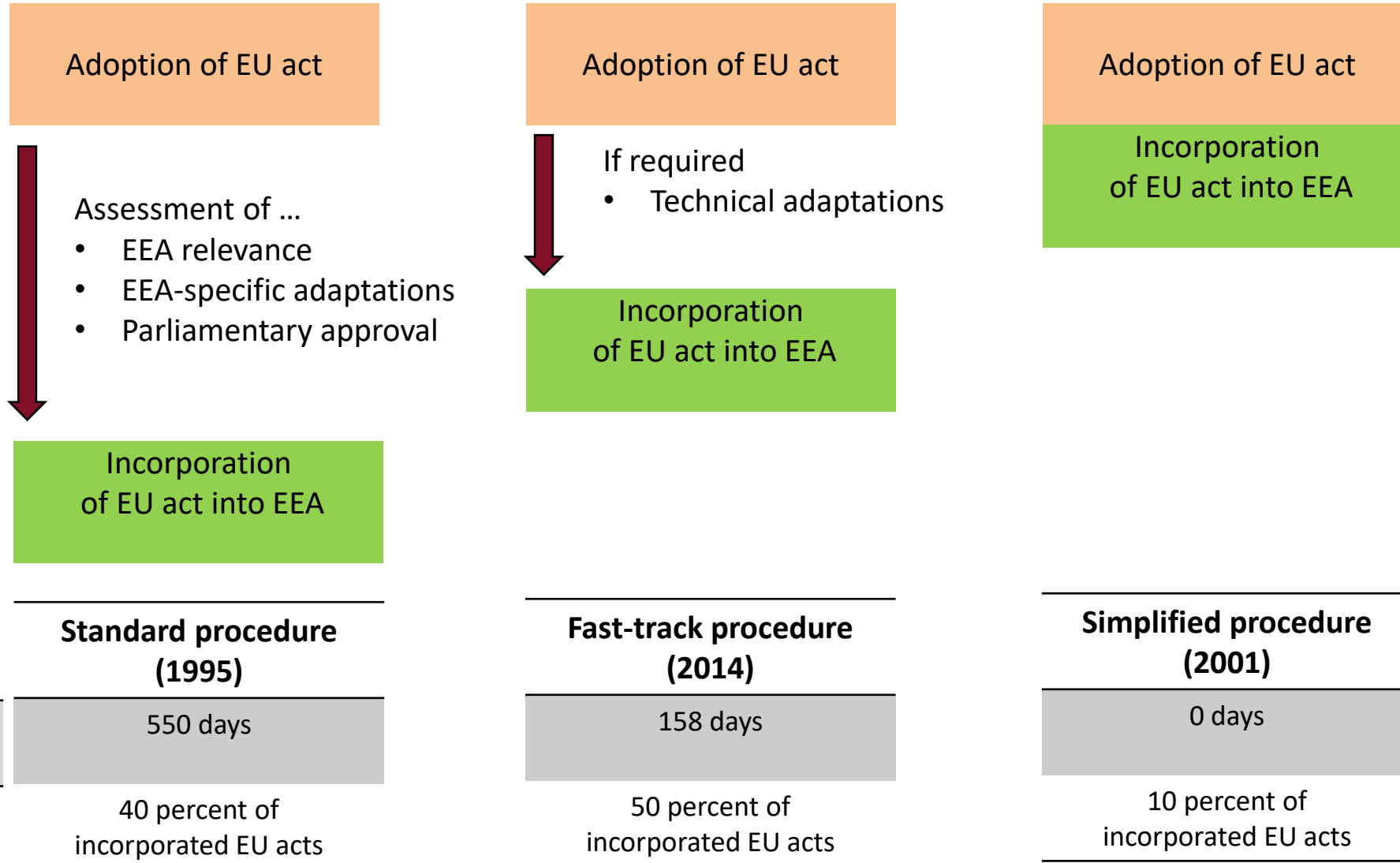


How can the EEA EFTA States compensate for their lack of voting rights in EU policy making?





Different procedures of EEA decision making





Opportunities of influence for associated countries throughout the law and policy-making process

Steps in the law and policy-making process	Mechanisms to exert influence
agenda setting for new EU law or policies	uploading to initiate new rules
	cross-loading to initiate new rules via member states
formulation and adoption of new EU law or policies	uploading to shape new EU rules
	cross-loading to shape new EU rules via member states
adoption of new law or policies by the associated country	tweaking to adapt the scope of new EU rules
	rebuffing to exclude, delay or reject new EU rules
implementation of new law or policies by the associated country	tweaking to adapt adopted rules when applying
	rebuffing to delay or reject the transposition of adopted rules or retroactively seek an exemption





Consequences of different procedures

- Different level of efficiency
 - Different level of room for manoeuvre
 - to protect national interest by agreeing on opt-outs or delaying incorporation
 - to involve domestic political actors
 - Different level of involvement in EU policy making
-
- Increasing institutional complexity
 - Finding a balance of keeping autonomy and ensuring efficiency
 - Pragmatism and dialogue as key to success





EEA Decision Shaping and Making – some selected conclusions

- Great variety of institutional venues to influence EU law
- Extent of involvement depends heavily on their commitment to take over the relevant EU rules
- The organisational inclusion of the EEA EFTA States in EU policy making does not violate the autonomy of EU decision-making.
- The EEA EFTA States' access to EU policy making shall primarily ensure the efficiency of EEA decision-making and thus the functioning of the EEA Agreement.
- Expertise-based policy shaping by the EEA EFTA States contributes to the mutual understanding and the overall reputation of the EEA EFTA States as constructive and credible partners.
- The fact that the EEA EFTA States do not have the right to vote in EU policy making can be explained by the fact that there is specific EEA decision-making (for tweaking and rebuffing).





