

# **Liechtenstein's tailor-made arrangements in the EEA: A small state's creative solutions in European integration**

Christian Frommelt

## **1 Introduction**

With approximately 37'000 inhabitants the Principality of Liechtenstein is Europe's fourth smallest country. Liechtenstein has a longstanding sovereign history which goes back to 1806 when Napoleon established the Confederation of the Rhine. Due to its smallness, however, Liechtenstein has always been closely integrated with its surrounding countries. From 1852 to 1919 Liechtenstein was in a customs and currency union with the Austrian monarchy. After this customs and currency union ended with World War I, Liechtenstein has built up an even closer regional union with Switzerland. It is based on the Customs Treaty of 1923 but includes also many other agreements (inter alia the treatment of foreigners, the enforcement of civil judgments, the control of medicines, air traffic, patent protection and the currency). From Liechtenstein's perspective, this regional union is a "genuine success story as the economic actors of Liechtenstein gained access to the Swiss market and to the export markets that Switzerland had opened up through trade agreements" (Frommelt and Gstöhl 2011, p. 8). In addition to the close regional cooperation, Liechtenstein is also deeply embedded in European integration. On 2 May 1992, after long negotiations, representatives of the EU and its member states as well as of the countries of the European Free Trade Association (EFTA) signed the Agreement on the European Economic Area (EEA). After Switzerland opted out due to a popular vote and Austria, Finland, and Sweden joined the European Union (EU), Norway, Iceland and Liechtenstein remain the only EFTA countries that are contracting parties of the EEA (the so called EEA EFTA states). Today, Liechtenstein finds itself as a member of the EEA half-way between Austria, a member of the EU, and Switzerland, which has stayed out of both the EEA and the EU.

The EEA extends the EU's internal market to the EFTA countries, with the exception of the Common Agriculture and Fisheries Policies, the Customs Union and Common Trade Policy, the Common Foreign and Security Policy, Justice and Home Affairs (even though the EFTA countries are part of the Schengen area) as well as the Monetary Union. It is based on the primary legislation of the EU and on the respective secondary law "adopted by the EU institutions on an ongoing basis" (EFTA Secretariat 2015a). Due to the dynamic

conceptualization of the EEA, the common rules are continuously updated by adding new EEA-relevant EU legislation. To this end, the contracting parties have established a two-pillar structure with EEA EFTA institutions matching those on the EU side. The two pillars are linked by joint bodies that are in charge for all “substantive decisions relating to the EEA Agreement and its operation” (EFTA Secretariat 2015b). These complex institutional arrangements shall ensure that within the functional scope of the EEA the same legal obligations apply to EEA EFTA and EU states.

The main goal laid down by the EEA Agreement is homogeneity. It means that within the EEA’s functional scope, EEA EFTA and EU states have to comply with the same legal obligations. Put differently, homogeneity is fully realized by consistent selection, timely and complete adoption and correct application of EEA-relevant EU legislation by the EEA EFTA states. As a result, since 1994 the EEA EFTA states have incorporated more than 7’500 EU acts into the EEA Agreement, which had to be transposed into domestic law (if not directly applicable).

Theoretically, although Liechtenstein’s population is only a fraction of the smallest other EEA member, it has to fulfil the same legal obligations and is equally represented in the institutional setup of the EEA. In this regard, European integration of a very small state like Liechtenstein faces two major difficulties: first, the contracting parties have to respect the sovereignty of every (small-sized) member state even though this may contradict the idea of an adequate (at least of a proportional) democratic representation of their citizens. Second, the very small states themselves have to prove their ability to implement the respective *acquis* in order to fulfil all obligations set out by an integration model.

This chapter focuses on the second aspect. It analyzes to what extent and under what conditions a very small state like Liechtenstein is capable to participate in European integration. To this end I assess how the smallness of Liechtenstein has affected its EEA membership throughout the last 20 years. In answering the research question, I try to show how smallness, public administration, and effective European governance are related and how very small states can contribute to the European integration project. Thereby I argue that a very small state may have little human resources and thus limited administrative capacity but can still ensure a highly efficient bureaucracy in order to comply with international obligations. As a result, it is no surprise that the domestic as well as international evaluations of Liechtenstein’s EEA membership are mainly positive. On the other hand, this chapter also shows that Liechtenstein has by far the most opt-outs of all EEA members. Against this background, I conclude that the success of Liechtenstein’s membership is also the result of

various specific derogations and opt-outs provided to Liechtenstein by the EU and the other contracting parties.

The chapter will first give an overview on Liechtenstein's participation in the European integration process. Second, it will present some empirical data on the domestic and international evaluation of Liechtenstein's EEA membership. Third, it will determine different elements of a country's administrative capacity and explain how those elements ensure the compliance with international obligations. Fourth, it will describe the administrative structure and procedures of Liechtenstein and specifically its foreign policy. Fifth, it will give an overview of Liechtenstein's tailor-made arrangements that are related to its smallness. Finally, it will raise the question how western European small-sized countries can benefit from Liechtenstein's experience in the European integration process.

## **2 Liechtenstein's participation in European integration<sup>1</sup>**

Liechtenstein's desire to adhere to international organizations was often met with scepticism. The most prominent example is the rejection of Liechtenstein's application to join the League of Nations in 1920 due to its small size, the delegation of some aspects of its sovereignty and the lack of an army (Gstöhl 2001). Similar obstacles had to be overcome later on when joining the International Court of Justice (1950), the Council of Europe (1978) and the United Nations (1990) as the first very small European state (Frommelt and Gstöhl 2011, p. 12). From the perspective of Liechtenstein's foreign policy, membership in international organizations has therefore always been seen as a strategy to safeguard Liechtenstein's independence and international recognition as the two main elements of the country's sovereignty.

Based on the Customs Treaty of 1923 Liechtenstein delegated its treaty-making power in trade matters to Switzerland. As a result, Liechtenstein was initially not an independent contracting party of the EFTA (Frommelt and Gstöhl 2011, p. 13). Instead, a special protocol of the EFTA Convention stated that the EFTA provisions also apply to Liechtenstein as long as the customs union with Switzerland persists. In this period, Liechtenstein was formally represented by the Swiss delegation to EFTA. The same applied to the 1972 Free Trade Agreement between the European Community (EC) and Switzerland, yet Liechtenstein was allowed to have a representative in the Mixed Committee. By contrast, from the very start in the 1980s, Liechtenstein was invited to the "Luxembourg Process". Moreover, the principality

---

<sup>1</sup> This section closely follows Frommelt and Gstöhl (2011, pp. 12-16).

also took part in the informal exploratory talks about closer cooperation following Commission President Delors' 1989 initiative for an European economic area. Liechtenstein thus participated independently in this decisive stage of European integration.

From the perspective of Liechtenstein the envisaged economic area with its four freedoms as well as horizontal and flanking policies went well beyond the Swiss competences in the framework of the Customs Treaty. The completion of the EU's internal market and the establishment of the World Trade Organization (WTO) made it increasingly difficult to separate trade in goods from other matters of international negotiations which the treaty-making power delegated to Switzerland did not cover. In 1991 the Customs Treaty was thus modified to allow Liechtenstein its own membership in international organizations and agreements, provided that Switzerland was also a contracting party. Liechtenstein joined the EFTA as well as the WTO and participated in its own right in the EEA negotiations. Hence, in the context of the new dynamics in European integration and the end of the Cold War, Liechtenstein within a few years emancipated itself from Switzerland and developed an own integration policy vis-à-vis the EU.

Liechtenstein's accession to the EEA was the result of a lengthy and intense domestic debate, facing serious opposition by the local manufacturing companies as well as numerous trustees and other actors of the finance sector. The opponents of an EEA membership used several arguments that were related to Liechtenstein's smallness, in particular, the lack of bargaining power and the lack of administrative resources. Put simply, for the opponents Liechtenstein was too small to join the EEA and an EEA membership would not be feasible. Nonetheless, in September 1992, the Liechtenstein Parliament (*Landtag*) approved the EEA Agreement but decided to hold a national referendum.

The government set the date for Liechtenstein's vote on the EEA Agreement one week after the Swiss referendum on the same matter. The Swiss electorate and cantons rejected an EEA membership by a very narrow margin. Against all odds, 55.8 percent of the Liechtensteiners approved the EEA Agreement in the referendum. Of all possible "yes/no" combinations between the two countries, this scenario was the most unexpected one as the two economies seemed too tightly interwoven to permit a different policy choice.

