

Liechtenstein and the European Economic Area

Christian Frommelt & Sieglinde Gstöhl

christian.frommelt@uni.li and sieglinde.gstoehl@coleurope.eu

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1. Background on Liechtenstein's relations with the EU

Liechtenstein was associated to the European Free Trade Association (EFTA) since its founding in 1960, via its bilateral customs union with Switzerland. However, it could only formally join the organization in its own right in 1991. This achievement was closely connected to the negotiations on the European Economic Area (EEA) Agreement. Liechtenstein joined the EEA on 1 May 1995 and thus one year later than the other EFTA countries. In the same year, it joined the World Trade Organization (WTO). These memberships became possible due to two amendments of the 1923 bilateral Customs Treaty between Liechtenstein and Switzerland. Liechtenstein had to join the EEA negotiations as a party because the scope of the agreement envisaged went well beyond traditional trade in goods for which it had delegated the treaty-making power to its neighbour Switzerland. Moreover, in 1992 the Liechtensteiners voted in favour of the EEA Agreement whereas their Swiss neighbours rejected it. This decision was confirmed in a second referendum in 1995 in which also the necessary bilateral Treaty adaptations were approved.

The political will to honour Liechtenstein's wish to join the EEA despite Switzerland's opt-out was strong on all sides, and several other factors were also conducive to 'squaring the circle' of a double membership in the EEA – an enhanced free trade area – and in the bilateral customs union with a non-member (Gstöhl 1997: 164-166): Liechtenstein's small territory makes it relatively easy to observe the trade flows, and the differences between EU and Swiss rules that could potentially lead to conflict have been small and shrinking over time. Moreover, an additional EEA EFTA country was most welcome in light of the accession of Austria, Finland and Sweden to the EU in 1995. Hence, Liechtenstein could position itself at the intersection of two important economic and legal areas – the European and the Swiss – thanks to the innovative principle of 'parallel marketability' which allows products meeting either EEA or Swiss requirements to circulate in Liechtenstein (Baur 1996).

As an EEA EFTA state Liechtenstein is – like Norway and Iceland – to a large extent integrated into the internal market of the European Union (EU). Unlike the other EEA EFTA countries, it benefits from several derogations linked to its small size. Regarding the free movement of persons, a politically highly sensitive issue in Liechtenstein, the country obtained a joint declaration with the EEA Council, in addition to the transitional period and the review clause that had been negotiated in the 1992 EEA Agreement. 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). Beyond the question of residence, however, the principality must ensure equal treatment for EEA nationals living on its territory (Frommelt and Gstöhl 2011: 36-38).

In order to reflect the more ambitious level of integration in the EEA as well as in the bilateral agreements that Switzerland concluded with the EU in 1999, the EFTA Convention was updated. 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 in order to take into account developments under the EEA Agreement and the EU-Swiss bilateral agreements.

Like the other EFTA states, Liechtenstein has concluded a few bilateral agreements with the European Union such as an agreement on the taxation of savings income (2004), which was in 2015 upgraded with regard to tax information exchange; an agreement on the security procedures for exchanging classified information (2010); an association with the Schengen area and the Dublin Convention (2011); cooperation agreements with Europol and Eurojust (2013); and an agreement on cross-border police cooperation (2019). In addition, some of the EU-Swiss agreements apply in Liechtenstein due to the customs union, for instance in the field of agricultural products. Liechtenstein also participates in a number of EU agencies such as the EU Agency for Asylum or the European Border and Coast Guard Agency (Frontex).

In a nutshell, Liechtenstein's special position in European integration is intertwined with its neighbour Switzerland with which it maintains a close regional union. This regional union is made up of many bilateral agreements and goes well beyond a customs and currency union (e.g. Sochin D'Elia 2019; Baur et al. 2024). As a result, Liechtenstein's integration policy is not only shaped by its own preferences and capacities and the conditions set by the EU, but also by the Swiss integration policy, even though in 1995 the two countries have parted ways when it comes to the EEA. Moreover, the integration policies of the other two EFTA states, Norway and Iceland, are especially relevant in so far as they affect the future of the EEA Agreement. Vice versa, as full member of the EEA, Liechtenstein's policy is relevant for the other EFTA countries and the future of the European Economic Area. This shows how a small state with limited resources has successfully managed to participate in a complex and dynamic integration project and how much national 'wriggle room' or leeway to diverge from standard legal obligations there can be.

2. Liechtenstein's EEA membership in the past decade

This report follows up on an earlier report which had examined the impact of the EEA Agreement on Liechtenstein during the first 15 years of its membership (1995-2010). It showed that the principality's economy, society, legal order, parliamentary work and national public administration have to a large extent become Europeanized (Frommelt and Gstöhl 2011). The main challenges regarding the implementation of relevant *acquis* concerned the free movement of persons and financial services. Following a pragmatic approach, the small country had managed to comply with the commitments despite limited resources, also thanks to a combination of specific derogations reflecting its size and close relations with Switzerland and the development of resource-saving implementation strategies.