EEA and legitimacy

Classic understanding of the EEA's democratic deficit

- Limited access to EU legislative process and no voting rights in EU committees and bodies
- BUT: Various institutional channels for participation (so-called decision-shaping)
- Only theoretical veto possibility due to suspension of relevant annexes
- BUT: Possibility to delay adoption and negotiate specific exceptions.

Other aspects of the democratic deficit

- "Legal overstretch" and "spillover" (i.e. de facto integration deviates from the actual integration mandate)
- Low transparency about the actual state of integration
- dominance of the executive, especially the administration; weak involvement of parliaments
- Trade-off between input and output legitimacy ("democratic trap")
- Institutional self-restraint (e.g. EASA; i.e. institutions voluntarily relinquish competences to which they are entitled for reasons of efficiency)





Some conclusions on EEA and its institutional challenges

- Maintaining autonomy and ensuring efficiency as the two patterns of institutional integration
 - The higher the integration, the more important are efficient procedures.
 - Institutions are a necessary but not a sufficient condition of effective external differentiated integration.
 - Various challenges to democratic legitimacy of external differentiated integration
- Keeping pace with the dynamics of EU legal developments as a continuous challenge
 - Extent of integration of EEA EFTA States has (slightly) increased over time.
 - Demand for opt-outs is higher for EEA EFTA States than for the EU States. (risk of cherry picking and free riding)
 - Supply of opt-outs is higher for the EEA EFTA States than for the EU States. (lower negative externalities; specific decision-making rules)
 - Informal DI as a new type of DI due to institutional complexity
- The empirical research on the EEA ...
 - ... confirms the importance of the EU principles in order to avoid centrifugal effects.
 - ... shows that there is also a risk of fragmentation within the legal relations of EU and non-member states.
 - ... shows that it is possible to establish a homogenous and dynamic economic area between non-member states and member states.



Focus Liechtenstein





Some basic facts about Liechtenstein

- Total area 160 km² (fourth smallest country in Europe)
- Total population 39'000 inhabitants (share of foreigners is one third)
- Liechtenstein is situated between Switzerland and Austria in the centre of the Alpine arc
- The Principality is a constitutional, hereditary monarchy on a democratic and parliamentary basis;
- The power of the state is embodied in the reigning Prince and the people and is exercised by both parties
- Head of state: HSH Prince Hans-Adam II. von und zu Liechtenstein (but has entrusted Hereditary Prince Alois to exercise his sovereign powers)
- Government: Five-member Government nominated by Parliament and appointed by the Prince for four years
- Parliament: 25 Members of Parliament, called Landtag, elected by the people for four years in universal, direct and secret elections
- Direct democracy: wide range of instrument of direct democracy (they are regularly used)





Some take aways on its history and economy

- Long history as a sovereign state but hard struggle for democratisation
- very diverse national economy with a large number of small and medium-sized enterprises
- Swiss franc (CHF) as the legal currency of Liechtenstein
- Export oriented economy (biggest partners are Germany and the US)
- More than half of the persons employed in Liechtenstein do not actually live there
- There are more people employed in Liechtenstein then living there
- Four phases of foreign politics
 - Phase 1: Focus on alignment with Austria (until 1919)
 - Phase 2: Focus on alignment with Switzerland (from 1919)
 - Phase 3: Openness to international cooperation in pursuit of international recognition as a sovereign state
 - Phase 4: Active but selective foreign policy at global and European level





How smallness determines foreign politics

- High external dependence
 - Dependent on foreign infrastructure, market access and international problem-solving competence
 - Dependent on compliance with international law
- Low geostrategic relevance and international visibility
- Limited human resources
- Limited regulatory capacity
- Proximity to neighboring countries
 - High influence of foreign media; legal reception; outsourcing and delegation
- European integration
 - Dispersion of dependencies Europe/Switzerland
 - Strong influence on regulation
 - Capacity building and increasing professionalism





Key points on European politics

- Active European politics since the 1990s
- Various agreements with the EU of which the EEA is by far the most important one
- High number of opt outs and tailor-made arrangements due to
- Special solution for free movement of persons
- Capacity building and key strategies to successfully administrate EEA membership with limited resources
- Driven by economic cooperation



Various explanations for Liechtenstein's tailor-made arrangements

- **economic factors** such as small market size (e. g. telecommunication)
- **regulatory factors** such as the lack of specific infrastructure (e. g. combustion plants; crude oil) or limited natural resources (e. g. renewable energy)
- **geographical factors** such as small inhabitable area (e. g. property market/ free movement of capital) or lack of regulatory need (e. g. inland waterways)
- **societal factors** such as the vital interest to maintain national identity (e. g. free movement of persons)
- **administrative factors** such as limited resources (e. g. medicinal products) or codes of conducts (e. g. privacy concerns in business statistics)
- **political factors** such as close relations with Switzerland (e. g. waste management; patent union)