As a result, the Liechtenstein government first had to renegotiate relations with Switzerland, then have the solution approved by the EEA partners and finally overcome the domestic ratification hurdle again. In March 1995, the *Landtag* approved several changes to the Customs Treaty and other agreements between Liechtenstein and Switzerland. The Customs Treaty now allowed Liechtenstein to join international organizations or agreements without

Switzerland. However, the parallel membership of Liechtenstein in two important economic and legal areas also required adaptations to the EEA Agreement. The solution of the “Gordian knot” was based on the innovative principle of parallel marketability which allows products meeting either EEA or Swiss requirements to circulate in Liechtenstein (Baur 1996). The principality created a market surveillance and control system to prevent the circumvention of Swiss import restrictions for EEA goods, adapted its customs procedures for the import of EEA goods and was granted certain transitional periods for areas where legal discrepancies between the Swiss and the EEA *acquis* persisted.

The second referendum took place in April 1995 after the approval by Parliament and vivid campaigns in favor and against EEA membership. In a remarkable show of independence, Liechtensteiners voted again in favor of European integration. With 55.9 percent “yes” votes the support was about the same as in 1992. On 1 May 1995 the principality became a full EEA member and thus achieved its first own treaty-based relationship with the EU.

Several factors allowed to “square the circle” of participating in the EEA’s enhanced free trade area while maintaining the bilateral customs union with a non-member (Gstöhl 1997, pp. 164-166): the small size of Liechtenstein made it quite easy to observe the trade flows, the need to adapt the bilateral relations was mainly restricted to the free movement of goods and the differences between EU and Swiss rules that could potentially lead to conflict were relatively small. The political will on all sides to honor the Liechtensteiners’ wish to join the EEA despite Switzerland’s opt-out was strong – the Swiss had no interest in complicating their future bilateral negotiations with the EU, while the Union was keen to demonstrate its understanding for the concerns of small states after the Danish “no” to the Maastricht Treaty. Finally, Art. 121(b) of the EEA Agreement already recognized the regional union between Liechtenstein and Switzerland as being in conformity with the EEA Agreement to the extent that it did not impair its functioning. It would indeed have been paradoxical to force these two countries to reintroduce border controls after seventy years. Moreover, an additional EEA EFTA country was most welcome in view of the EU accession negotiations of Austria, Finland, Norway, and Sweden.

Thus far, four lessons can be drawn from the history of Liechtenstein’s foreign policy: First, due to its smallness (and not despite its smallness) Liechtenstein always aimed for international integration in order to safeguard the country’s sovereignty. Second, over time Liechtenstein faced less opposition when applying for independent membership in international organizations. Third, the contracting parties of the EEA as well as Switzerland repeatedly demonstrated their willingness and capabilities to facilitate European integration of

Liechtenstein. Fourth, Liechtenstein paved the way for other very small states to join international organizations.

### **3 Evaluation of Liechtenstein's EEA membership**

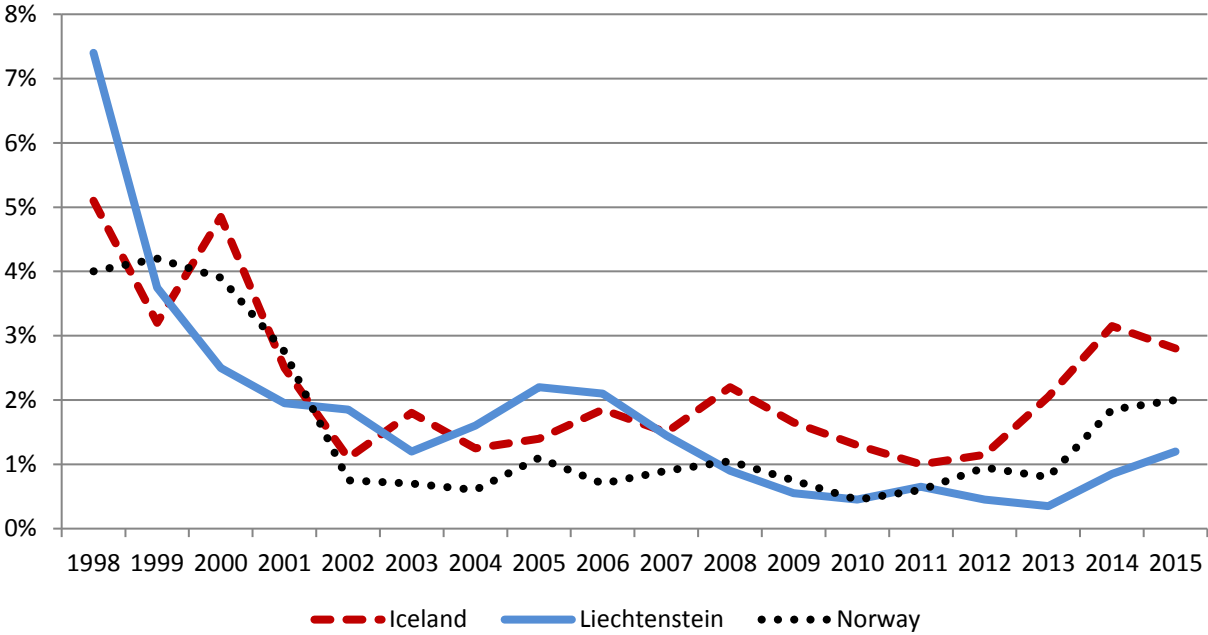
As an EEA member Liechtenstein could assert its international legal personality and has finally achieved its first own treaty-based relationship with the EU. However, it has yet to be proven whether a very small state like Liechtenstein is indeed capable to fully comply with the obligations set out by the EEA Agreement. In this section, I will therefore shed light on the effects and results of Liechtenstein's EEA membership.

To assess Liechtenstein's EEA membership, I will focus on four different sources. First, the Council of the European Union concludes every second year on a homogenous extended single market and EU relations with non-EU western European countries. The most recent conclusions date from December 2014. The Council commends Liechtenstein "for its continued excellent rate of implementation of EEA relevant EU *acquis*, (...) its efforts to bring about solutions to pending issues regarding the incorporation of relevant EU *acquis* into the EEA Agreement" and its willingness to share its "extensive experience in implementing EU *acquis* as a small-sized country with other western European small-sized countries" (EU Council 2014a, p. 3). Moreover, the Council welcomes "the continued good cooperation with Liechtenstein in a number of other areas", for instance in the area of Common Foreign and Security Policy and in particular Liechtenstein's active commitment to human rights issues in the UN system (EU Council 2014a, p. 3).

Second, the Internal Market Scoreboard and other reports of the EFTA Surveillance Authority (ESA) capture Liechtenstein's implementation record. Each directive adopted by the EU "provides a time limit by which transposition has to take place" (ESA 2014, p. 4). For the EEA EFTA states the obligation to transpose a directive is triggered by the decision of the EEA Joint Committee (EEA JCD) to incorporate this EU directive into the EEA Agreement. The transposition has to take place "in a timely and correct manner" but "it is left to each state to choose the form and the method of implementation" (ESA 2014, p. 4). Figure 1 shows how the transposition deficit of the EEA EFTA states have developed over time. In November 1997 Liechtenstein's transposition deficit was 10.8 percent. Put differently, Liechtenstein failed to notify the transposition of nearly 11 percent of all relevant EU directives on time. Hence, it has had by far the highest transposition deficit of all EEA states. However, since 1997 Liechtenstein's transposition deficit has dropped significantly and Liechtenstein has

currently the lowest transposition deficit of all EEA EFTA states. Subsequently, despite its lack of administrative resources Liechtenstein complies well with the legal obligations set out by the EEA Agreement. Figure 1 illustrates how the transposition deficit of each EEA EFTA states has developed since 1997.