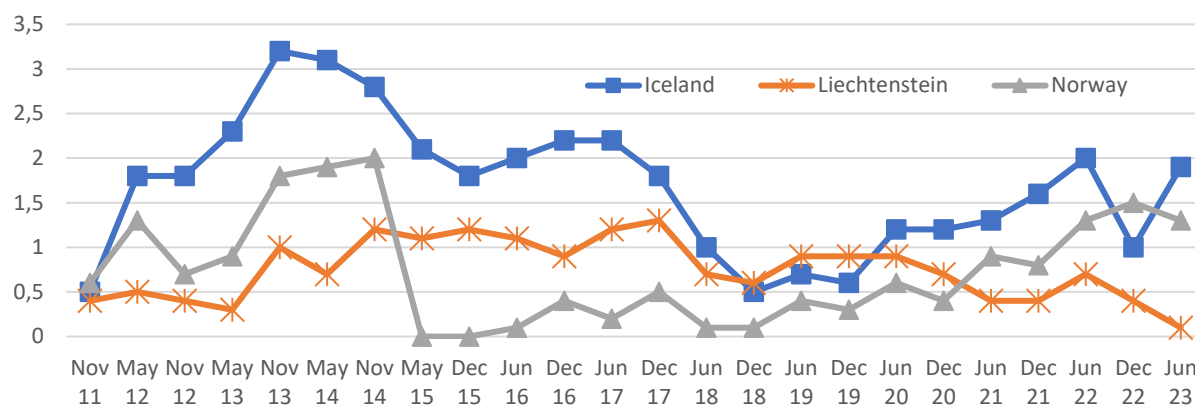
Since then, both Liechtenstein and the EU have repeatedly made positive assessments of the country's performance in the EEA (see, for instance, Liechtenstein 2020; Council of the EU 2022: paras 20-25). The next section outlines Liechtenstein's implementation record regarding EEA-relevant law, the administrative practices it has developed, its alignment with EU foreign policy and to what extent EEA membership is domestically controversial.

2.1. National implementation record

As an EEA member Liechtenstein achieved its first own treaty-based relationship with the EU. However, it had yet to prove whether such a very small state is indeed capable to fully comply with the obligations set out in the EEA Agreement.

Figure 1 shows that the transposition deficit of Liechtenstein (i.e. the share of EU Directives that are not implemented correctly and on time) was over the last 10 years in fact more stable than the transposition deficits of the other EEA EFTA states. However, right after joining (1996-1999), the average transposition deficit of Liechtenstein reported by the EFTA Surveillance Authority was 6.1 percent compared to 3.4 percent for Norway and 4.1 percent for Iceland. This shows that Liechtenstein first had to build up its capacity to implement EEA law. The continuous improvement of the deficit in the early 2000s and the stabilization at a low level in recent years shows that despite its lack of administrative resources, Liechtenstein complies very well with its legal obligations in the EEA. According to the most recent Internal Market Scoreboard of October 2023 (EFTA Surveillance Authority 2023a), there is currently only one Directive overdue.

Figure 1: Transposition deficits of the EEA EFTA states 2011-2023



Source: own compilation based on data from the Internal Market Scoreboard of the EFTA Surveillance Authority.

Liechtenstein’s good implementation record is confirmed by a low number of pending infringements cases. Since December 2017, Liechtenstein has never had more than nine pending cases compared to a maximum of 33 for Norway and 27 for Iceland in the same time period (EFTA Surveillance Authority 2023b: 14).

Another important indicator for Liechtenstein’s compliance with EEA law is the number of cases before the EFTA Court of Justice. In total, there have been 69 cases that are primarily related to Liechtenstein since it has joined the EEA (EEA Coordination Unit 2023). This is an average of less than three cases per year. Many of the cases deal with different issues of residence requirements or other aspects of the free movement of persons or the cross-border provision of services. Liechtenstein also has an above-average number of cases in the field of financial services, an economic sector of great importance. Finally, the rather high number of referrals from all national courts, and in the past decade increasingly also by the State Court, to the EFTA Court are worth mentioning given the country’s small size. This has earned Liechtenstein the reputation of being a particularly referral-friendly state, even if not all judges refer cases to the EFTA Court to the same extent.

The number of constitutional requirements and the time required to fulfill these requirements is also of interest to gauge the efficiency of the implementation of EEA law. Each EEA EFTA state can indicate constitutional requirements (such as ratification by the

national parliament) regarding a decision of the EEA Joint Committee. In Liechtenstein, the EEA/Schengen Committee of the parliament meets a few days prior to the meeting of the EEA Joint Committee in order to decide whether a procedure in accordance with art. 103 EEA Agreement is necessary for a specific EU act. The parliamentary committee takes a decision based on a recommendation from the EEA Coordination Unit of the government. While the number of reservations indicated is roughly the same for all three EEA EFTA states, the time needed for ratification is comparatively lower in Liechtenstein (Frommelt 2020a: 24).

EEA matters very rarely meet with major resistance in parliament. Moreover, so far, no referendum has ever been held against a decision of the EEA Joint Committee, although this would be possible under constitutional law. In November 2023, however, for the first time a referendum was launched against a law implementing an EEA-relevant legal act. On 21 January 2024, 65.2 percent of Liechtenstein voters rejected a bill which aimed to implement Directive 2010/31/EU on the energy performance of buildings and, at the same time, transpose certain Swiss energy standards into national law. Simultaneously, voters rejected a national bill containing an obligation to install photovoltaic systems in new buildings. Although the two acts were put to the vote separately, voters made little distinction between them and rejected both by a large majority. As a result of the rejection of the Directive, the EFTA Surveillance Authority is likely to initiate an infringement procedure against Liechtenstein. However, the government has already signaled that it will make a new attempt to implement the EU Directive. Given that voters' opposition focused on the mandatory installation of photovoltaic systems, which is unrelated to Liechtenstein's EEA membership, the chance that the bill will pass in the second round is high. In fact, the EEA played no role in the referendum campaign. The government had justified the bill with its national energy strategy and a general commitment to sustainability. Nevertheless, this case also shows that the government is very cautious to explain national proposals by referring to international requirements.