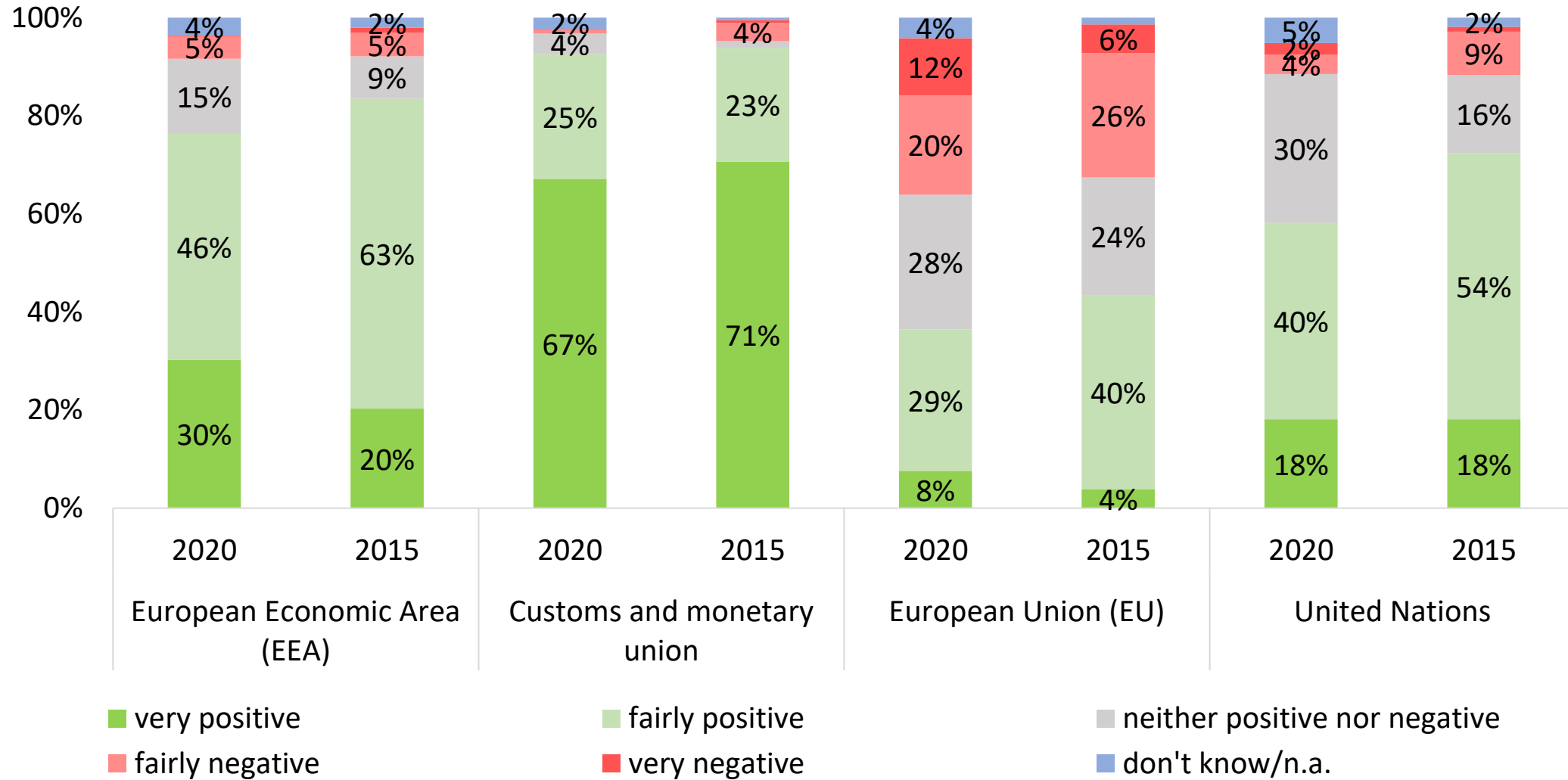


Liechtenstein and the EEA: Focus on public attitude

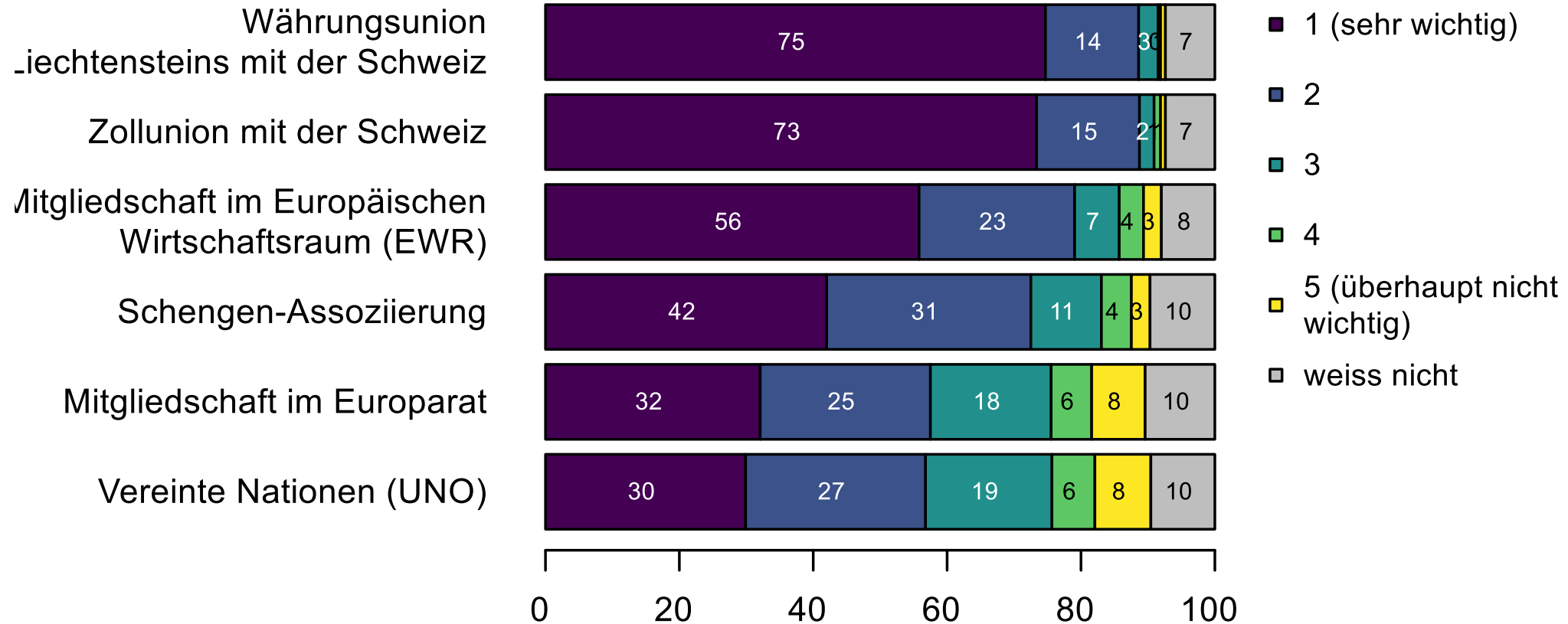