Figure 1: Transposition deficit of the EEA EFTA states since 1998 (annual mean)



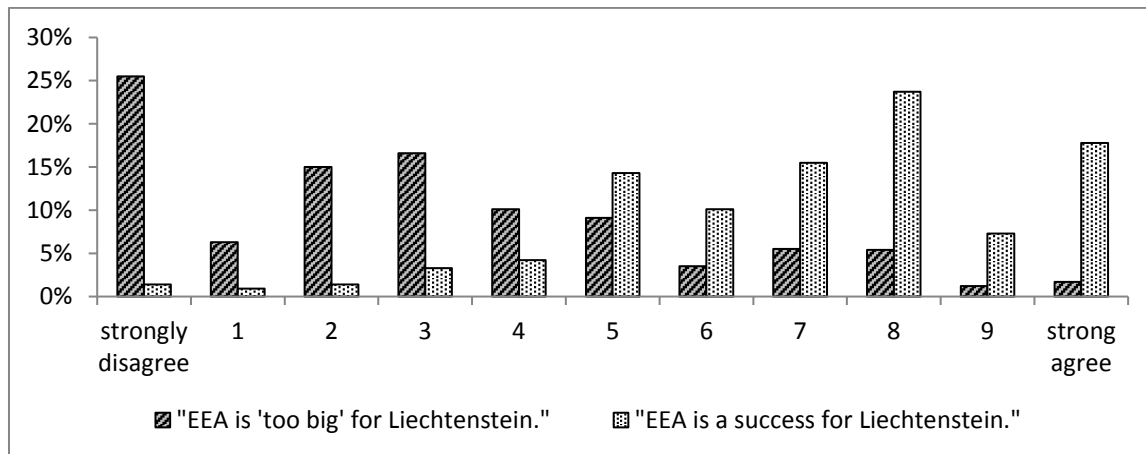
Source: based on EFTA Surveillance Authority (2015).

Third, every five years the government of Liechtenstein issues an extensive report on Liechtenstein’s EEA membership which also includes statements from various national professional bodies and organizations. Thus far all reports have drawn a positive picture by considering Liechtenstein’s EEA membership as “an extremely positive success story”. In all reports the government also refutes initial concerns that the EEA membership would trigger an excessive administrative expense that would not be feasible for a very small state like Liechtenstein (e. g. Liechtenstein 2010, pp. 8-9). The *Landtag* took note of each government report with only very few divergent opinions.

Fourth, on the occasion of the 20 year anniversary of Liechtenstein’s EEA membership the Government commissioned representative surveys among Liechtenstein voters, Liechtenstein economic operators and representatives of the public administration of Liechtenstein. All actors consider the country’s EEA membership to be very positive and fully compatible with the size of Liechtenstein (Figure 2). This appraisal is impressive given that the two

referendum campaigns on joining the EEA in the 1990s were very controversial. However, a majority of the Liechtenstein voters also agree with the statement that “the EEA membership has triggered an unnecessary extension of the public administration of Liechtenstein” (Frommelt 2015a). Figure 2 illustrates to what extent the people of Liechtenstein agreed with selected statements about Liechtenstein’s EEA membership.

Figure 2: Agreement of the Liechtenstein people with selected statements to the EEA



Source: Frommelt (2015a, p. 21).

In contrast to the other very small states of Europe Liechtenstein is deeply embedded in European integration. Historically speaking, however, Liechtenstein’s desire to adhere to international organizations was often met with skepticism. This was also the case when Liechtenstein joined the EEA but this time the opposition came mainly from the local manufacturing companies as well as numerous trustees and other actors from the finance sector according to whom Liechtenstein was too small to join the EEA. However, 20 years after Liechtenstein joined EEA there are hardly any critical voices. Instead, most actors draw a positive balance of the country’s EEA membership and thus acknowledge that Liechtenstein is compatible to be a full and independent EEA member. In light of these findings, the following section describes under what conditions states comply with international obligations and whether those conditions also apply to very small states.

#### 4 Compliance with international obligations

In the research on European integration it is one of the major questions why states comply with EU rules and why some states comply better than others. According to Börzel et al. (2010, p. 1365) “the best compliers are member states that have ample administrative capacity



and lack the political power to withstand the compliance pressure of enforcement authorities”. Put differently, “states with high bureaucratic efficiency and few domestic veto players can quickly abandon instances of non-compliance, and powerful member states are able to sit out long and escalating infringement proceedings” (Börzel et al. 2012, p. 455).

From a rationalist perspective, states choose to infringe international rules if they are “not willing to bear the costs of compliance” (Börzel et al. 2010, p. 1367). In this chapter, however, I focus on institutionalist theories of non-compliance. Institutionalists argue that non-compliance is involuntary in the sense that states are willing to fully act in accordance with international norms but lack the administrative capacity to do so (Börzel et al. 2010, p. 1369). Hence, states with high capabilities are more likely to comply with EU law than states with limited capabilities.

There are three different approaches to capture the capabilities of a state. First, from a resource-centered perspective, the capabilities of a state to comply with international obligations are defined as the sum of its financial, military, and human resources (Haas 1998). In a legally integrated system such as the EU, financial and military resources are of minor relevance. By contrast, the human resources of a state, in particular the number of administration employees, play a crucial role in order to ensure a continuous transfer of EU obligations into the domestic political and legal system. Subsequently, from a resource-centered perspective, the state’s capabilities to comply with EU law derive from the number of people that are employed in the public administration.

Second, from a procedure-centered perspective, the capabilities of a state to comply with EU law reflect its ability to efficiently mobilize and channel resources into the required processes to fulfil the respective obligations. In this vein, the capabilities of a state capture the functioning of its domestic institutional structures and procedures and can simply be defined as the efficiency of its bureaucracy.

Third, from a power-centered perspective, the capabilities of a state capture its ability to make decisions. In this regard, the capacity of a state is “a function of the number of institutional and partisan veto players in the domestic political system” (Börzel et al. 2010, p. 1375). In addition, state capacity is determined by the stability of the government, its public support, and its time horizon for action (Democracy Barometer 2015).

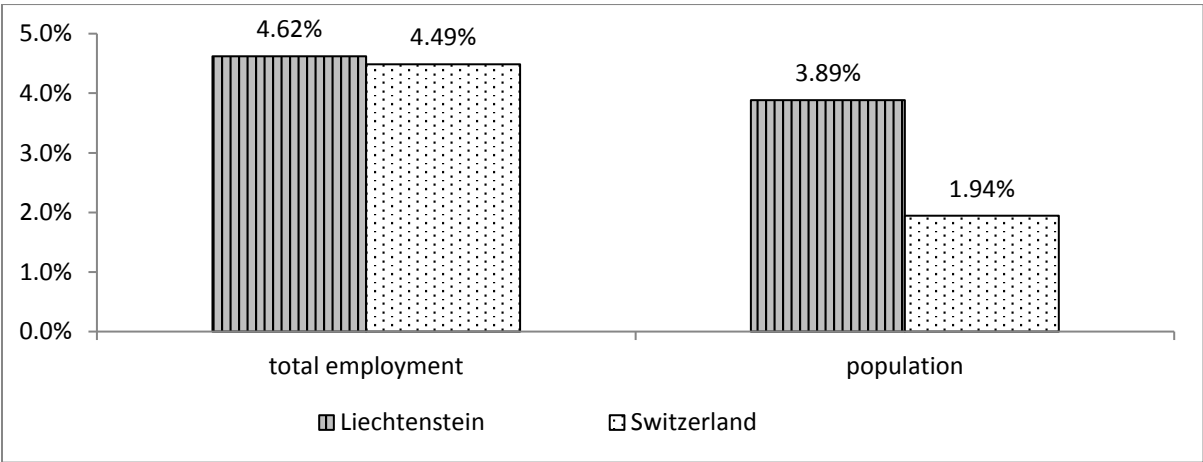
In sum, a state is likely to comply well with EU law if (1) its administration has enough employees, (2) its bureaucracy is efficient, and (3) its government can decide autonomously. In the following sections I argue that the concept of state capacity can help to explain the positive evaluation of Liechtenstein’s EEA membership. I therefore assume *that Liechtenstein*

(1) compared to the size of its population, invests more human resources in its public administration than the other EEA members, (2) has a highly efficient administration of EEA matters, and (3) has high government autonomy.

**4.1 Resources of Liechtenstein’s public administration**

From a resource-centered perspective, the capacity of a state to comply with EU law correlates with the number of people that are employed in the public administration. In 2013, in total 1’758 people worked in the public administration of Liechtenstein which corresponds with 1’443 full-time equivalent employees. Liechtenstein thus has by far the lowest number of administration employees of all 31 EEA states. As a result, in absolute terms, there is no doubt that Liechtenstein’s administrative capacity is limited. This argument, however, may no longer apply if one compares Liechtenstein’s number of administration employees to its total employment as well as its population. Figure 3 shows that the employment in the public administration in Liechtenstein is higher than in Switzerland when comparing the employment with the total employment or the population.