The risk for a conflict between direct democracy and European integration is much lower regarding popular initiatives compared to referenda against the implementation of EEA law or the ratification of a treaty with the EU. On average, one popular initiative per year is launched in Liechtenstein. The collection of signatures for such an initiative is only possible after it has been formally and materially examined by the government on whether it is compatible with international law and EEA law. It is thus not possible for Liechtenstein's population to vote on an initiative requiring a new law that is incompatible with EEA law or that would change an existing law in a way that it would make it incompatible. An initiative like the 2014 'mass immigration initiative' in Switzerland, which would have contradicted the free movement of persons, is therefore not possible in Liechtenstein. In this regard, Liechtenstein's direct democracy is more compatible with European integration than the Swiss system.

2.2. Administration of EEA membership

All departments of Liechtenstein's public administration have at least one EEA expert. Based on their personal expertise, these experts accompany the EEA policy-making process, represent Liechtenstein's interests in the respective EFTA or EU committees and are responsible for the transposition of EEA law into domestic law. The EEA Coordination Unit, which is specialized on EEA law, and Liechtenstein's diplomatic representation in Brussels

support and coordinate the activities of the specialists. Indeed, the EEA Coordination Unit is the key player that advises the government and public administration on EEA matters, coordinates the incorporation and implementation of EEA law, and represents the government in proceedings before the EFTA Surveillance Authority and the EFTA Court

Liechtenstein’s approach to managing its EEA membership is primarily a legal one, and the EEA Coordination Unit consist of lawyers. The ambition is less about influencing EEA-relevant law than about ensuring the compatibility of EEA-relevant EU law with the EEA’s two-pillar structure and to gather information that facilitates national implementation of EEA law. However, Liechtenstein has a certain demand for tailor-made arrangements due to its small size, limited administrative resources, small market and the lack of infrastructure such as ports or airports, but also due to its close relations with Switzerland. These arrangements are mostly agreed within the EEA Joint Committee. They should not be seen as preferential treatment for Liechtenstein but rather as a need to find pragmatic solutions. This flexibility helps explain Liechtenstein’s good implementation record and the high level of support for EEA membership among the population. Finally, Liechtenstein’s legal order is very open to EEA law. This ‘friendly’ approach (Thürer 1998) is also a result of the country’s monist approach to international law. International law applies directly as if it were domestic law. International treaties, and thus EEA law, also take precedence over national constitutional law (Hammermann 2021: 294). In this context it should be kept in mind that Liechtenstein traditionally has a specific legal culture of high jurisprudential reception of Swiss and Austrian law. Due to the customs treaty with Switzerland, the relevant Swiss law is automatically applicable in Liechtenstein, and the country is also subject to Swiss jurisdiction in customs treaty matters. Moreover, Swiss and Austrian judges are regularly appointed as judges to the Liechtenstein courts.

Table 1 lists the factors that favour an efficient and very pragmatic administration of EEA membership by a small state such as Liechtenstein.

Table 1: Factors conducive to an efficient administration of EEA matters

Staff	expertise	representation by experts and not by political staff
	autonomy	high discretionary power of EEA experts in shaping EEA policy due to few political guidelines
	continuity	long-term of office and thus great experience and broad networks
Organisation	coordination	fast, reliable communication between administrative units and between the administration and the government
	education/ recruitment	high level of professionalism and expertise through impartial recruitment and regular further training
	translation	German is an official EU language (in contrast to Icelandic and Norwegian)
Strategies	delegation	occasional delegation and outsourcing of administrative and representation tasks to like-minded countries
	selectivity	strategic priorities and selective engagement taking into account political and economic interests
	size	active communication vis-à-vis the EU about the inherent limitations of smallness
	cooperation	strategic use of cooperation with the EFTA Secretariat and the EEA EFTA partners

Legal order	openness	monist approach to international law; tradition of legal reception and autonomous adaptation to foreign law
Politics	permissive consensus	low politicization of EEA matters in parliament and in political debate
	legitimacy	strong political and public support for EEA membership
	inclusiveness	close cooperation with private actors such as economic associations and trade unions
	centralization	no legislative competences for municipalities on EEA matters

Source: own compilation.

The importance of administrative resources is illustrated by various tailor-made arrangements that Liechtenstein has achieved through negotiations with its EEA EFTA partners and the EU. In most cases, these arrangements do not serve to safeguard specific national regulatory interests, as is usually the case with differentiated integration in the EU/EEA, but rather a reduction of Liechtenstein's administrative burden. They are therefore not necessarily accompanied by a gain in autonomy for Liechtenstein. This is particularly evident in the suspension of the applicability of the annex on veterinary and phytosanitary matters and of certain chapters of the annex on technical regulations (e.g. foodstuffs) of the EEA Agreement. The suspension is linked to a supplementary agreement between Switzerland, the EU and Liechtenstein to the Swiss-EU Agreement on Agriculture, which stipulates that EU-compliant Swiss legislation in the agricultural and food sector is automatically applicable in Liechtenstein. In other words, Liechtenstein waives its right to veto the incorporation of an EU legal act into the EEA Agreement as well as an own implementation in national law and instead automatically applies Swiss law. This pragmatism entails certain risks. For example, in case of a termination of the Swiss-EU Agreement on Agriculture, the necessary know-how for an independent implementation of the corresponding EU law would first have to be built up by Liechtenstein. It is also problematic from a democratic point of view that the incorporation and subsequent implementation of certain legal acts are hardly discussed in parliament.