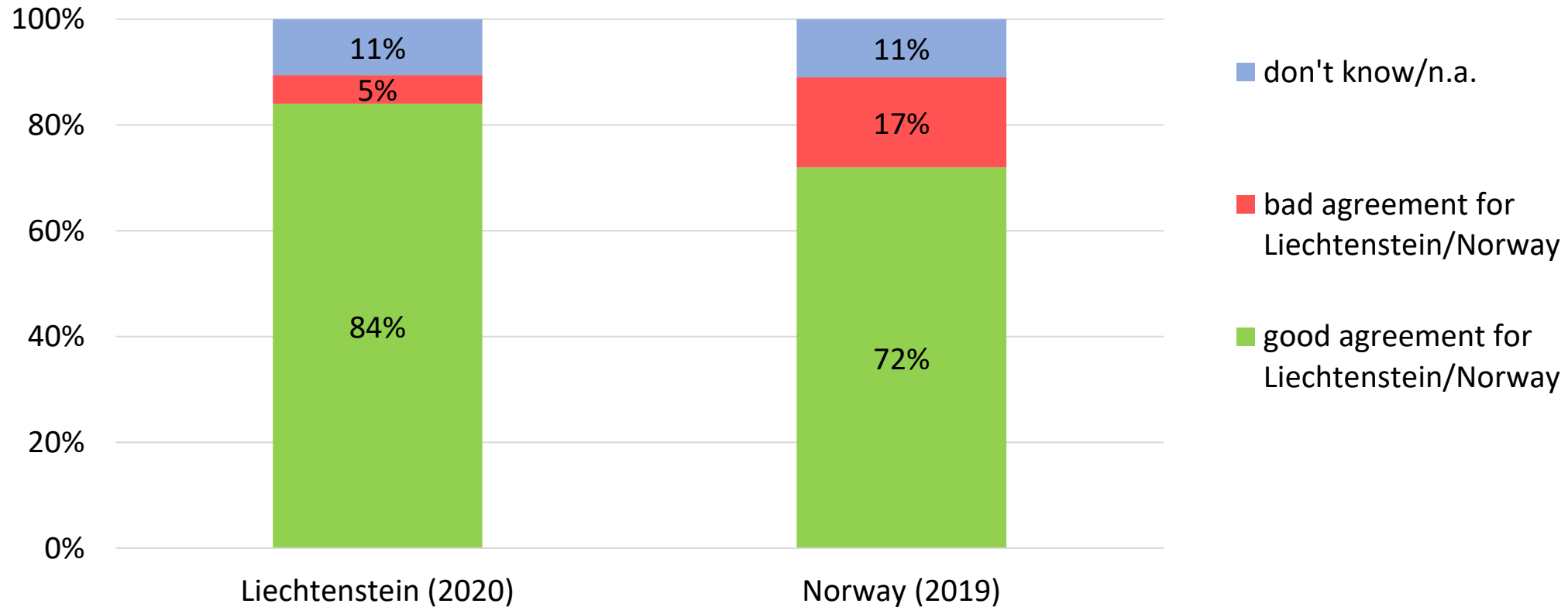
Comparison of image of selected agreements among Liechtenstein citizens (2015 and 2020)