Figure 3: Employment in public administration of Liechtenstein and Switzerland compared to their total employment and population (2013, full-time equivalent)



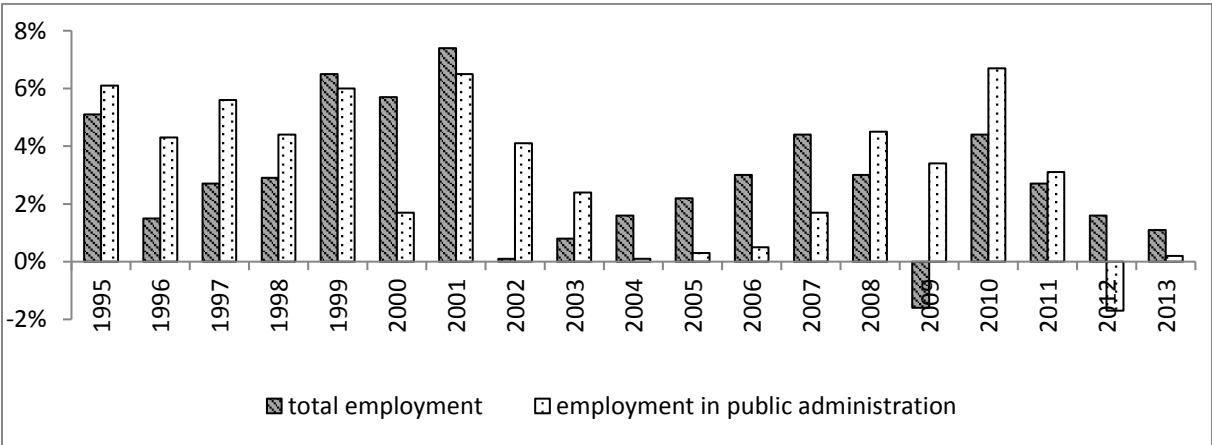
Source: based on Liechtenstein statistics (2015) and Swiss statistics (2015).

Liechtenstein does not run a Labor Force Survey. It is thus not included in the employment statistics of Eurostat and cannot be directly compared to other EEA members. However, since Switzerland is included in the Eurostat employment statistics (although with slightly different data than in Figure 3) it is possible to roughly compare Liechtenstein with the other EEA member states. Such an approximation shows that compared to its population, Liechtenstein is

likely to have the highest number of employees in the public administration of all EEA members. Subsequently, in relative terms, Liechtenstein invests more human resources in its public administration than the other EEA members. However, due to the specific characteristics of the Liechtenstein labor market, in particular the high share of commuters from the neighboring countries, it is also necessary to compare the number of employees in the public administration with the total employment. In this regard, the employment in the public administration of Liechtenstein is lower than in most EEA states. To sum up, there is no exact answer to the question whether Liechtenstein invests more resources in its public administration than other EEA members.

This also applies when analyzing the development over time. Since 1995 the employment in the public administration has increased by 69 percent compared to an increase of 63 percent of the total employment. The increase of the employment in the public administration of Liechtenstein was higher than in most other EEA or EFTA countries. In the same period, the employment in the public administration of Switzerland as well as Iceland increased by approximately 45 percent. In those countries, however, there was also much a lower increase of the total employment (18 percent for Switzerland and 23 percent for Iceland). Figure 4 shows that the increase of the employment in Liechtenstein’s public administration was particularly high in the first five years of Liechtenstein’s EEA membership.

Figure 4: Annual growth rate of the total employment and the employment in the public administration since 1995 (in percent)



Source: based on Liechtenstein statistics (2015).

The increase of the employment in public administration in the 1990s is a direct result of Liechtenstein’s EEA membership. Due to its EEA membership Liechtenstein had to establish several new governmental offices and also within the already existing governmental offices

the workload has significantly increased (Liechtenstein 2015, p. 183). This increase proves that Liechtenstein was willing and capable to increase the resources of its public administration in order to fulfil the obligations of the EEA Agreement. In relation to its population, Liechtenstein is also likely to invest more human resources in its public administration than the other EEA members. In this vein, Liechtenstein may compensate for the fact that due to its smallness it has limited administrative resources.

#### **4.2 Efficiency of Liechtenstein's public administration**

An efficient bureaucracy is likely to increase the capabilities of a state to comply with EU law. There is no exclusive concept of an efficient bureaucracy. From the perspective of the traditional organization theory, elements such as hierarchy, division of labour or specialization are positively correlated with the efficiency of the public administration (Weber 1980, pp. 122-142). By contrast, other schools of thoughts have pointed out the positive effects of personal elements such as emotions, attitudes, and values or have focused on the interactions between the organizational environment and internal organizational features (Gajduschek 2003, pp. 702-703).

The various indicators that measure the efficiency of a country's bureaucracy are based on information about the degree of the administration's independence from political pressure, the degree of corruption, the quality of policy formulation and implementation, and the credibility of the government's commitment to such policies as well as the professionalism and expertise of civil servants (see e. g. Democracy Barometer 2015) or World Governance Indicators (WGI, 2015)). Most of those indicators, however, provide no or just little data for very small states like Liechtenstein.

According to Bräutigam (1996) the efficiency of bureaucracy is likely to correlate with the GDP per capita indicating that a state has the financial resources to ensure the conditions of effective implementation of international obligations (Börzel et al. 2010, p. 1376). Indeed, based on the World Governance Indicators, for most EEA members the level of efficiency of the national bureaucracy is positively correlated with the GDP per capita. Taking into account the high GDP per capita of Liechtenstein as well as the limited but favorable data of international indicators, I argue that Liechtenstein's public administration is rather efficient. Figure 5 illustrates how Liechtenstein administers the EEA. All departments of Liechtenstein's public administration and all ministries are involved in the administration of the EEA, having 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 and Liechtenstein's diplomatic representation in Brussels support and coordinate the activities of the specialists. Indeed, the EEA Coordination Unit is the key player by advising the government and public administration on EEA matters, coordinating the incorporation and implementation of EEA law, and representing the government in proceedings before the ESA and the EFTA Court (EEA Coordination Unit 2014). In addition, the EEA Coordination Unit is responsible for the documentation on EEA topics. To sum up, Liechtenstein's administration of EEA matters is a well elaborated trade-off between the thematic specialization of the individual departments and the specialization on the EEA policy making process by the EEA Coordination Unit.

To increase the knowledge about the EEA policy making process as well as recent developments in EU and EEA law, the EEA Coordination Unit provides a handbook on EEA matters and a monthly newsletter. In addition, it organizes specific trainings for the EEA experts of Liechtenstein's public administration. According to a representative survey among the EEA experts (Frommelt 2015b), technical knowledge and language skills are the most important factors for their EEA-related activities. However, there are also other important factors such as the political support for the EEA work, the knowledge about the EEA policy making process and the cooperation with the EEA Coordination Unit or other institutions. The survey indicates that for the big majority of the EEA experts, Liechtenstein's administration of EEA matters is efficient and the cooperation with the EEA Coordination Unit or other relevant institutions functions well. In addition, less than 10 percent of the EEA experts think that their knowledge of the EEA policy making process as well as their language skills are not sufficient.

The EEA experts of Liechtenstein's public administration have also been asked whether they receive instructions from the government or other actors when participating in EU or EFTA committees. In total, less than 30 percent of the EEA experts regularly receive such instructions. This indicates that the EEA experts face little political constraints and have a high autonomy to make knowledge-based decisions when engaging in the EEA policy making process. Semi-structured interviews with selected members of Liechtenstein's public administration, in particular from the EEA Coordination Unit and the Diplomatic Representation in Brussels but also from the EFTA Secretariat and Liechtenstein's EEA EFTA partners (Interviews 2013-2014) confirm the findings of the survey as well as the assumption that Liechtenstein administrates the EEA efficiently. Table 1 summarizes those semi-structured interviews by isolating the key characteristics of Liechtenstein's public

administration which are all likely to be positively correlated with an efficient administration of EEA matters.