In addition to these political challenges, the EEA also poses regulatory challenges for Liechtenstein. Regarding the free movement of persons, it can be assumed that Liechtenstein will be able to retain its special solution adopted in 1999 and consolidated in 2004. However, a number of open questions have emerged over time: whether a permanent residence permit is lost in case of a temporary departure, how family reunification is applied to couples that live in a long partnership but are not married, how non-discrimination can be ensured in the distribution of residence permits, or how participation in the lottery for residence permits is organized in a socially acceptable manner. Liechtenstein also faces the challenge that more than half of its workforce commutes from neighbouring countries, and the increase in part-time employment and working from home entails an increased burden regarding social security law for the companies concerned. Regulatory challenges also arise for Liechtenstein in case EEA-relevant EU law contains customs provisions that Liechtenstein cannot manage independently due to its customs union with Switzerland.

2.3. Alignment with EU foreign policy

In 2019 Liechtenstein celebrated 300 years of its existence. Given its small size and limited resources, its foreign policy necessarily has to be selective. The principality has traditionally

relied very much on good relations with its immediate neighbours Austria and Switzerland, and increasingly also beyond (besides the EEA EFTA partners, in particular Germany and the United States). It has entered more than 100 agreements with Switzerland as well as more than 40 agreements with Austria. Since 2002 the network of embassies consists of eight representations in Berlin, Bern, Brussels, Geneva, New York, Strasbourg, Vienna, and Washington (plus non-resident ambassadors to the Czech Republic and the Holy See). In addition, Liechtenstein's foreign policy concentrates on certain multilateral organisations such as the Council of Europe, EFTA, the Organization for Security and Co-operation in Europe, the United Nations and the WTO. It is currently also negotiating its accession to the International Monetary Fund, in line with its financial centre strategy. According to the government, "membership in international organisations primarily strengthens Liechtenstein's sovereignty, [while] neighbourly relations in particular secure the basic needs of the State and its people" (Liechtenstein 2019: 23).

Liechtenstein is committed to multilateralism, international law (including human rights and international criminal justice) and solidarity. The country has actively led and supported initiatives in the United Nations (Liechtenstein 2019: 31-32), such as the 2016 Syria accountability mechanism to investigate serious crimes, or the 2022 resolution on a General Assembly debate in case of a veto in the Security Council. It engages in international humanitarian cooperation and development, supported by the Liechtenstein Development Service (LED). In 2020, Liechtenstein reached an official development assistance rate as a percentage of gross national income (GNI) of 0.41 percent (Liechtenstein 2023: 68). This rate still falls short of the target of 0.7 percent. In view of the increasing expenditure on security throughout Europe, the question arises as to how Liechtenstein, as a small state without an army and thus without national expenditure on defence, can also financially contribute to the European security architecture.

The EEA is considered the currently best option for Liechtenstein's integration in Europe, contributing to its "foreign policy profile ... as an active and reliable member of the international community" (Liechtenstein 2020: 8). The country selectively aligns with EU statements in multilateral fora (e.g. Marciacq and Sanmartín Jaramillo 2015) and Council decisions regarding restrictive measures, although less frequently than Norway (e.g. Hellquist 2016: 1007-1012). In contrast, Switzerland does not figure in the list of countries that explicitly 'align' themselves with EU sanctions (nor does the United Kingdom), although in practice it follows them on a case-by-case basis (Hillion 2023). In the case of Russia's war against Ukraine since February 2022, Liechtenstein has followed the EU's sanctions despite its longstanding '*de facto* neutrality' (Ospelt 2022: 53). Like in neighbouring Switzerland, this war has contributed to putting Liechtenstein's understanding of neutrality into perspective.

2.4. Lack of politicization of EEA membership

Liechtenstein's membership of the European Economic Area enjoys great support among its citizens (Frommelt 2020b). According to the most recent, representative survey available (dated February 2020), 76 percent of the respondents have a positive image of the EEA and only 5 percent have a negative image (ibid.: 10). In addition, 84 percent consider the EEA Agreement to be a good agreement for Liechtenstein and only 4 percent consider it to be a bad agreement (with the remaining 12 percent undecided). This high level of popular support for the EEA is also reflected in the question of a possible withdrawal from the EEA: only 5

