



LIECHTENSTEIN-INSTITUT

30 October 2019

The EEA Agreement: Scope, Institutions and Challenges

Christian Frommelt

Contact: christian.frommelt@liechtenstein-institut.li

53RD MEETING OF THE EEA JOINT PARLIAMENTARY COMMITTEE



Starting point: EEA as a model of differentiated integration



- Institutional arrangements depend on ...
 - Extent of integration
 - Properties of integrated policies
 - Policy-specific modes of governance in the EU
 - Political context



Historical and political context of the EEA [1]

- EFTA preferences
 - Policy-specific and intergovernmental integration
 - Decision making power for relevant policies
 - Permanent opt-outs
- EU principles
 - ‘Community integration comes first’
 - ‘Community’s decision making autonomy must be preserved’
 - ‘Balance between benefits and obligations’



Historical and political context of the EEA [2]

- Outcome: EEA Agreement:
 - Global approach
 - Two-pillar structure
 - No right to vote for EEA EFTA States
 - Very limited access to the EU legislators
- Aim of the EEA: dynamic homogeneity
- Purpose of the EEA: managing diversity



Scope of the EEA Agreement

Goods

- > *Agriculture/Fisheries/Food Safety*
- > *Customs/Trade Facilitation*
- > *Energy*
- > *Product Sectors/Product Safety and Market Surveillance*
- > *Standardisation/Mutual Recognition Agreements/Technical Cooperation*

Services

- > *Services Directive*
- > *Electronic Communication, Audiovisual Services and Information Society*
- > *Data Protection*
- > *Financial Services*
- > *Postal Services*
- > *Transport*

Capital

- > *Free Movement of Capital*

Persons

- > *Free Movement of Persons*
- > *Recognition of Professional Qualifications*
- > *Social Security*

Horizontal Policies

- > *Budgetary Matters*
- > *Civil Protection*
- > *Company Law*
- > *Consumer Protection*
- > *Cultural Affairs*
- > *Education, Training and Youth*
- > *Employment and Social Policy*
- > *Environment*
- > *Gender Equality, Anti-Discrimination and Family Policy*
- > *Health and Safety at Work and Labour Law*
- > *Public Health*
- > *Research and Innovation*
- > *Single Market Policies and Tools*
- > *Statistics*

Competition/State Aid/Procurement/IPR

- > *Competition/State Aid/Procurement/IPR*



Level of integration provided by the EEA Agreement

Share of EU law incorporated into the EEA Agreement

- 11.2 % of EU regulations and directives adopted by the EU between 1994 and 2015 (*including amending law*)
- **19.6 % of EU regulations and directives in force on 31 December 2015 (*not amending law*)**
- 21.9 % of EU regulations and directives adopted by the EU Council and EU Parliament between 1994 and 2015 (*including amending law*)
- **50.3 % of basic EU regulations and directives adopted by the EU Council and EU Parliament in force on 31 December 2012 (*very strict interpretation of basic acts*)**

In a nutshell:

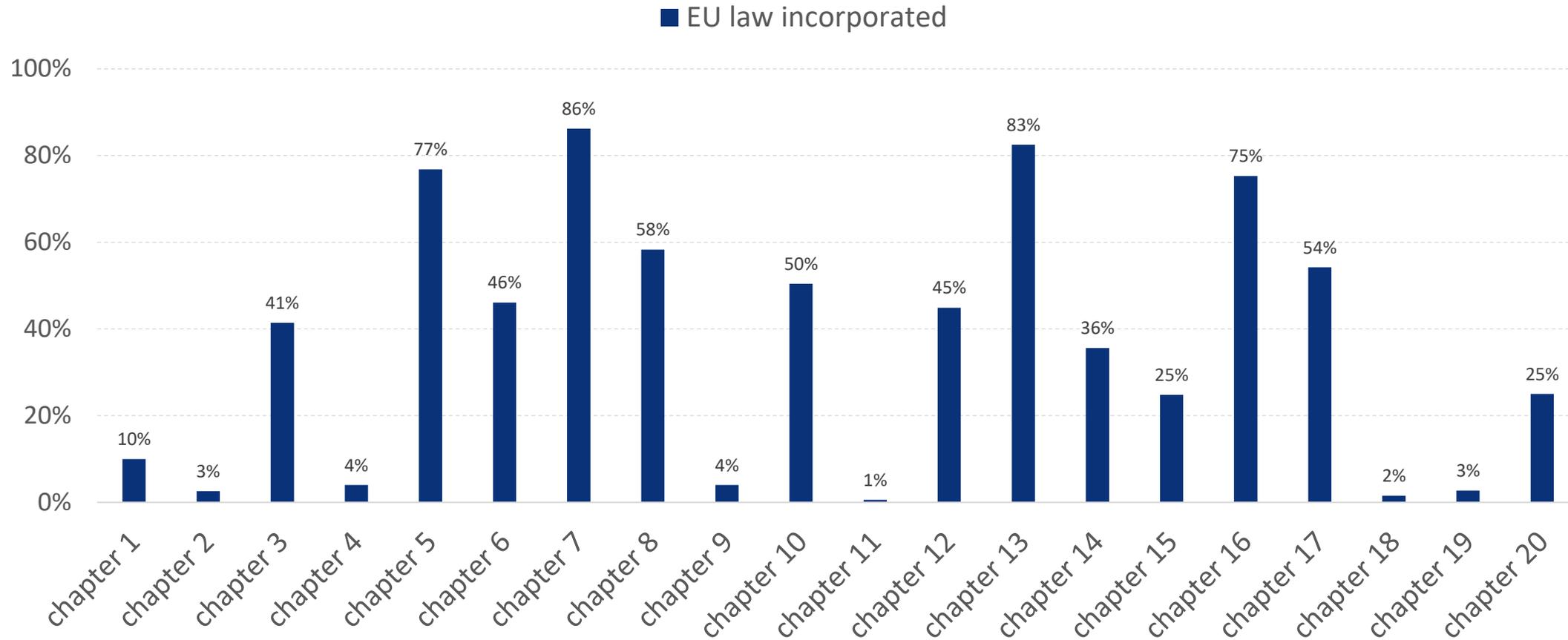
- Level of integration difficult to measure
- EU legal acts are of different relevance and therefore not a good indicator to measure level of integration
- Story of EEA EFTA states as '70 percent EU members' misleading



Level of integration across policy fields

In a nutshell:

- Level of integration varies across policy fields
- Rarely full or zero correspondence of EU and EEA acquis