Table 1: Key characteristics of Liechtenstein's public administration

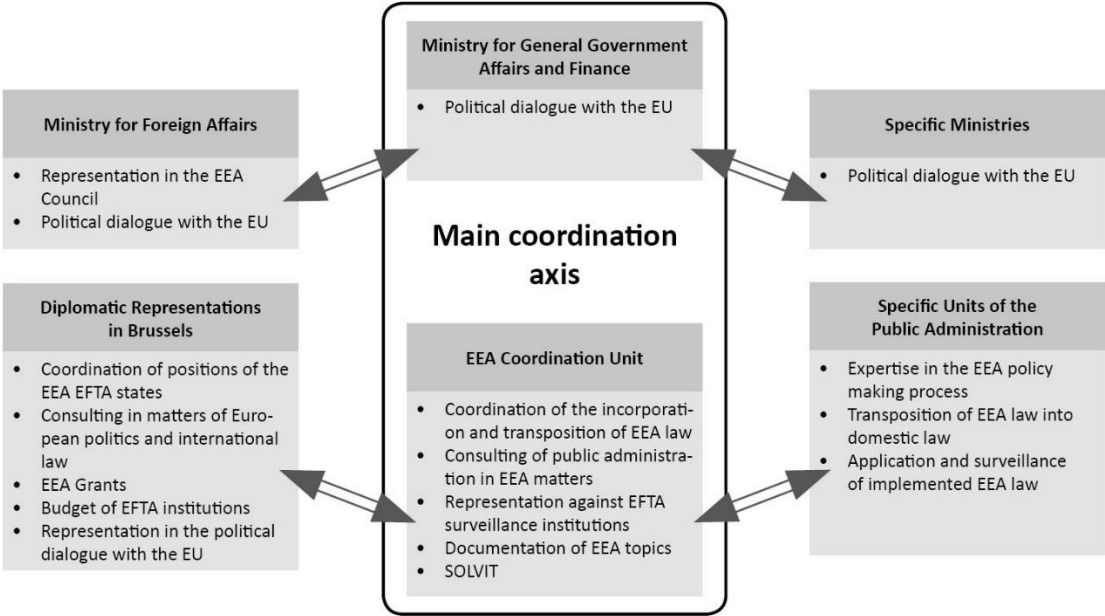
Key characteristics	Explanation
Professionalism	The professionalism of Liechtenstein's public administration is ensured by an impartial recruitment and a high share of career public servants.
Technical specialization and high autonomy	The technical expert of the respective department of Liechtenstein's public administration has a high autonomy to make decisions.
Strategic priorities and selective engagement	Liechtenstein's engagement in the EEA policy making is limited to areas of particular interest for Liechtenstein's economy and society. Liechtenstein has a clear idea of its strengths and weaknesses.
No translation of EU documents required	In contrast to Icelandic and Norwegian, German (Liechtenstein's national language) is an official EU language
Outsourcing and delegation	Liechtenstein may delegate the representation of its interests to likeminded countries such as Switzerland or Austria.
Favorable legal culture	The tradition of autonomous adaptation to Swiss or Austrian law and in particular the monistic approach to international law facilitate the administration of the legal obligation of the EEA.
Quick and reliable communication	The smallness of Liechtenstein's public administration ensures a quick and reliable communication across the various administrative units.
Continuity	Liechtenstein's public administration has a high continuity of its EEA experts.

Source: based on expert interviews conducted in 2014 by the author.

To sum up, the results of a representative survey among all EEA experts of the Liechtenstein public administration as well as of several semi-structured interviews indicate that in

Liechtenstein the administration of EEA matters is very efficient. In particular, the semi-structured interviews show that Liechtenstein is willing and able to limit its political ambitions. For instance in the EU committees Liechtenstein focuses on gathering information instead of trying to exercise a concrete impact on new EU legislation (Frommelt 2015b). In this vein, feasibility becomes the guiding principle for Liechtenstein when administrating its EEA membership. Due to these specific characteristics of Liechtenstein’s public administration, I argue that from a procedural perspective, Liechtenstein administrates its EEA membership highly efficiently and compensates for its lack of resources.

Figure 5: Liechtenstein’s key players in the administration of EEA matters



Source: own compilation.

**4.3 Autonomy of the Liechtenstein government**

From a power-centered perspective, the capacity of a state to comply with EU law correlates with the autonomy of the government to make EU-related decisions in the domestic political system. Hence, the autonomy of the government is a function of the number of institutional and partisan veto players (Börzel et al. 2010, p. 1375 referring to Tsebelis 2002). Put differently, the autonomy of the government captures the level of political constraints that the government faces in the domestic policy making. The POLCON Index (Henisz 2015) provides data of all EEA members by measuring their political constraints on a scale from 0 (minimum constraint) to 1 (maximum constraint). For the year 2012 the political constraints of Liechtenstein (0.37) are similar to most other EEA states (mean 0.42). The stability of the

political environment in Liechtenstein does not differ from its EEA partners. Hence, international indicators such as the POLCON Index give no indications whether Liechtenstein provides good or bad conditions to comply with EU obligations and cannot explain the positive evaluation of Liechtenstein's EEA membership.

The data quality of the POLCON Index for Liechtenstein differs from the one of the other EEA states as it is based on very few sources. To assess whether Liechtenstein provides favorable conditions to comply with international obligations or not, one has to make another caveat. International indicators such as the POLCON Index measure which political constraints the government generally faces in the domestic political system and not the specific constraints in matters of European integration. In contrast to most EU states, the "permissive consensus" in European politics among the political elite of Liechtenstein has not yet come to an end. Instead, in Liechtenstein the politicization of the EU is very low, which is why the Liechtenstein government has a high autonomy when making EEA-related decisions.<sup>2</sup> As a result, the European politics of Liechtenstein is characterized by high stability.

According to De Wilde (2011, p. 566) politicization means "an increase in polarization of opinions, interests or values and the extent to which they are publicly advanced towards policy formulation within the EU". An empirical analysis shows that draft laws transposing an EU act into domestic law are less salient than purely national draft laws (Frommelt 2011a). Likewise, a high majority of the EEA experts of Liechtenstein's public administration state that the domestic policy process of domestic laws with national and EEA impetus differ (Frommelt 2015b, p. 29). According to the EEA experts domestic laws with an EEA impetus face less opposition and changes by the Parliament, receive less public attention and are subject to a higher time pressure (Frommelt 2015b, p. 30). These differences can be explained by the fact that laws with an EEA impetus are often more technical and require a lot of expertise. However, from a constructivist perspective (March and Olsen 1999) one can also argue that due to the high political support for Liechtenstein's EEA membership, the political actors of Liechtenstein are socialized into the norms and rules of the EEA and thus are following "a normative belief" that obligations of the EEA "ought to be obeyed" (Börzel et al. 2010, p. 1370).

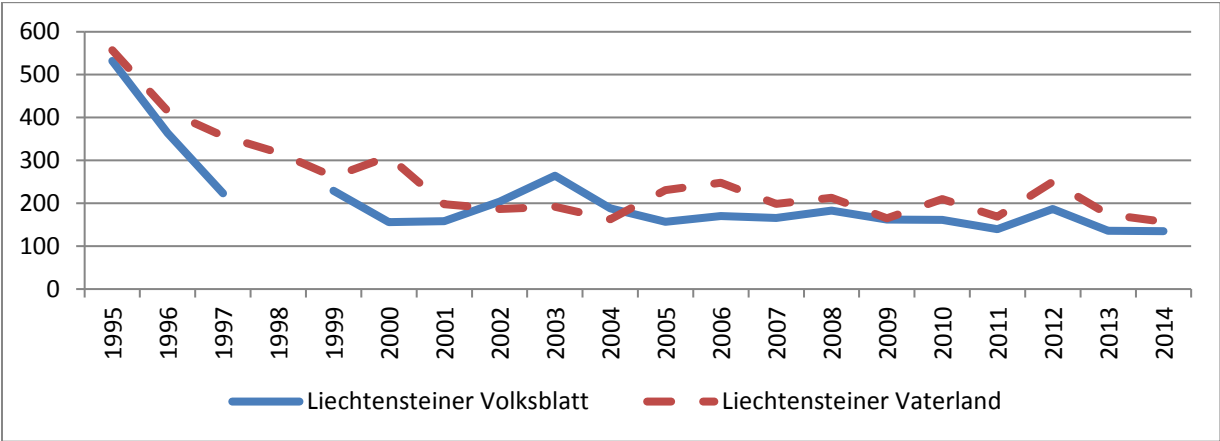
---

<sup>2</sup> Hence, I fully agree with Veenendaal (2015, p. 335) that "small jurisdictions are likely to be characterized by excessively dominant political executives" as well as with Wolf (2015, p. 358) who highlights "the powerful role of the government in Liechtenstein".