Relevance of international agreements and memberships

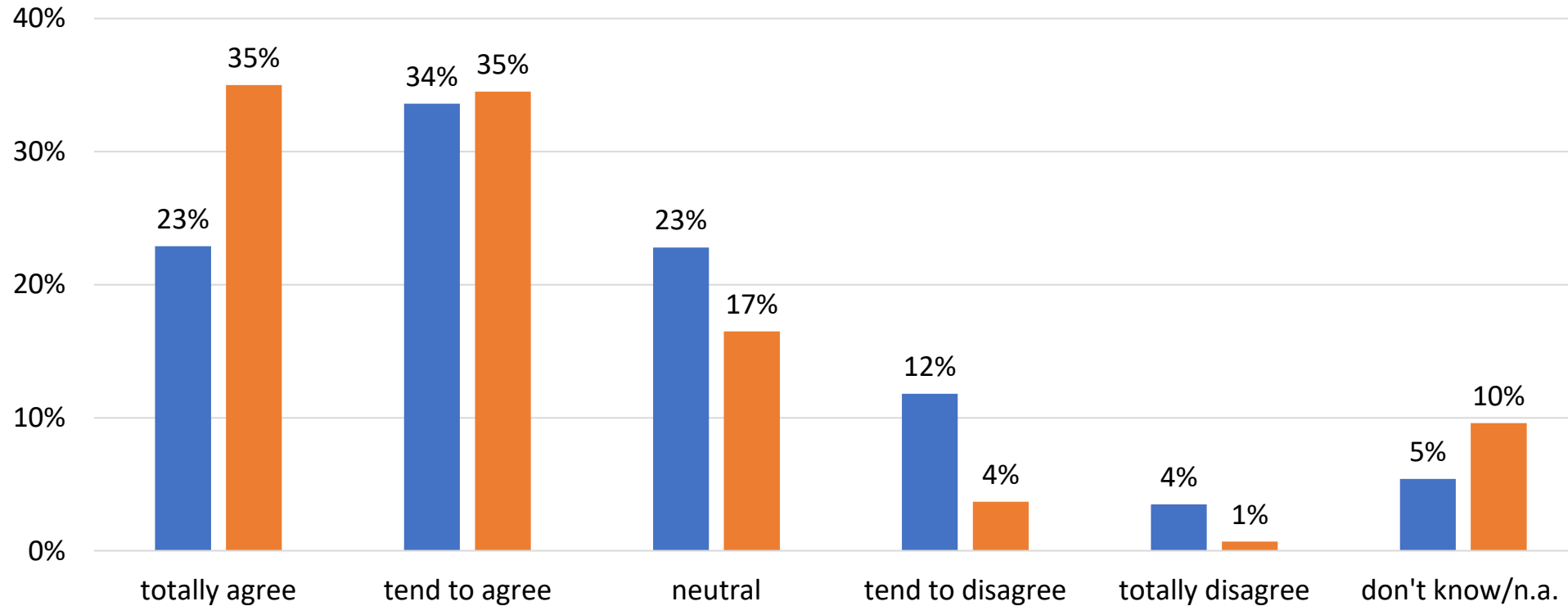


Assessment of the EEA Agreement in Liechtenstein and Norway



Note: LIE: CAWI survey, February 2020, N=869; NOR: NUPI/Sentio CATI survey, January 2019, N=1000

Support for EEA and close cooperation with Switzerland in comparison (2020)



- Liechtenstein should coordinate its European policy as closely as possible with Switzerland.
- The EEA is the best option for Liechtenstein in the coming years.