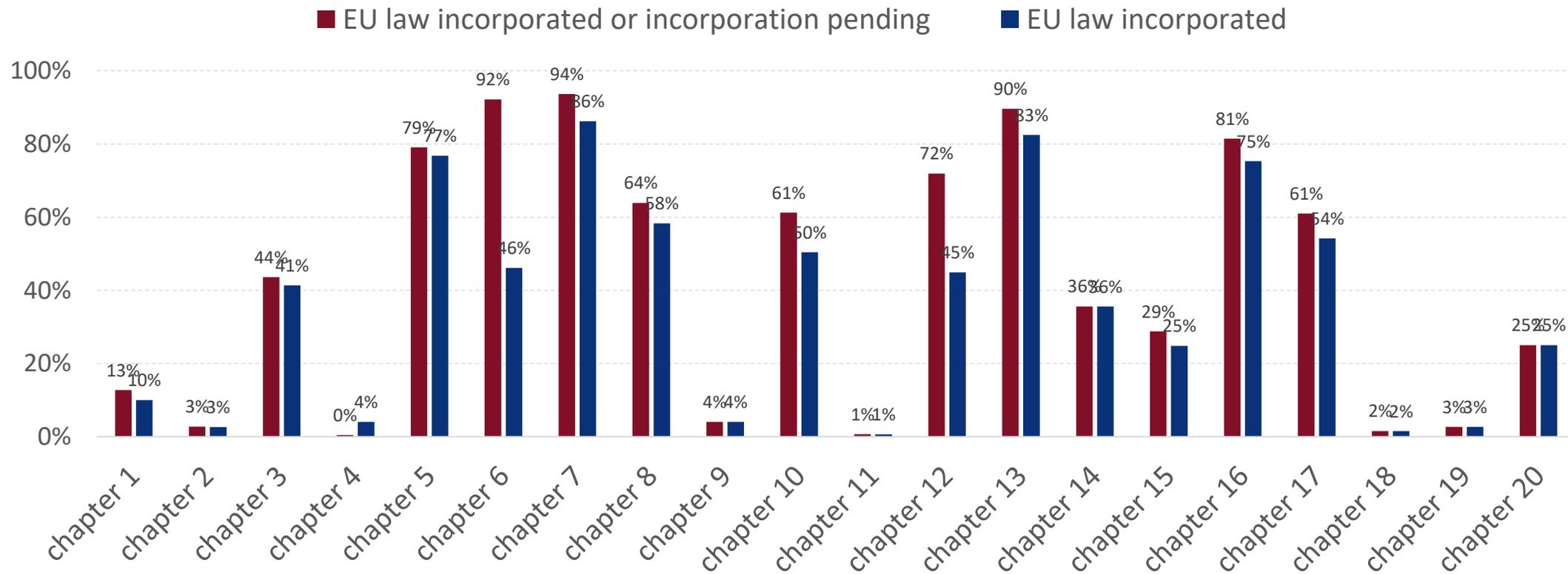


Note: Comparison of EEA secondary law with EU secondary law based on EU directory 31 December 2015; only basic directives and regulations; for more information see *Frommelt, C. In search for effective external differentiated integration, Liechtenstein Institute.*

Level of integration across policy fields

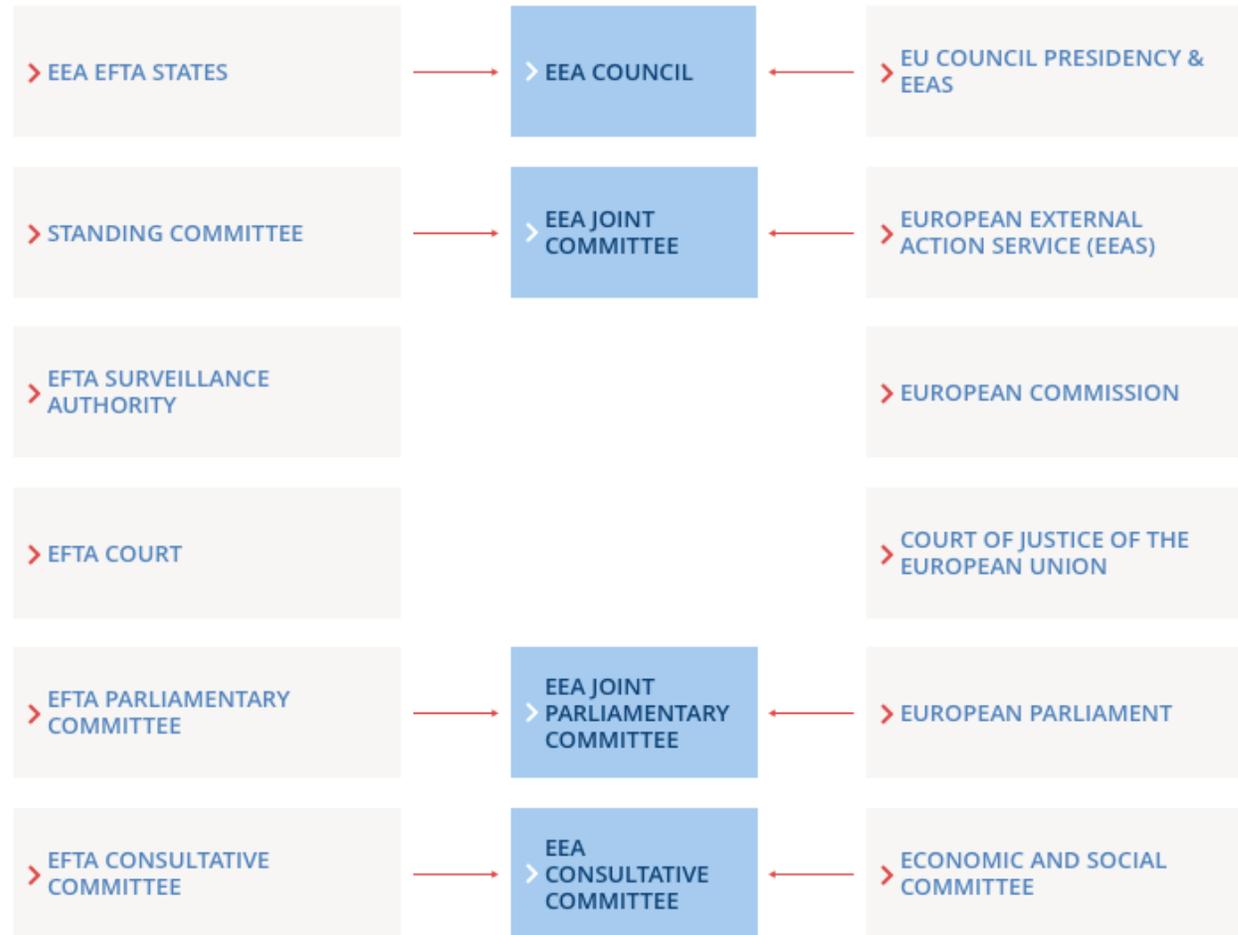
In a nutshell:

- Variation in the level of integration due to delayed incorporation



Note: Comparison of EEA secondary law with EU secondary law based on EU directory 31 December 2015; only basic directives and regulations; for more information see *Frommelt, C. In search for effective external differentiated integration, Liechtenstein Institute.*

Institutional framework of the EEA Agreement

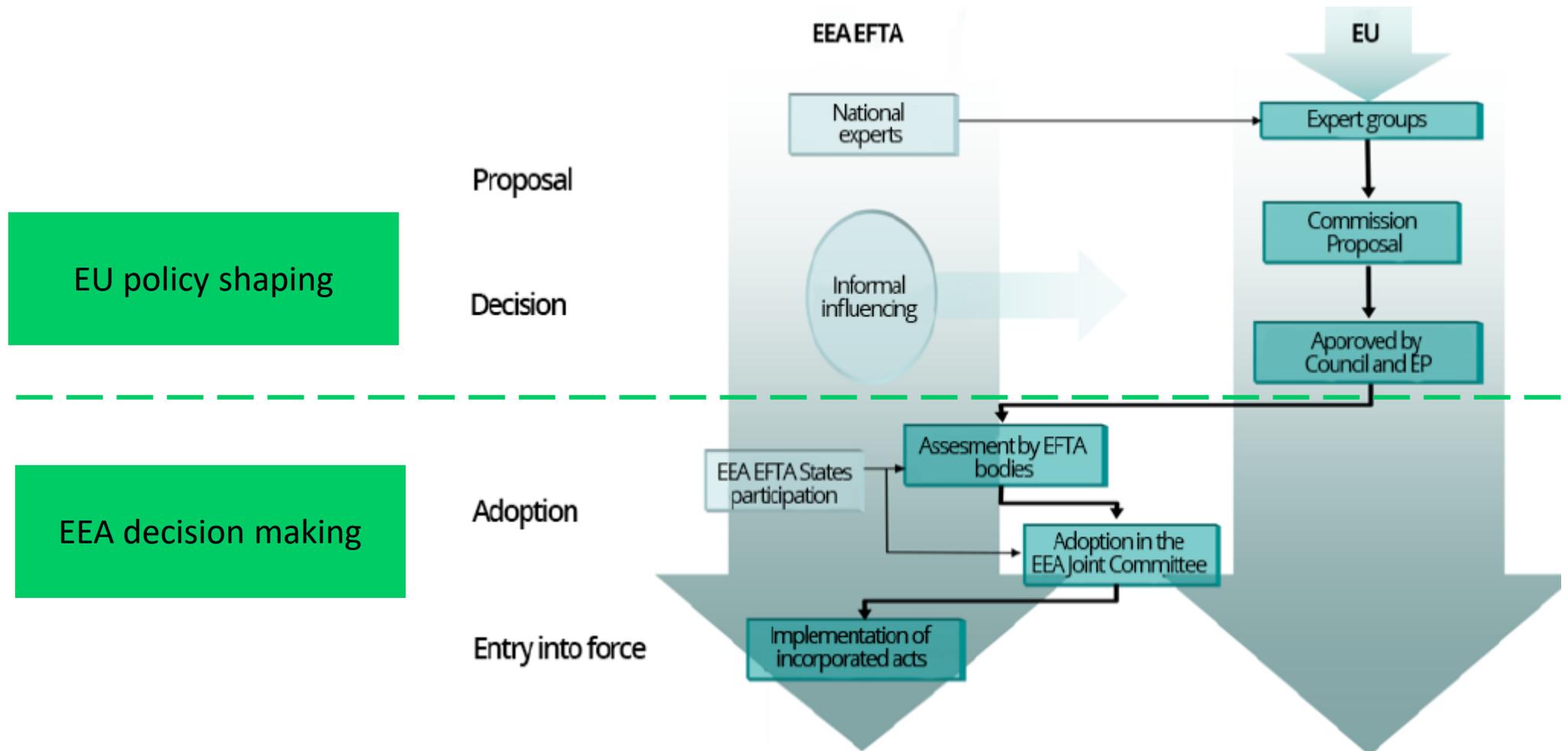


This diagram illustrates the management of the EEA Agreement. The left pillar shows the EFTA States and their institutions, while the right pillar shows the EU side. The joint EEA bodies are in the middle.

Policy cycle of the EEA

In a nutshell:

- Complex policy cycle
- Homogeneity against the background of different institutions and different institutional principles



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

EU policy shaping

- Legally anchored decision shaping rights:
 - Seconded national experts
 - EEA EFTA comments
 - Involvement of EEA EFTA experts
 - Commission committees
 - EEA Joint Committee and EEA Council