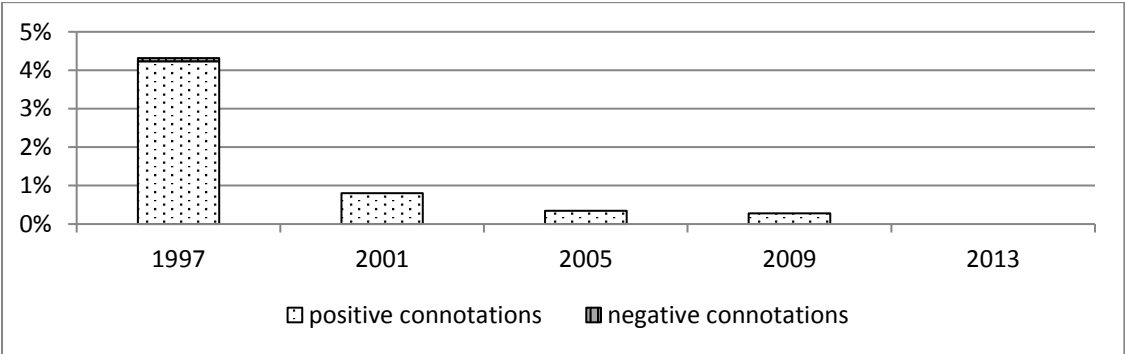
The politicization of European integration is very low in Liechtenstein. After Liechtenstein joined the EEA no political actor contested Liechtenstein’s EEA membership or – more generally speaking – the European politics of the Liechtenstein government. The high support of the EEA membership among the political elite is likely to facilitate the administration of Liechtenstein’s EEA membership as it increases the Government’s autonomy. In this regard, Figure 6 shows the number of articles of the two main newspapers *Liechtensteiner Vaterland* and *Liechtensteiner Volksblatt* that report about EEA matters. Although the total number of articles has significantly increased (Marxer 2004, p. 97) the number of references to EEA matters has decreased in each newspaper from over 500 articles in 1995 to around 140 articles in 2014. Likewise, Figure 7 shows how often European integration is mentioned in the parties’ election programs (Marxer 2013). Again the number of references is significantly decreasing over time.

Figure 6: Politicization of the EEA in the media



Source: own compilation based on Volksblatt (2015) and Vaterland (2015).

Figure 7: Politicization of the EEA in parties’ election programs



Source: based on Marxer (2013).

Compared to its EEA partners as well as Switzerland, in Liechtenstein the appearance of the EEA is low in the parties' election programs and in the media and is also decreasing over time. This indicates a low level of politicization of European integration and EEA matters. In sum, from a power-centered perspective, the capacity of Liechtenstein to comply with EEA obligations is likely to be high because the Liechtenstein government has a high autonomy to make EEA-related decisions. As stipulated above, Liechtenstein has also a professional bureaucracy that ensures an efficient administration of EEA matters. Hence, the empirical analysis confirms that Liechtenstein's state capacity is not overall limited. Instead, Liechtenstein is likely to compensate a lack of resources by a higher efficiency and autonomy of its bureaucracy and government respectively. Compared to the population, the employment in the public administration is also higher in Liechtenstein. However, the data is not sufficient to confirm the hypothesis that compared to the size of its population, Liechtenstein invests more human resources in its public administration than the other EEA member states.

## **5 Tailor-made arrangements for Liechtenstein**

Thus far, this chapter has shown that due to its smallness Liechtenstein's desire to adhere to international organizations was often met with skepticism. There were serious doubts whether very small states like Liechtenstein have the state capacity to comply with international obligations.<sup>3</sup> On the other hand, this chapter underlines that Liechtenstein's EEA membership is evaluated positively by most actors which is why there are no longer any doubts that the EEA membership is feasible for Liechtenstein. The success of Liechtenstein's EEA membership can be explained by the fact that from a procedure-oriented as well as power-centered perspective Liechtenstein's state capacity is likely to be high. Notwithstanding these findings, I argue in this section that Liechtenstein's EEA membership has widely benefited from various tailor-made arrangements for Liechtenstein according to which the actual validity of incorporated EU acts for Liechtenstein differs from the validity of those EU acts for the other contracting parties.

Legal acts and policies of the EU that have been incorporated into the EEA Agreement are not necessarily valid for all EEA EFTA states.<sup>4</sup> Instead, the EEA *acquis* includes various opt-outs that exempt an EEA EFTA state from the implementation of an EEA policy. Due to such

---

<sup>3</sup> The communication from the European Commission about the EU relations with the Principality of Andorra, the Principality of Monaco and the Republic of San Marino confirms that such concerns still play a role when addressing the options for integration with the EU of the very small states of Europe (European Commission 2012).

<sup>4</sup> Opt-outs among the EU member states ("EU-internal differentiation") are not considered in this chapter.

exemptions, the actual legal obligations to comply with an EEA policy may differ across the EEA EFTA states. Among the three EEA EFTA states, Liechtenstein has by far the highest number of exemptions from EEA law. According to Frommelt and Gstöhl (2011, p. 45) more than half of the EEA *acquis* is not fully valid for Liechtenstein. The most prominent opt-out is the so-called “special solution” (EEA JCD 191/1999) that allows Liechtenstein to apply quantitative restrictions for new residents. However, Liechtenstein has also many technical opt-outs. These opt-outs are of minor relevance for the overall functioning of the EEA but are still important for Liechtenstein as they significantly reduce the number of EU acts that Liechtenstein has to implement.

To assess the actual relevance of Liechtenstein’s opt-outs, I first focus on how Liechtenstein’s opt-outs are anchored in the EEA law. Thereby one has mainly to distinguish between legally anchored opt-outs and other arrangements that may also change the validity of EU law for Liechtenstein but that are tacitly accepted by the institutions or contracting parties of the EEA. Secondly, I analyze the extent of the tailor-made arrangements for Liechtenstein in the sense that I examine whether Liechtenstein is fully exempted from the implementation and application of an EU act or whether it has still to ensure its application, for instance by referring to the respective legislation of another EEA state. Indeed, despite formal opt-outs most of those EU acts are to some extent still relevant for Liechtenstein. Thirdly, I assess the causes of the Liechtenstein opt-outs and tailor-made arrangements which are most likely related to the smallness of Liechtenstein.

### **5.1 Specific and sectoral opt-outs**

Thus far, there is no clear systematology of opt-outs or other tailor-made arrangements for the EEA EFTA states and how they are integrated in the EEA law. Opt-outs can occur at the level of primary law as well as secondary law. At the level of primary law, opt-outs are necessarily issued by all contracting parties (including the EU member states) and are most likely addressed in a protocol to the EEA Agreement, for instance the Protocol 15 on transitional periods on the free movement of persons for Liechtenstein. However, none of these opt-outs are still valid as they have not been prolonged or have been transferred into sectoral or specific adaptations at the level of secondary law.

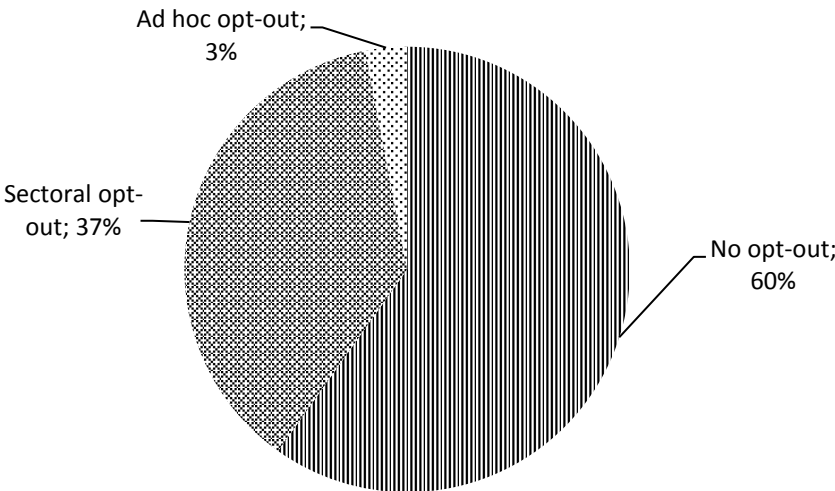
At the level of secondary law, opt-outs mainly base on decisions of the EEA Joint Committee (EEA JCD) but can also base on decisions of the EEA Council or the ESA. The policy making of the EEA can be described as mirror-legislation since the EEA EFTA states do not issue their own legal acts but continuously incorporate new EEA-relevant EU legislation into

the respective annexes of the EEA Agreement. The incorporation takes place by a decision of the EEA Joint Committee. These decisions include the title and celex number of an EU act as well as – if required – specific adaptations for the EEA EFTA states that may exempt an EEA EFTA state from the implementation of a concrete EU act.