Assessment of the options in the event of dissolution of the EEA

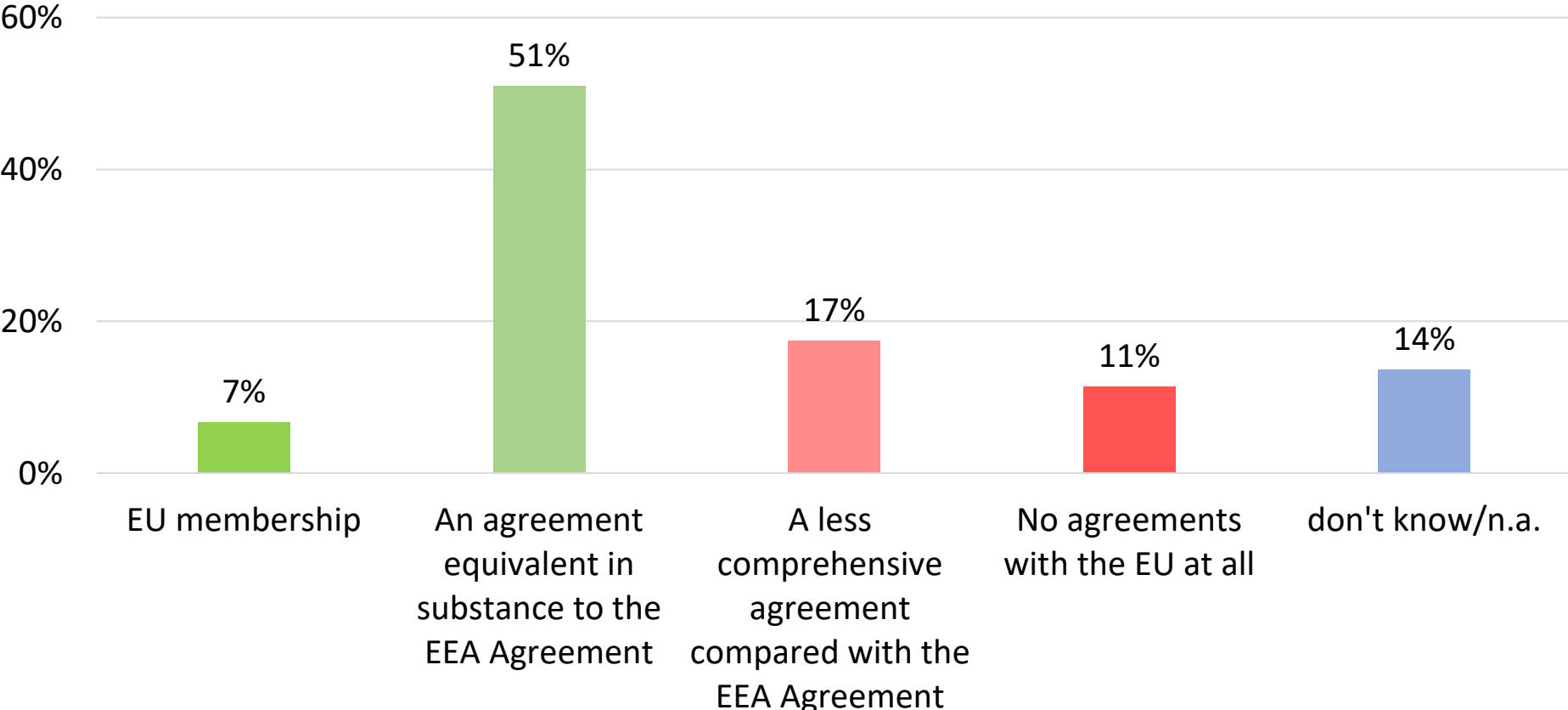
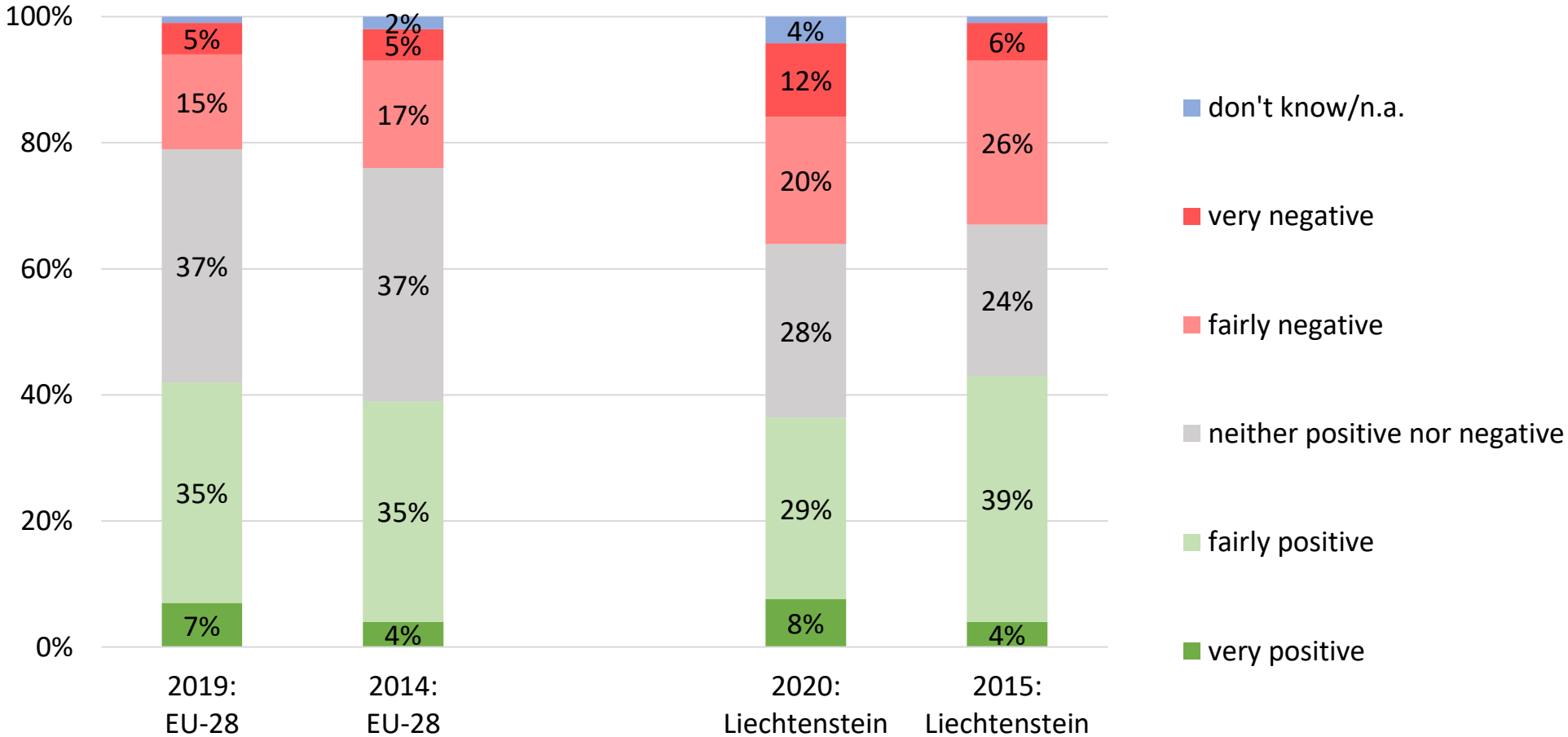