 - ‘Continuous information and consultation process’ (Article 99)
 - Cooperation ‘in good faith’ (Article 99)
- Informal decision shaping mechanism
 - Political dialogue and lobbying with EU bodies, in particular EU Council
 - Political dialogue and lobbying with EU member states

In a nutshell:

- Policy shaping more appropriate term (‘broader’)
- Coordination at EFTA level could be improved to administrate access to comitology and expert groups
- EEA EFTA States have to take advantages of possibilities offered by EU policy shaping
- Policy shaping crucial for the EEA
- *Purpose of policy shaping is to increase efficiency of the EEA rather than its legitimacy*



EEA decision making

- Static in scope, dynamic in character
 - At the time of signing in 1992: 1.875 legal acts
 - Dynamic incorporation: 11.000 legal acts
 - EEA law in force: 6.000 legal acts
- Different procedures
 - Standard procedure
 - Simplified procedure (since 2001)
 - Fast-track procedure (since 2014)

Requirements

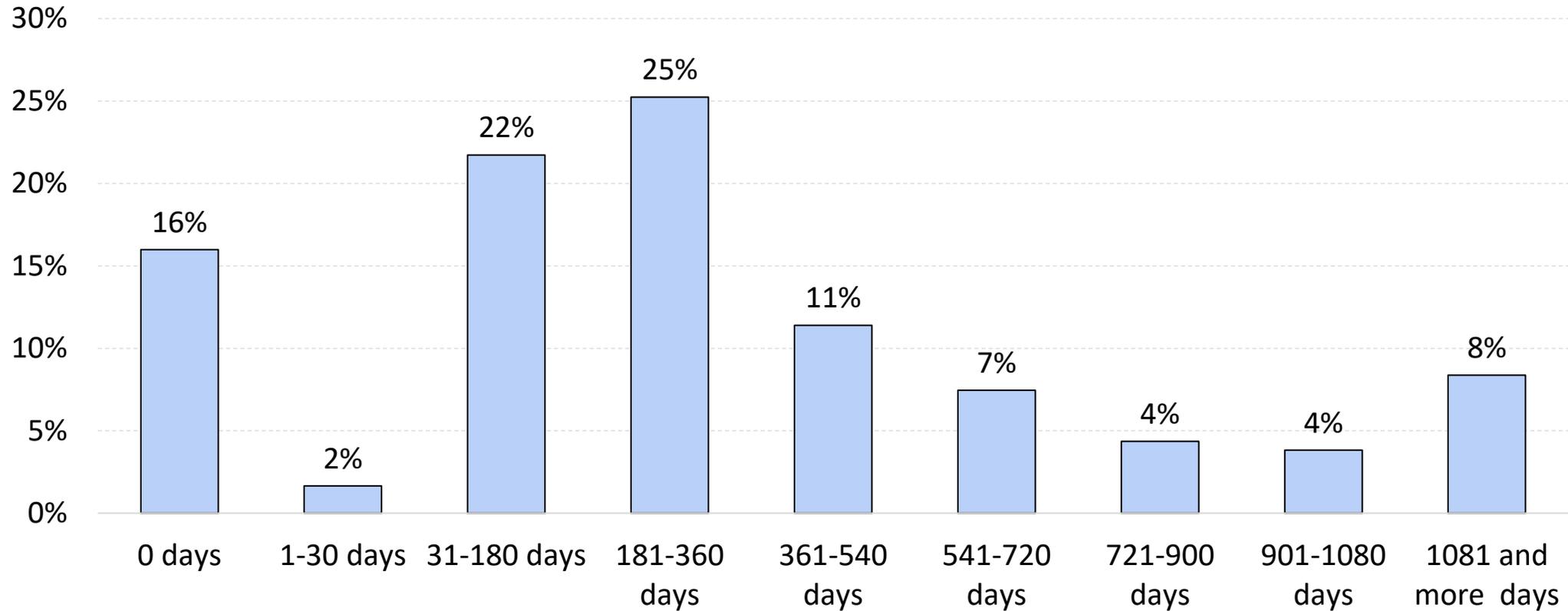
- Assessment of EEA relevance
- Need for adaptations
- Need for constitutional requirements