The EEA EFTA states and the EU can also agree on sectoral adaptations. In contrast to specific adaptations, sectoral adaptations do not refer to a specific EU act but a whole annex or chapter of an annex of the EEA Agreement. Put simply, an EEA EFTA state can be exempted from the implementation of a concrete EU act (specific adaptation) or from the implementation of all EU acts related to the respective policy (sectoral adaptation). The distinction between specific and sectoral adaptations is very important in order to assess how Liechtenstein's smallness affects its membership in the EEA. Based on a specific adaptation Liechtenstein may save the resources to ensure the correct implementation of an EU act. On the other hand, Liechtenstein has to argue why its EEA EFTA partners as well as the EU should provide such an opt-out to Liechtenstein. This requires an active engagement of Liechtenstein in the policy making process of the EEA and ties a lot of resources. By contrast, a sectoral adaptation means that Liechtenstein is automatically exempted from all related EU acts (including their amendments) which is why it no longer has to follow the respective policy making process.

Figure 7 shows the share of sectoral and specific opt-outs from the total number of EU acts incorporated into the EEA Agreement which have been in force in the EEA by the end of 2014. It includes only opt-outs that are based on decisions of the EEA Joint Committee (which are by far the most common opt-outs). Moreover, it does not differ between opt-outs that are timely limited or restricted to parts of an EU act. In total, Liechtenstein's formal opt-outs cover 40 percent of the EEA *acquis*. Put differently, around 40 percent of the EEA *acquis* in force is not directly valid for Liechtenstein. As most of Liechtenstein's opt-outs are sectoral opt-outs, they are very likely to facilitate Liechtenstein the administration of the EEA Agreement significantly.

Figure 7: Formal validity of the EEA *acquis* for Liechtenstein



Source: author’s own compilation based on the EEA *acquis* in force in December 2014 (only formal opt-outs based on an EEA JCD).

Most of the EU acts which Liechtenstein does not have to implement due to a sectoral adaptation are still relevant for Liechtenstein. In September 2007 the EEA Joint Committee suspended Liechtenstein from all provisions of Annex I (“Veterinary and Phytosanitary Matters”), Chapters XII (“Foodstuffs”) and XXVII (“Spirit Drinks”) of Annex II and Protocol 47 (“Trade in Wine”), as long as the Agreement on Agriculture between Switzerland and the EU is applied to Liechtenstein. Hence, all EU acts that are part of the Agreement on Agriculture between Switzerland and the EU as well as their implementation into Swiss law automatically apply to Liechtenstein based on the Additional Agreement between the EU, Switzerland and Liechtenstein (EEA JCD 97/2007; LGBI. 2007 No. 257) as well as the Customs Union Treaty between Switzerland and Liechtenstein (LGBI. 1923 No. 24). The *acquis* of the Agreement on Agriculture is more or less identical with the suspended parts of the EEA Agreement (Frommelt 2015d). Consequently, the suspension of EEA law did not imply a strong divergence of legal rules between Liechtenstein and its EEA EFTA partners. Put differently, Liechtenstein does not have to implement an EU policy by itself but has to ensure that the implementation of the respective EU policy by another European state applies to Liechtenstein. In addition to the agriculture sector, Liechtenstein has outsourced the implementation of certain EU acts in the civil aviation sector to Switzerland (e. g. Regulation No. 1321/2007; EEA JCD 49/2009) and has also delegated its participation in the decentralised procedure of medicinal products to Austria (Directive 2001/82/EC and Directive 2001/83/EC; EEA JCD 61/2009). This outsourcing of the implementation of EU policies

underlines that Liechtenstein's wish to be exempt from the respective EU acts is not based on material concerns in terms of a "regulatory misfit" (Börzel and Risse 2000) but simply aims at reducing the administrative expenses of Liechtenstein.

## 5.2 Further tailor-made arrangements

The compilation of Figure 7 is not extensive in the sense that it does not capture all EU acts that do not fully apply to Liechtenstein. In addition to the sectoral and specific opt-outs illustrated in Figure 7, Liechtenstein has also other tailor-made arrangements that trigger a differential validity of formal EU obligations across the EEA EFTA states. Such tailor-made arrangements for Liechtenstein are mostly not written down in the EEA Agreement or its annexes but are tacitly accepted by the ESA.

The most prominent example of such a tailor-made arrangement is the implementation of certain directives of EEA Annex II by so-called modular decrees ("Modularverordnung", Büchel 1999, p. 35). Based on the law about the circulation of goods (LGBl. 1995 No. 94), the government enacts a decree that implements a directive on a certain type of goods, for instance the directive on crystal glass (Directive 69/493/EEC, LGBl. 1998 No. 126).

However, the government decree includes only the basic principles about the circulation of the corresponding product as well as references to the directive and its position in the annex of the EEA Agreement. In this way Liechtenstein does not have to adopt specific

implementation measures and the valid edition of the directive arises from the EEA Agreement instead of the decree itself. Hence, there is no need for the government to update its modular decree in case the corresponding directive is amended (Frommelt 2011b, p. 25).

Legally speaking, in the EU and the EEA directives have to be implemented into domestic law by each member state (see Art. 288 TFEU and the respective case law). In this regard, Liechtenstein's renouncement to implement certain directives can be seen as an offence of EEA law. It also threatens the legal certainty of the EEA law as well as transparency of Liechtenstein's legal order. Thus far, however, the renouncement to implement certain directives of Annex II is tacitly accepted by the ESA, which is why Liechtenstein can reduce the administrative expenses of its EEA membership significantly. By the end of 2014, Liechtenstein had 35 such modular decrees in force which refer to approximately 500 directives.

The number of EU acts that Liechtenstein has to implement is further reduced as Liechtenstein does not have to implement EU acts for which there is no field of application. For instance, Liechtenstein has no inland waterways and so there is no reason to implement

the corresponding *acquis* into national law. The same applies to maritime transport or some parts of the aviation *acquis*. These derogations do not appear in the annexes of the EEA Agreement but are documented in the implementation database of the ESA.

The ESA database includes also information about EU acts that an EEA EFTA state may have to implement but of which the assessment of its compliance by the ESA is limited. For instance, regarding the Directive 2002/22/EC on universal service relating to electronic communications networks and services a specific adaptation states that “Liechtenstein and its national regulatory authority shall make all reasonable endeavours to apply the provisions of this directive” but “the assessment of their compliance shall take due account of the specific situation of Liechtenstein and the particular circumstances of its very small telecommunications network, its market structure, its limited number of customers, its market potential and the possibility of market failure” (EEA JCD 11/2004). In total, there are only very few such adaptations but they again underline that the contracting parties and institutions of the EEA are willing to take into account the smallness of Liechtenstein.

Finally, the ESA might accept derogations from the EEA *acquis* that are anchored in the national law of Liechtenstein. For instance, due to the small inhabitable area, the access of EEA nationals to the property market is confined to EEA nationals with a residence permit in Liechtenstein. This restriction on the free movement of capital is accepted by the ESA since Liechtensteiners also face certain restrictions on the property market (Liechtenstein 2007; Interviews 2011).

### **5.3 Smallness and derogations**

Most of Liechtenstein’s tailor-made arrangements can be attributed to its small size or its close relations with Switzerland. In this section, I focus on arrangements due to Liechtenstein’s smallness. As stipulated above, tailor-made arrangements can be linked to the small market size (e. g. electronic communication networks, EEA JCD 11/2004), the limited administrative resources (e. g. EEA *acquis* on agriculture, EEA JCD 97/2007), and the lack of a regulatory need (e. g. EEA *acquis* on inland waterways, accepted by ESA). In addition, geographical factors such as Liechtenstein’s small inhabitable area (e. g. property market/free movement of capital, accepted by ESA) or its limited natural resources (e. g. renewable energy sources, EEA JCD 102/2005) as well as its infrastructure (e. g. combustion plants, EEA JCD 147/2002) might explain opt-outs from the EEA *acquis*. Likewise, opt-outs can refer to societal factors, for instance Liechtenstein’s vital interest to maintain its national identity (e. g. free movement of persons, EEA Council 1/1995). Finally, in the field of

statistics, a small population might raise privacy concerns and Liechtenstein is exempted from collecting the respective data (e. g. business statistics, EEA JCD 123/2008).

The high number of tailor-made arrangements for Liechtenstein seems to challenge the confidence in Liechtenstein's implementation capacity and willingness but also in the uniformity of EEA law. An analysis of Liechtenstein's specific arrangements has to consider both the EU and the domestic dimension. In the EU context, the question is whether such derogations initiate a special treatment of Liechtenstein and whether such a special treatment threatens the homogeneity of the EEA. By contrast, the domestic dimension focuses on the need of derogations, their acceptance, and potential savings.