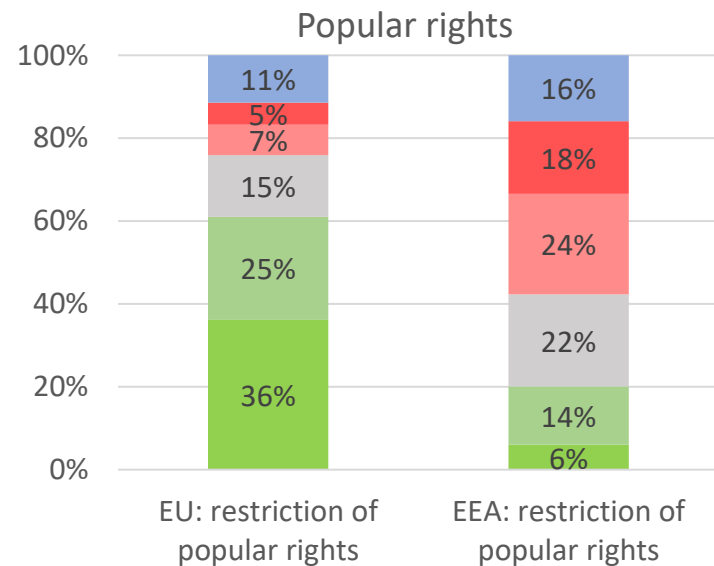
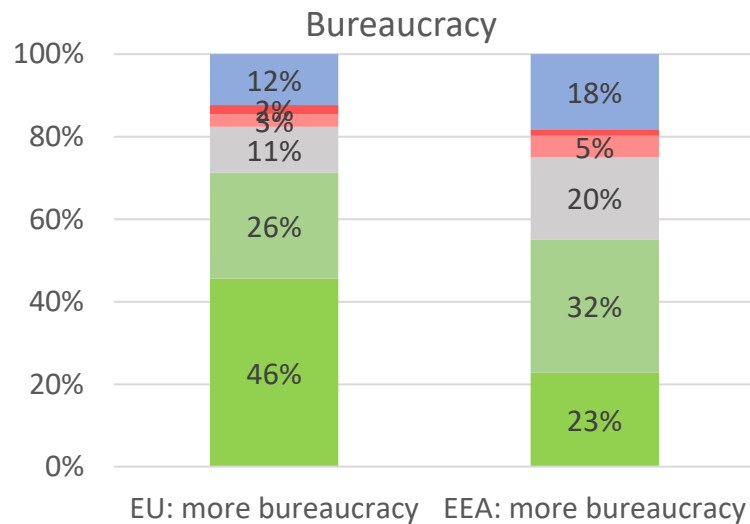
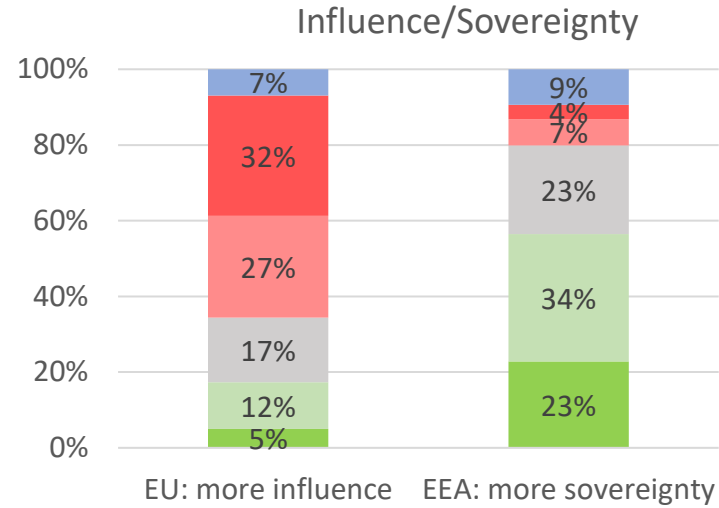
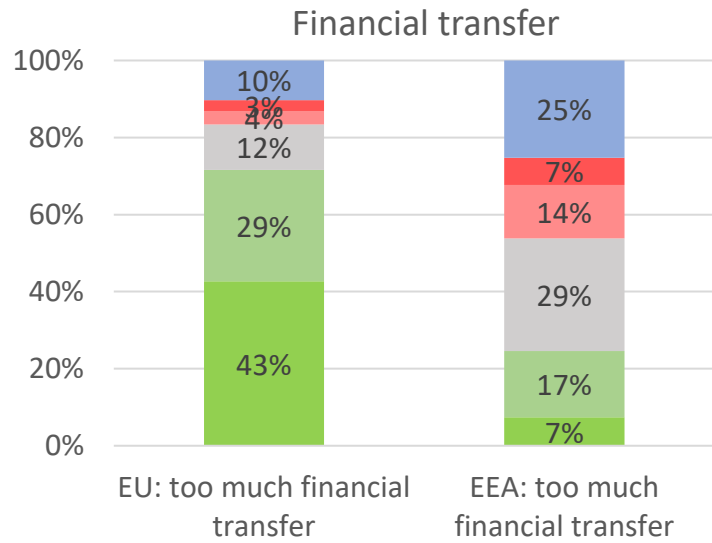


