

LIECHTENSTEIN-INSTITUT

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# The European Economic Area: a two-pillar system

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**The EU's 'Privileged Partnerships' with its Neighbours:  
An Institutional Perspective**  
College of Europe, Bruges



# Overall questions related to the conference

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- Which are the institutionalised arrangements for integration into and cooperation with the EU in the EEA?
- What are the major advantages and shortcomings?
- What lessons can be drawn from an institutional perspective regarding 'privileged partnerships'?



# Analytical dimensions

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- Why have the EU and the EEA EFTA states agreed on the EEA's institutional architecture?
- How well does the EEA's institutional architecture function?
- How do the institutional arrangements contribute to the overall functioning of the EEA?
- How inclusive is the institutional architecture of the EEA?



# Requirements for governance of an international treaty



# Elements of institutional arrangements

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*The institutional arrangements of an agreement between the EU and a non-member state shall ensure ...*

- its access to EU policy-making;
- ongoing management of the agreement;
- supervision and enforcement of the agreed policies;
- dispute settlement;
- the enforcement of dispute settlement.



# Objectives of institutional arrangements

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*An international agreement has to be effective by ...*

- avoiding legal uncertainty and regulatory fragmentation;
- establishing a continuous political dialogue;
- adapting to changes in the political environment;
- mobilising the required resources.



# From the perspective of the non-member state

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*The institutional arrangements of an agreement between the EU and a non-member state shall limit the extent ...*

- to which the non-member state has to pool its sovereignty;
- to which the non-member state has to delegate decision-making authority to new (non-intergovernmental) institutions.



# From the perspective of the EU

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*The institutional arrangements of an agreement between the EU and a non-member state shall preserve ...*

- the integrity of the Single Market;
- the integrity of the EU's legal order;
- the autonomy of the EU's decision-making.





# The EU's perspective: example judicial bodies (Source: TF-50, 19 January 2018)

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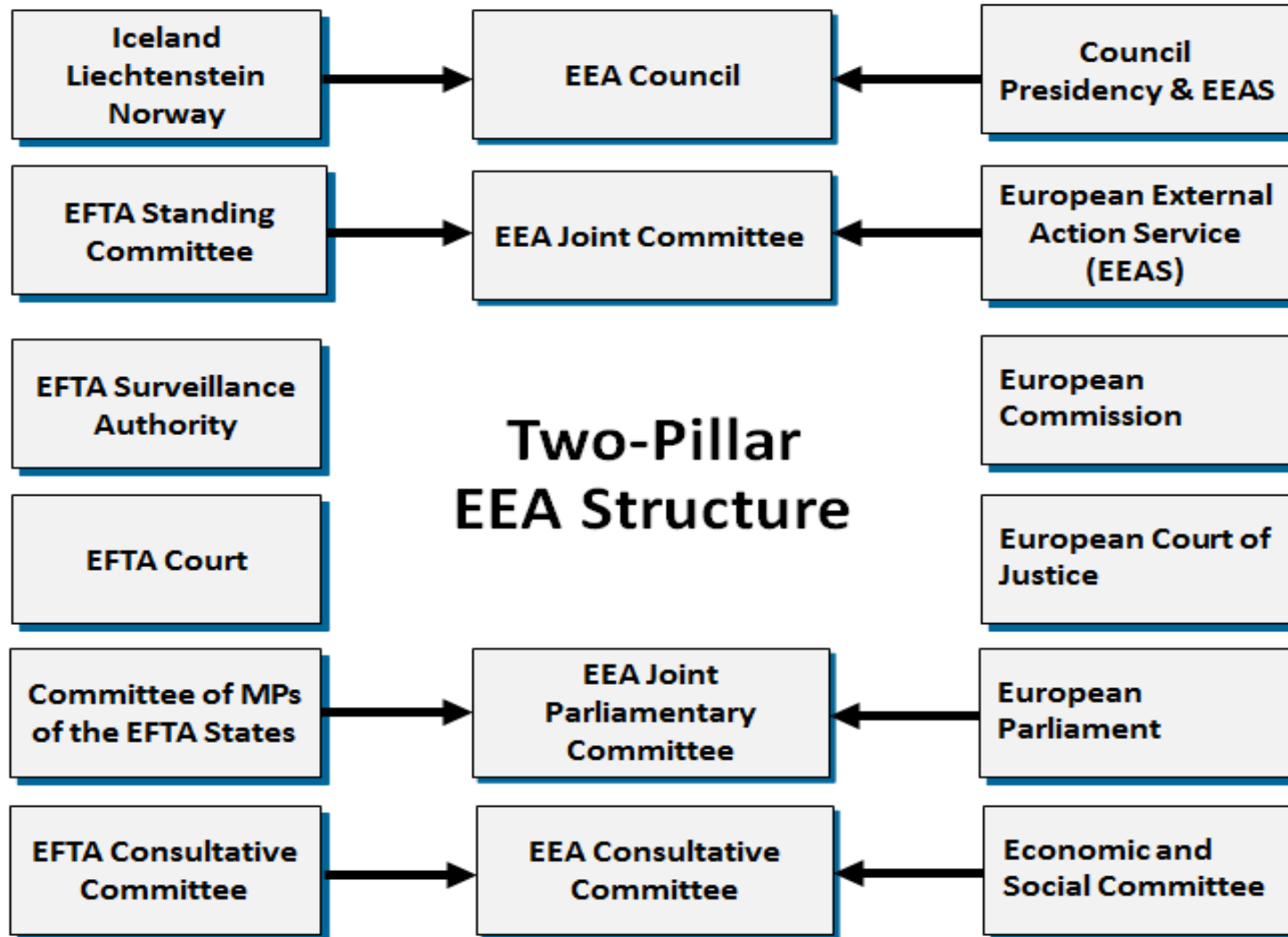
- Dispute settlement may not bind EU, internally, to a particular interpretation of EU law
- Judicial body may not interpret provisions in substance identical to EU law
- Joint Committee decisions must not affect ECJ case-law
- No powers to rule on respective competences of EU and member states
- No organic links (no judges sitting in double capacity)
- ECJ rulings must be binding in any case