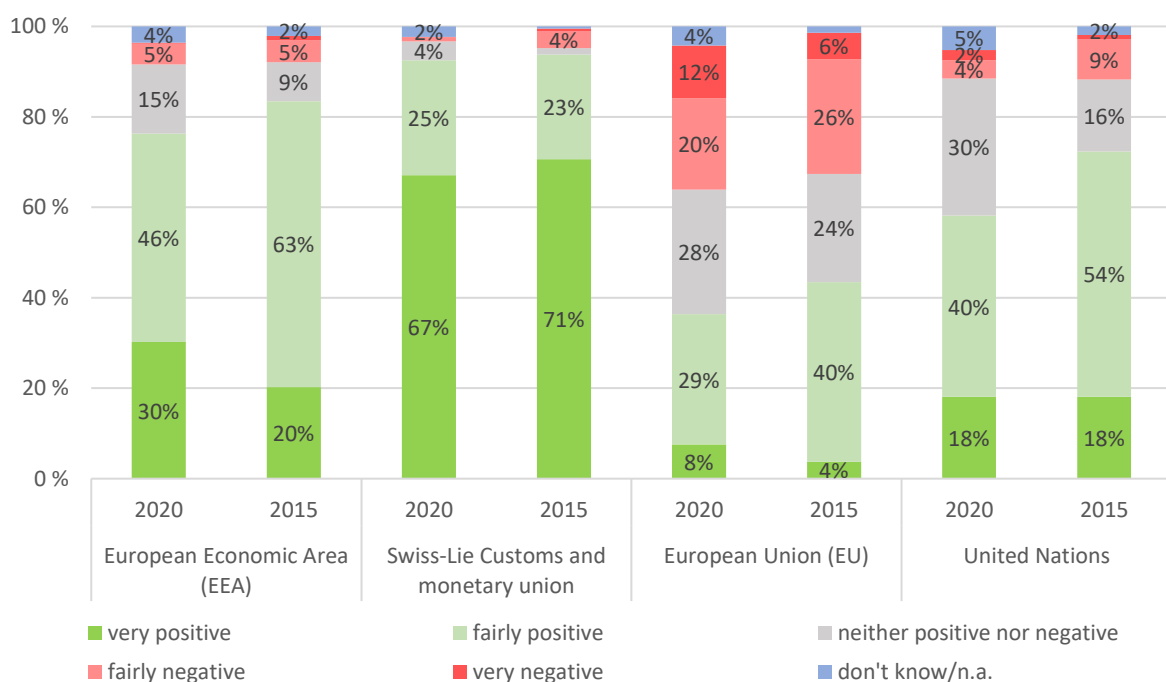
percent of the people surveyed agreed with the statement ‘Liechtenstein should leave the EEA’ (ibid.: 18).

Moreover, the support for the EEA in Liechtenstein has been very stable over the years. This may seem surprising given that Liechtenstein only joined the EEA after two highly controversial popular votes. The most important explanation is the positive economic development that the country has experienced since 1995. In terms of GDP, Liechtenstein’s economy is now almost twice as large as it was before joining the EEA, yet it has not only grown, but it is today also structurally better positioned. For example, the EEA has led to a diversification of economic sectors and trade flows. There is no doubt that the access to the European internal market is of crucial importance for Liechtenstein as an export-dependent country without natural resources and without much political power.

A prerequisite for the high level of support of the EEA appears to be the preservation of the special solution regarding the free movement of persons. This allows Liechtenstein, despite its EEA membership, to restrict the right of residence also for EEA nationals. Another crucial factor is the compatibility of EEA membership with the Swiss-Liechtenstein customs and monetary union. This compatibility has been ensured to date thanks to various specific exemptions for Liechtenstein, in particular the parallel marketability of goods, but also Switzerland’s alignment to the EU through bilateral agreements. If Swiss-EU relations were to erode, the need for specific adjustments to maintain Liechtenstein’s parallel membership in the EEA and the regional union with Switzerland would increase. In case such an increased demand for tailor-made arrangements could not be met, this would probably have a negative impact on the acceptance of the EEA among the Liechtenstein population.

As shown in Figure 2, the support for the EEA may be strong in Liechtenstein, but the support for the regional union with Switzerland is stronger.

Figure 2: Images of international organisations and regional integration among Liechtenstein citizens



Note: 2015: November 2014, CATI survey, N=500; 2020: February 2020, CAWI survey, N=869.

Source: Frommelt 2020b: 10.

For a small state like Liechtenstein, joining international organisations or regional integration projects means international recognition and visibility. Accordingly, politicians regularly use the narrative that EEA membership represents a gain in sovereignty for Liechtenstein, granting it equal access to various European bodies compared to significantly larger states. The concept of sovereignty may be difficult to grasp, but it is undisputed that EEA membership has strengthened Liechtenstein's statehood. For example, Liechtenstein had to significantly expand its national administration in order to be able to implement the EEA requirements. As a result of its EEA membership, Liechtenstein has also (re)gained more autonomy from Switzerland.

None of the parties currently represented in parliament openly opposes the EEA – although Liechtenstein's party system has become ideologically more differentiated in recent years. It is safe to say that all parties represented in parliament largely belong to the political centre, and there is neither a radical left-wing party nor a radical right-wing party. The political culture in Liechtenstein also continues to be strongly characterized by the pursuit of broad-based solutions, and the willingness of the political parties to compromise is rather high in international comparison.

Political opposition to the EEA is limited to specific issues such as i) Liechtenstein's contributions to EU programmes, ii) EEA-related interventions in the liberal economic order, such as regulations on working hours, equal treatment or parental leave, iii) EEA legal acts whose compatibility with the Liechtenstein-Switzerland regional union is unclear, such as in the area of payment transactions, iv) regulations that increase competitive pressure and administrative costs for small and medium-sized enterprises, such as the requirements of public procurement or the EU Services Directive, and, finally, v) a perceived steady increase in the density of regulation, whereby, in addition to the numerous regulations for the financial centre, the adoption of the General Data Protection Regulation was the subject of intense debate even though the necessity of its adoption was undisputed.