Challenges

- To secure fast incorporation
- To maintain two-pillar structure
- To ensure input-legitimacy



Speed of incorporation: Share of EU acts with different compliance dates in the EU and the EEA



Note: Only directives and regulations (1994 to 2016; N = 4573), for more information see Frommelt, C. (2017), In search for effective external differentiated integration, Liechtenstein Institute.

EEA modes of governance

- No integration, i. e. no EEA-level policy coordination
- Intergovernmental cooperation
 - No obligation to speak with one voice
 - No threat of suspension
- Intergovernmental cooperation under a shadow of hierarchy
 - Obligation to speak with single voice
 - Asymmetric interdependence
- Quasi-supranational centralisation within the EFTA pillar
 - Decision making by ESA
- Quasi-supranational centralisation across EU and EFTA pillars
 - Decision making by ESA based on draft enacted by EU institutions
- Subordination to the EU pillar
 - Exclusive decision making of EU institutions

In a nutshell:

- EEA still lacks supranational traits of the EU.
- But EEA is a system *sui generis*
 - Different modes of governance for different policies
 - No longer purely intergovernmental cooperation
 - Trade-off between far-reaching EU policy shaping and hierarchical EEA decision making.



EEA as a model of differentiated integration

- Benchmark for external differentiated integration
 - Long-term partnership
 - Extension of the EU's internal market
 - High adaptability of the EEA
 - Continuous technical and political dialogue
 - Continuous efforts to improve functioning of the EEA
- 'Not made for export' (Ulf Sverdrup)
 - Highly complex institutional framework
 - Diffuse but indistinct functional scope
 - Obligation to speak with one voice
 - Political conditions contribute to success of the EEA
- Democratic deficit
 - Lack of accountability and congruence between decision makers and decision takers
 - Shadow of hierarchy due to asymmetrical dependence
 - Lack of transparency and debate/ limited knowledge
 - But: no automatic transfer of EU policies and no hegemony

In a nutshell:

- Institutions are *a necessary but not a sufficient* condition for the functioning of the EEA.
- The EEA creates a democratic trap as it is hardly possible to balance input and output legitimacy.



Current and future institutional challenges of the EEA

Ongoing challenges

- To ensure functioning of the EEA
- To balance input-legitimacy and output-legitimacy
- To maintain political support for the EEA
- To improve constitutional conditions of integration
- To maintain balance between benefits and rights
- To keep up the ambition of being the benchmark of external differentiated integration

Future challenges

- Increasing competition between different models of association after Brexit?
- Increasing polarization of integration on left-right-scale due to deepened integration?
- More pressure by the EU to comply with goals of the EEA?

In a nutshell:

EEA EFTA States shall ...

- increase the capacity of the EFTA institutions
- maintain their reputation as a credible partners
- increase knowledge on the EEA

In a nutshell:

- Aim of the EEA is to establish homogeneity
- Purpose of the EEA is to manage diversity
- *Certain supply of differentiation by the EU is required*



More information:

www.liechtenstein-institut.li

www.Efta-studies.org