# Basic institutional features of the EEA



# Two-Pillar EEA Structure



# Challenges of the EEA's institutional framework

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- Far-reaching scope of the EEA Agreement
- Four freedoms and numerous horizontal and flanking policies
- So far 11'000 EU legal acts have been incorporated into the EEA Agreement since 1992
- More than 9'700 acts incorporated by decisions of the EEA Joint Committee
- ESA has to monitor implementation status of over 4'000 directives and regulations in force




# EEA Governance



# Modes of EEA decision-making [1]

Transfer of decision-making power

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- No EEA-level policy coordination
  - Intergovernmental coordination within the EEA JC
    - Exclusive decision-making by EEA JC
    - Exemption for individual EEA EFTA state possible
    - No threat of suspension
  - Intergovernmental cooperation within the EEA JC
    - Exclusive decision-making by EEA JC
    - Obligation to speak with ‘single voice’
    - (Potential) suspension of affected parts of EEA Agreement in case of non-incorporation



# Modes of EEA decision-making [2]

Transfer of decision-making power



- 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



# Deepening in the EEA: mechanism

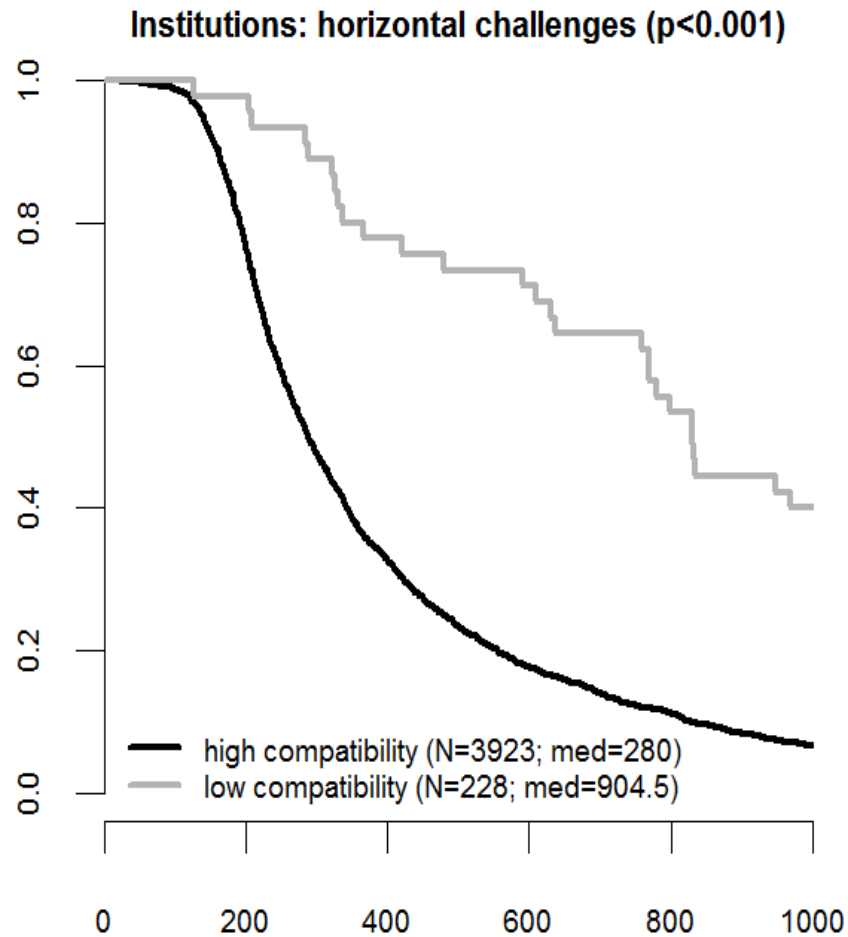
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- Within EEA EFTA pillar:
  - Transfer of decision-making power from the EEA EFTA states to EEA EFTA institutions
- Across EU and EEA EFTA pillar:
  - EU specific patterns of governance spill over into the EEA
  - EEA decision-making is tied more closely to EU decision-making
- Functionalist logic but various players
  - EFTA institutions
  - EEA EFTA states
  - Businesses of the EEA EFTA states





# Conditions of effective external differentiation



Note: Period of analysis 1995-2015 (EEA JCD); 1994-2014 (EU acts); only directives and regulations; share of incorporated acts (y-axis); time to incorporation in days (x-axis)



# Assessment of the EEA institutional framework

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- High institutional ambiguity and complexity
  - Policy-specific modes of governance
  - Wide range of decision-making authority
- ➔ EEA has transcended narrow confines of its initial conceptualisation as an agreement under international law
- ➔ Two-pillar structure has been filled with a multitude of informal and formal ad hoc rules



# Discussion



# Why have the EU and the EEA EFTA states agreed on the EEA's institutional architecture?

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- Institutional arrangements depend on ...
  - extent of integration
  - properties of integrated policies
  - policy-specific Governance in the EU
  - political context