In a survey of June 2022, 78 percent of the respondents also rated the Schengen association as very important or somewhat important for Liechtenstein (Frommelt and Rochat 2022). Schengen membership is even less politicized than EEA membership. In contrast, EU membership finds very little support in the population. In fact, the perception of the EU and of the EEA are very different. For example, a majority of the population is convinced that EEA membership does not restrict the rights of the people, whereas a large majority fears such restrictions in the case of EU membership (Frommelt 2020b: 25). The economic associations are also largely positive about the EEA yet negative with regard to EU membership when it comes to issues such as influence and costs. It seems that the reservations expressed in the past about EEA membership are now projected onto EU membership. This suggests that, despite the positive experience of EEA membership, the population continues to be strongly guided by material interests regarding European integration.

The high level of support for the EEA strengthens the government's policy leeway and promotes an efficient implementation and application of EEA law in Liechtenstein. Currently, there are no real signs that in the near future a stronger politicization of the EEA is to be

expected. However, the recent increase of controversies in party politics and the stronger use of the instruments of direct democracy may hamper the smooth implementation of certain EU acts, especially in the areas of environment, energy, social policy and social security which focus more on market-correcting and less on market-creating integration. A politicization of the EEA may also occur when the future relations between Switzerland and the EU stabilize and if they look like an attractive alternative option for Liechtenstein.

3. Future of Liechtenstein's relations with the EU

This part looks into some of the major challenges that Liechtenstein is facing today as well as possible alternatives to EEA membership. The challenges stem mainly from developments in the European Union and in the other EFTA countries as well as the broader international level rather than from domestic politics.

3.1. Key challenges and scenarios

In the past decade, the European Union has had to face multiple crises: the aftermath of the 2008 economic and financial crisis, the migration crisis in 2015, rule of law problems in some member states, the withdrawal of the United Kingdom, the pandemic in 2020, or Russia's war in Ukraine since February 2022 and its fall out such as the energy crisis, as well as the renewed conflict between Israel and Hamas in 2023. The Ukraine war has also led Denmark to end its 'opt-out' from EU defense policy in a referendum, Finland and Sweden to abandon neutrality and seek accession to NATO, and Ukraine, Georgia and Moldova to apply for EU membership.

In response to the crises, the EU has developed new initiatives such as issuing joint bonds for the recovery fund and joint procurement of vaccines, but also unprecedented sanctions against Russia and a reorientation of its energy policy. In 2022-23, the European Council granted candidate status to Ukraine, Moldova, Bosnia-Herzegovina, and Georgia. Although accession negotiations with the Western Balkan countries and Türkiye had been stagnating, Russia's full-scale invasion of Ukraine in February 2022 has given new momentum to EU enlargement.

On 6 October 2022, the first summit of the European Political Community (EPC) took place in Prague. The EPC offers 44 European countries a platform for political coordination. It allows Liechtenstein to engage with European states beyond the EEA. The Conference on the Future of Europe which ended on 9 May 2022 has also sparked new interest in differentiated integration, including a revival of the question of possible alternatives to EU membership. This picks up from earlier academic and policy debates of concepts such as variable geometry, multi-speed Europe, Europe of concentric circles, or partial membership (e.g. Schimmelfennig and Winzen 2020; Leruth, Gänzle and Trondal 2022). For Liechtenstein, this discussion is of interest since it promises potentially more flexibility in the integration process.

The EU has in the past decade concluded various agreements with third countries, yet the EEA has remained the benchmark for any close partnership in terms of participation in the internal market and decision-making. The more recent negotiations between the EU and the United Kingdom on the Trade and Cooperation Agreement (2020), which followed the negotiations of the Withdrawal Agreement (2017-19), as well as between the EU and

Switzerland on an institutional framework agreement (2014-2018) have further consolidated the conditions for such a participation. In general, the more important the degree of *acquis*-based integration, the more likely is an inclusion of those third countries into the EU's decision-making processes via decision-shaping and other governance mechanisms (see Gstöhl and Phinnemore 2019). Such an inclusion partially compensates the countries' relative loss of autonomy and helps ensure the homogeneity of the shared legal and economic space. While the neighbouring countries face a trade-off between access to the EU and convergence with EU rules, they may also exert (limited) influence: before the downloading of relevant new rules, they can attempt to initiate or shape these rules during the agenda-setting and the formulation phases; and during or after the downloading relevant new EU rules can at times be tweaked or rebuffed in the adoption and implementation phases (Gstöhl and Frommelt 2023). For Liechtenstein decision-shaping is usually less important than securing necessary adaptations. The country also relies more on the expertise of the EFTA Secretariat than Iceland and Norway, and it therefore would like to preserve the EFTA institutions and the two-pillar character of the EEA. Brexit had in the end rather few implications for Liechtenstein.

The bilateral agreements between the EU and Switzerland are relevant for several reasons. Some agreements automatically apply to Liechtenstein as long as it finds itself in a customs union with Switzerland. Other agreements have been extended to Liechtenstein through a trilateral supplementary agreement between Switzerland, Liechtenstein and the EU. Liechtenstein's Schengen and Dublin association is based on protocols to Switzerland's Schengen and Dublin association agreements with the EU. These protocols could continue to legally exist if Switzerland's association was terminated. However, it is unlikely that Liechtenstein could remain in the Schengen area without Switzerland if it wants to maintain a customs union and open border with its neighbour. Moreover, thanks to the agreement on the free movement of persons between Switzerland and the EU, EEA nationals are able to take up residence in Switzerland in order to work in Liechtenstein. This has contributed to meet Liechtenstein's high demand for foreign workers given that it is more difficult to take up residence in Liechtenstein itself.