Image of the EU in Liechtenstein and on average in the EU Member States



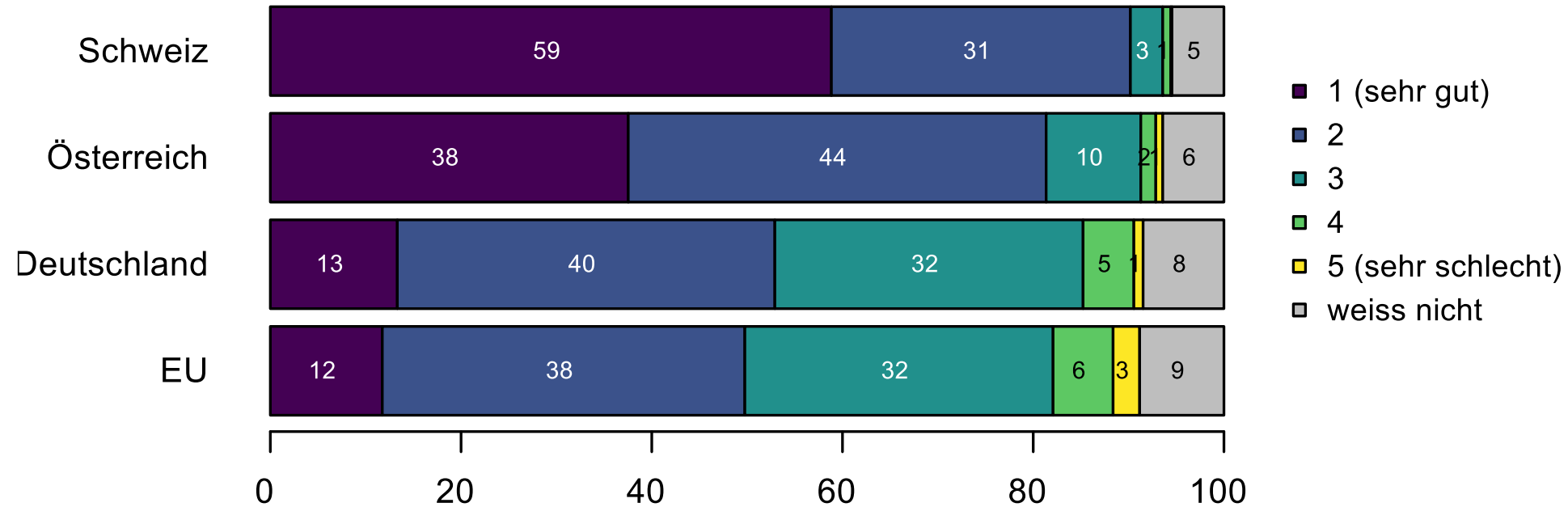


Comparison of the perception of the EU and EEA

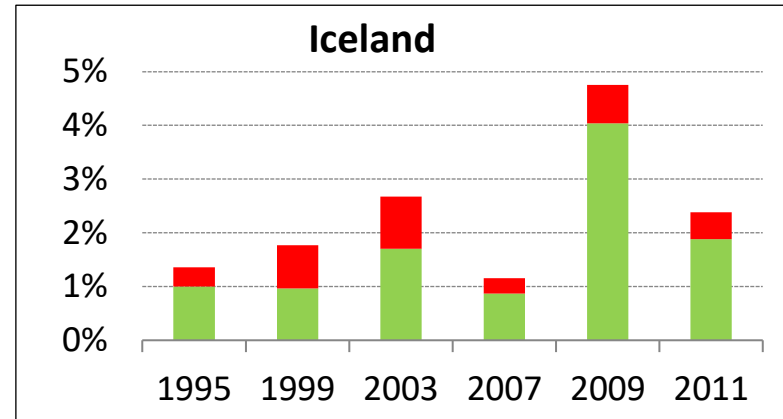
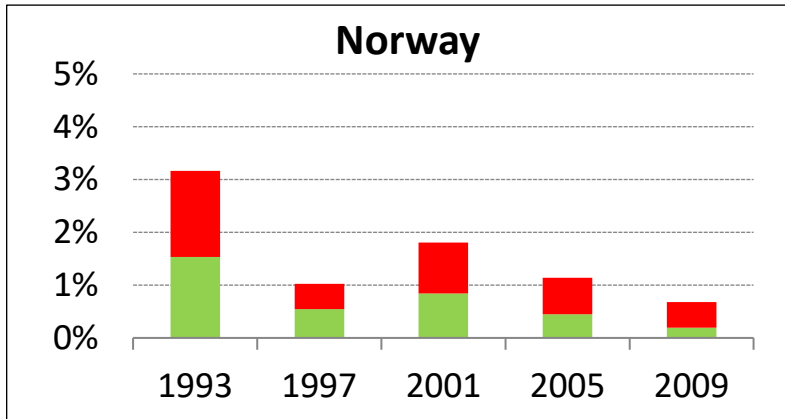




State of relations

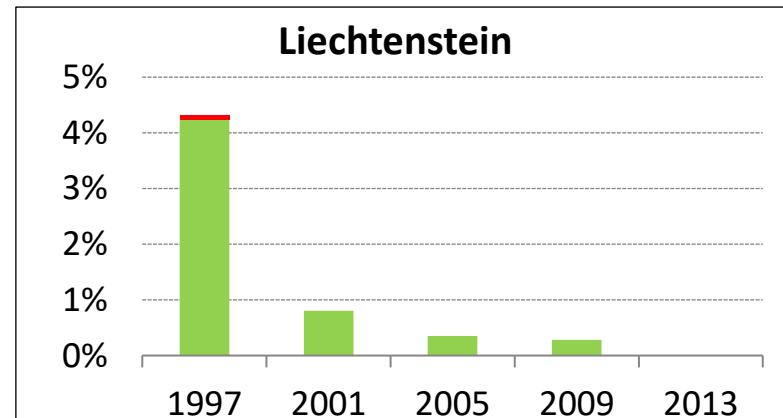
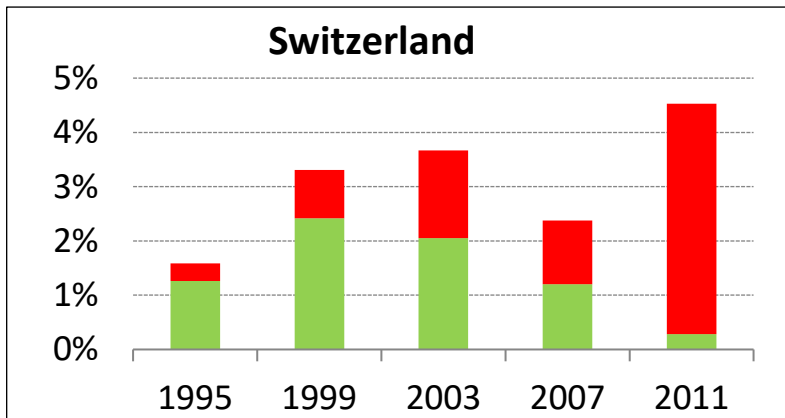


Low politicization of EEA membership by political parties (manifesto)



■ share of EU negative quasi-sentences

■ share of EU positive quasi-sentences





EEA and sovereignty

EEA as a gain of sovereignty ...

- International recognition as an equal partner
- Access to international institutions (access to information and co-design)
- Legal certainty
- Capacity building and professionalisation
- Diversification of dependency





Conclusions public attitude

- Euroscepticism in Liechtenstein
 - Relatively low when it comes to the EEA (but strong when it comes to the EU)
 - Mainly a right-wing Euroscepticism (*so far*)
 - Fear of costs and loss of sovereignty
 - Age and education are not particularly strong variables to define attitude to EEA and EU
- Explanations for high political and public support for EEA membership
 - Favourable economic development after EEA accession
 - High flexibility of the EU (derogations, adaptations etc.)
 - No strongly negative effects on Liechtenstein's relations with Switzerland (*so far*)
 - Little politicization of EEA membership (*but is slightly increasing*)
 - Lack of alternative options
 - EEA membership has been “feasible” / Efficient administration
 - Pragmatic handling of institutional questions (monism; experiences with custom union treaty)
- Main narratives in the political debate
 - EEA as a gain of sovereignty
 - EEA is economic integration and therefore the essence of European integration





Overall conclusions

- The EEA is not made for export.
- A well functioning model of external DI has still to be found.
- Path dependency ensures the adaptability of the EEA.
- Assessment of the effects of EEA membership on sovereignty and democracy brings mixed results.





Thank you very much for your attention.