- Basic principles of the EU regarding international treaties
- EEA EFTA states' ideological and political constraints on integration



# How well does the EEA's institutional architecture function?

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- Malfunctions regarding specific elements of policy cycle, e. g. regarding speed of incorporation
- Certain adaptability and flexibility of institutional framework
- Certain institutional innovations
- Continuous political dialogue as the basis of trust and credibility



# How do the institutional arrangements contribute to the overall functioning of the EEA?

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- Institutional path-dependency tends to lock in prior integration.
- Institutional framework is a necessary but not sufficient conditions for effective external differentiation.
- Country-specific factors such as administrative capacity, degree of interdependence, degree of politicisation also contribute to the functioning of the EEA's institutional framework.



# How inclusive is the institutional architecture of the EEA?

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- Democratic deficit
  - Lack of accountability and congruence
  - Shadow of hierarchy
  - Lack of transparency and debate
- Democratic trap
  - Impossibility to balance input- and output-legitimacy
- But: no automatic transfer of EU policies and no hegemony



# Lessons for the EEA and the EEA EFTA states

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*The EEA EFTA states have to ...*

- ... ensure that their involvement in EU policy-making takes place at an early stage.
- ... entrust the EFTA Secretariat with a leading role in the administration of the process of the incorporation of new EU legislation.
- ... provide the administrative and political resources at the national level in order to take advantage of their decision-shaping rights.
- ... continuously raise awareness of specific features of the EEA within the EU.
- ... finally accept the constitutional implication that come with advanced economic integration.



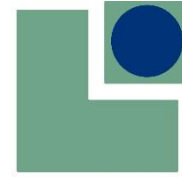


# Lessons for 'privileged partnerships'

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- An effective and inclusive model of external differentiation enabling non-EU countries to fully cope with the legislative dynamics of the EU has yet to be found.
- The search for efficient institutional arrangements gets even more difficult as integration into the EU proceeds.
- This search does not end with the agreement on an institutional set-up as additional institutional arrangements are needed for new EU acts to be incorporated into the existing agreement.





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

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