Yet Liechtenstein's situation would considerably be simplified by a Swiss EEA membership. According to art. 128 EEA Agreement, the Swiss Confederation may at any time apply to become a contracting party. In recent years, the European Union has repeatedly expressed its dissatisfaction with the largely static bilateral approach, which "does not ensure the necessary homogeneity in the parts of the internal market and of the EU policies in which Switzerland participates" nor legal certainty (Council of the EU 2010: para 42). Except for Switzerland's Schengen and Dublin associations and the agreements on air transport as well as on customs facilitation and security, the EU-Swiss bilateral agreements are static. Hence, Switzerland can delay or block unwanted adaptations. A prominent example is the 2004 EU Citizenship Directive which the EU wants to be included in the bilateral agreement on the free movement of persons. There are no common bodies to monitor the correct implementation and application of the agreements. The only exception is the air transport agreement, where the European Commission has some supervisory powers also in relation to Switzerland.

In 2016, in the midst of the negotiations on an institutional framework agreement that should have addressed these issues, Switzerland formally withdrew its 'frozen' EU membership bid of 1992. After a draft agreement was reached at the end of 2018, the Swiss Federal Council

demanded clarification on a few controversial points, yet in May 2021 finally declared the end of the negotiations (Kaddous 2023). An institutional framework agreement between Switzerland and the EU would have stabilized relations in the Liechtenstein-Switzerland-EU regulatory triangle. Without a solution for updating the bilateral agreements, they will continue to erode over time. This may also affect Liechtenstein, for example when certain Swiss products are no longer recognized by the EU and can thus only be traded in one of the two economic areas of which the principality is part. This could raise issues of legal certainty and higher administrative costs. In December 2023, both the Swiss government and the European Commission have proposed mandates for new negotiations that could, based on the common understanding reached, lead to the conclusion of new bilateral agreements and an insertion of institutional provisions in the major market access agreements (European Commission 2023b).

Regarding the other EFTA countries, a future accession of Iceland or Norway to the EU would raise serious questions about the functioning of the EEA. With only two EFTA countries, the EEA would not only lose in political importance but also encounter practical (and financial) difficulties. The decision-making procedures would have to be simplified, the EEA-related bodies downsized, and the EFTA Court of Justice and the EFTA Surveillance Authority would need to change their composition to avoid deadlocks as their decisions are taken by simple majority. This scenario is not on the political agenda. Iceland had negotiated EU membership from 2010 to 2013, largely driven by a severe economic crisis. In March 2015, however, the country requested not to be regarded as an EU candidate country anymore. Since then, holding a referendum on whether to resume the negotiations has basically become a precondition for any move in this direction (Thorhallsson 2019). Norway has already experienced two divisive referendum campaigns about EU membership in 1972 and 1994. The EEA enjoys more popular and political support despite profound constitutional democratic implications (Fossum 2019).

3.2. Alternatives to EEA membership

According to the government, “[t]he EEA has so far proven to be the ideal solution for Liechtenstein’s integration in Europe” (Liechtenstein 2019: 26). A ‘step back’ below the level of integration already achieved – that is, below an internal market association – is not a serious option for the future. The government stated in its 2019 foreign policy report that “[t]he advantages of the single market associated with EEA membership ... must be preserved” (ibid.: 39). “At the same time, the Liechtenstein integration model is continuously being reviewed and compared with alternative models of European integration” (ibid.: 38). The report does not further specify these alternative models, and there is also no public debate about them.

The alternatives to the EEA – other than EU membership – are rather limited, as the Brexit debate has again shown, which basically evolved around the so-called Norwegian, Turkish and Swiss ‘models’ (HM Government 2016). In other words, the EEA, a customs union, and bilateral cooperation or association of some kind. The latter category could take various forms, but the ‘Canadian model’ that had been discussed in the United Kingdom – or the ‘British model’ for that matter – can be ruled out if an internal market association is the goal (see also Gstöhl 2023). Table 2 provides a short comparative assessment of the various options and their political feasibility.

Table 2: Options for future EU-Liechtenstein relations in case of changes to the EEA

Option	Trigger and implications	Political feasibility
Full EU membership	mainly considered in case Switzerland would join the EU at the same time; would further challenge Liechtenstein's administrative capacity, including its representation in the EU institutions	currently no domestic debate about accession and no specific interest from the EU's side either
Partial EU membership (if available)	ongoing debate in the EU about new forms of differentiated integration in light of future enlargement and the need for reforms	Liechtenstein could in the future benefit from new forms of affiliation with the EU
Upgrade of the EEA Agreement	improvement of the functioning of the EEA by further integrating the EEA EFTA states into the EU's decision-making processes and/or expanding the scope of the EEA, but a renegotiation is currently not on the political agenda	no current debate but most likely Liechtenstein would be open to a selective revision of the EEA Agreement (e.g. EFTA Court, EFTA Surveillance Authority) if compatible with its regional union with Switzerland
Trilateralization Switzerland-EU-Liechtenstein	a termination of the EEA or Liechtenstein's withdrawal could lead to a 'trilateralization' of Switzerland-Liechtenstein-EU relations	a trilateralization could bring lower administrative costs (at the expense of political marginalization) and may receive some domestic support in case Swiss-EU relations develop further
Bilateral free trade agreement (& other bilateral agreements) with the EU	a termination of the EEA or Liechtenstein's withdrawal could lead to bilateral agreements between Liechtenstein and the EU similar to the bilateral Swiss-EU relations or the association model between Andorra, San Marino and the EU	no domestic debate in this regard, and the government would like to maintain the level of integration already achieved; no interest from the EU's side either

Source: own compilation.

An inclusion in the EU's customs union would be incompatible with Liechtenstein's regional union with Switzerland, if the latter would not join the EU simultaneously (Gstöhl 2005: 203-205). While Turkey first entered an association and then a customs union with the EU, the reverse process applies to the European small-sized countries Andorra, Monaco and San Marino. They have since 2015 been negotiating association agreement(s) with the EU with Andorra and San Marino reaching a deal with the EU in December 2023. An association of Andorra and San Marino will further integrate them into the internal market, in addition to their current placement in the EU's customs territory for trade in goods. It has therefore been labelled as "a sort of EEA plus" (European Commission 2023a). Indeed, first indications of the scope of the draft agreement, which has not yet been made publicly available, show that the agreement contains the 22 annexes to the EEA Agreement as well as three additional annexes concerning customs, agriculture and trade (San Marino Ministry of Foreign Affairs 2024). Regarding the institutional issues, the European Commission and the Court of Justice of the EU take a more prominent role as there is no separate institutional pillar foreseen like the EFTA pillar. As long as Liechtenstein is in a customs union with Switzerland, such an 'EEA plus' is not attractive for Liechtenstein. Nevertheless, the new association agreement of Andorra and San Marino can be seen as another example that the EU is willing to offer very small states close

relations and shows some flexibility regarding their constraints such as a limited state capacity and a higher sensitiveness regarding immigration. In the declaration on art. 8 TEU, the European Union in fact promises to “take into account the particular situation of small-sized countries which maintain specific relations of proximity with it”. This also makes a potential future bilateralization of Liechtenstein-EU relations more realistic. By contrast, Monaco had in September 2023 suspended the negotiations as the government was not prepared to accept the legal and socio-economic implications of implementing the four freedoms of the internal market (Monaco Hebdo 2023).

Finally, any institutional concessions from the EU are probably easier to obtain in accession negotiations than in a ‘bilateralization’ of the EEA. The EEA Agreement 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. Scholars have argued that, if the accession criteria were fulfilled, the European Union had to accept any European state that applied to become a member, and that the small size of a candidate could not serve as a legal reason to reject a membership application (Breuss 2010: 181). If accession was not possible, “the principle of best possible participation” would require a solution as close as possible to full membership (Bruha and Alsen 2005: 176). Flexible solutions would have to be found for the representation of such a country in the Union’s organs and for any specific problems with the implementation of the *acquis*.

The treatment of a membership application from Liechtenstein might well depend on whether Switzerland, another EEA EFTA country or another very small state applies at the same time. However, some challenges will in any case arise. Compared to the EEA, EU membership would improve Liechtenstein’s participatory rights, yet the country might – due to its limited administrative capacities – not be able to benefit from all these rights or to fulfil all the obligations of a full member. In a study on Andorra, Emerson (2007: iii-iv) envisaged 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”. Any special arrangement would need to respect the status as a sovereign country and avoid a mere second-class membership. Liechtenstein already uses certain ‘outsourcing instruments’ of cooperation or delegation which save resources in less important issue areas, based on agreements with Switzerland or Austria. 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 in case of EU membership allow Liechtenstein to even (re)gain limited influence (Frommelt and Gstöhl 2011: 54-55).

4. Conclusion

Liechtenstein is closely integrated with the European Economic Area and the Swiss economic area, holding since 1995 a special position at the intersection of both economic and legal spaces. Both EFTA countries are associated with the Schengen area and the Dublin Convention. Despite its small size and limited resources, Liechtenstein has shown that it can effectively participate in a complex and dynamic integration project, with a good national implementation record and well-functioning administration. This is facilitated by specific, size-related derogations and good relations with its immediate neighbours, its EFTA partners and the EFTA Secretariat.

EEA membership has had a significant impact on the country's economic, legal and political development. In economic terms, EEA membership has primarily led to a liberalization and diversification across various economic sectors. The EEA market is essential for both industry and the financial centre. Politically, EEA membership has led to greater autonomy vis-à-vis Switzerland. This was accompanied by an expansion of the public administration, more own legislation and a proliferation of interest groups.

An accession to the European Union is not on the political agenda, in particular not without neighbouring Switzerland. However, should the EEA fall apart, the priority would be to keep the level of European integration achieved so far, be it through a 'bilateralization' with the EU or a 'trilateralization' EU-Switzerland-Liechtenstein. The latter would in particular presuppose that Switzerland finds a solution with the EU to the so-called institutional question regarding the dynamic updating of key bilateral agreements in line with the development of EU law and on settling disputes.

Overall, it can be concluded that for the foreseeable future Liechtenstein will continue to be satisfied with its membership in the EEA. Although the EEA suffers from some institutional shortcomings, Liechtenstein pursues a pragmatic approach and is historically accustomed to absorbing international and foreign law. EEA matters are usually not politicized in the parliament nor in the public, and there is a strong 'permissive consensus'. In comparison to Switzerland, direct democracy in Liechtenstein is less likely to pose a serious challenge to the country's European integration. Nonetheless, the challenges surrounding the EEA are likely to increase. On the one hand, the intensity of the political debate in general has made it more difficult for the government to push through political decisions in parliament and vis-à-vis the people. On the other hand, the success of Liechtenstein's EEA membership also depends on its compatibility with membership of the Swiss customs union and on the good will of the EU and the EFTA partners to continue allowing small state-specific exceptions.

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