Liechtenstein's market is simply too small that specific restrictions could have an impact on the functioning of the EEA. Likewise, Liechtenstein as a state and political actor is too small to attain much political interest. I therefore argue that there is no consistent awareness of Liechtenstein's demand for opt-outs which is why there is also no mobilization or polarization against such opt-outs. On the other hand, most of Liechtenstein's tailor-made arrangements concern mainly technical issues. They are also often partial derogations that are subject to certain conditions which is why they will be abandoned when these conditions change. Moreover, Liechtenstein's opt-outs are often embedded in a narrow institutional corset according to which Liechtenstein cannot take advantage of its opt-outs for its own economic benefits (Frommelt 2014).<sup>5</sup> As a result, Liechtenstein's opt-outs have never endangered the incorporation of new EU acts into the EEA Agreement and have rarely implied any delay of the acts' incorporation. Hence, so far, the smallness of Liechtenstein has not created legal uncertainty within the EEA and thus has not affected the functioning of the EEA Agreement as such.

From a domestic point of view, most of Liechtenstein's tailor-made arrangements do not base on "material" or "ideational preferences" (Leuffen et al. 2013, p. 35). Instead, most specific arrangements refer to the limited state capacity of Liechtenstein and thus simply aim at limiting the expenses of Liechtenstein's public administration. Hence, there is no "regulatory misfit" (Börzel and Risse 2000) in the sense that there would be a structural incompatibility between an EU policy and domestic law constituting an adaptational pressure that Liechtenstein's political or economic actors are not willing to bear. In contrast to the traditional understanding of an opt-out, Liechtenstein does in general not gain legislative

---

<sup>5</sup> For instance, the special solution regarding the free movement of persons states that the Liechtenstein authorities shall grant residence permits in a way that is not discriminatory and does not distort competition. Moreover, half of the permits available shall be granted in accordance with a procedure that gives an equal chance to all applicants (EEA JCD 191/1999).



sovereignty by its tailor-made arrangements. Indeed, most of the Liechtenstein-specific arrangements impose certain restrictions on the sovereignty of Liechtenstein in the sense that EU directives become directly applicable (e. g. modular implementation) or the Swiss and Austrian implementation of EU law automatically applies to Liechtenstein (e. g. EEA Annex I). Put differently, Liechtenstein's tailor-made arrangements represent mostly a trade-off between legislative sovereignty and administrative efficiency.

Except for Liechtenstein's special solution regarding the free movement of persons, the various tailor-made arrangements of Liechtenstein are rarely debated in the domestic political system. Frommelt and Gstöhl (2011, p. 44) argue that in most cases Liechtenstein would actually be capable to implement the respective EU acts by itself. Liechtenstein could go without opt-outs if it was be willing to invest more administrative resources and accept a higher rule density. On the other hand, more than 65 percent of Liechtenstein's EEA expert would prefer more opt-outs from EEA-relevant EU secondary law for Liechtenstein (Frommelt 2015b, p. 23).

According to two recent surveys, the Liechtenstein people and economic operators already link the EEA membership with an unnecessary increase of the employment in the public administration as well as of the rule density in Liechtenstein (Frommelt 2015a, 2015c). Hence, Liechtenstein's tailor-made arrangements may be crucial in order to ensure a high public support of the EEA membership and thus a high compliance with EEA law.

## **6 Lessons to draw for other western European small-sized countries**

Despite its smallness, Liechtenstein is deeply embedded in European integration. It is a full member of the European Economic Area (EEA) and the Schengen Area. As such, it is equally represented in the respective institutions and procedures and has to comply with the same legal obligations as the other member states which have at least ten times the population of Liechtenstein. Nevertheless, the evaluation of Liechtenstein's EEA membership is mostly positive and there are no longer any doubts that an EEA membership is feasible for Liechtenstein.

Due to its smallness, Liechtenstein has limited administrative resources. However, this chapter has shown that from a procedure-oriented as well as power-centered perspective Liechtenstein's state capacity is likely to be high. As a result, despite its lack of resources, Liechtenstein provides favorable conditions to comply with international obligations. On the other hand, this chapter has also shown that Liechtenstein has by far the highest number of

exemptions from EEA law of all EEA states. Most of those exemptions are based on tailor-made arrangements for Liechtenstein that are related to its smallness in the sense that they help Liechtenstein to limit the expenses of its public administration and thus help to keep its state capacity.

Liechtenstein's EEA membership underlines that the EU has repeatedly stated its willingness and ability to accept tailor-made arrangements due to the smallness or smallness-related factors. This makes Liechtenstein an interesting case for small state studies. In particular the other western European small-sized countries Monaco, Andorra, and San Marino, which are currently negotiating an association agreement with the EU (EU Council 2014b) may benefit from Liechtenstein's experience as an EEA member.

The high number of Liechtenstein's tailor-made arrangements should not be misleading because smallness does not allow for a free ride. Small states cannot unilaterally opt out from EU law by keeping their access to the EU's internal market. Liechtenstein's opt-outs do not correspond with the traditional understanding of an opt-out as in most cases the contracting parties imposed various institutional restrictions on Liechtenstein's opt-outs. Indeed, despite a formal opt-out, the "material substance" of the EU act may still apply to Liechtenstein as the Swiss and Austrian implementation of the respective EU act automatically applies to Liechtenstein. Subsequently, most of Liechtenstein's tailor-made arrangements do not base on "material" or "ideational preferences" as they are simply a trade-off between legislative sovereignty and administrative efficiency.

To assess Liechtenstein's tailor-made arrangements it is also important to consider under which conditions Liechtenstein and the EU agreed on a specific arrangement. Thereby I argue that most of Liechtenstein's tailor-made arrangements have only become possible due to specific bargaining strategies such as "package deals" and "side payments" (Benz 2009). For instance, when negotiating the special solution regarding the free movement of persons, Liechtenstein benefited from its chairmanship in the EEA Joint Committee and the re-evaluation in 2004 is closely linked to Liechtenstein's approval of the Eastern enlargement of the EEA and the increase of the financial contributions of Norway, Iceland, and Liechtenstein towards the reduction of economic and social disparities in the EEA (Frommelt and Gstöhl 2011, p. 36; Frommelt 2014). Hence, all opt-outs have to be assessed against their political background. In this regard, a recent survey among the EEA experts of Liechtenstein's public administration shows that the room for manoeuvre for specific opt-outs for Liechtenstein has strongly decreased over time and Liechtenstein has to invest more and more resources when negotiating with the EU (Frommelt 2015b). Again, this underlines that the other small-sized

countries cannot automatically expect the same flexibility of the EU when negotiating their association agreements with the EU (EU Council 2014b).

Taking into account Liechtenstein's experience in the EEA, I conclude that smallness does not impose any substantial restrictions on the embedding of a very small state in European integration. However, it requires creative tailor-made arrangements that limit the administrative burden for a very small state and thus the flexibility and willingness of the contracting parties (in particular of the EU) to agree on such arrangements.

## **Bibliography**

- Baur, G. S. (1996). Die 'parallele Verkehrsfähigkeit' und analoge Verfahren als Prinzipien des Europarechts. In F. Baur & G. Baur (eds.), *Aktuelle Rechtsfragen 1996. Liber amicorum zum sechzigsten Geburtstag von Theodor Bühler* (pp. 83-101). Zürich: Schulthess Juristische Medien.
- Benz, A. (2009). *Politik in Mehrebenensystemen*. Wiesbaden: VS Verlag für Sozialwissenschaften.
- Börzel, T.A., Hofmann, T., & Panke, D. (2012). Caving in or sitting it out? Longitudinal patterns of non-compliance in the European Union. *Journal of European Public Policy* 19(4), 454-471.
- Börzel, T.A., Hofmann, T., Panke, D., & Sprungk, C. (2010). Obstinate and Inefficient: Why Member States Do Not Comply With European Law. *Comparative Political Studies* 43(11), 1363-1390.
- Börzel, T. A. & Risse, T. (2000). When Europe Hits Home: Europeanization and Domestic Change. *European Integration online Paper* 4(15). <http://eiop.or.at/eiop/pdf/2000-015.pdf>. Accessed: February 2015.
- Brautigam, D. (1996). *State capacity and effective governance*. Washington, DC: Transaction Publishing.
- Büchel, C. (1999). Wie verwaltet der Kleinstaat Liechtenstein das EWR-Abkommen? In H. Prange (ed.), *Zwischen Bern und Brüssel, Erfahrungen Liechtensteins im Europäischen Wirtschaftsraum* (pp. 23-60). Chur/Zürich: Rüegger.
- Council of the European Union (2014a). *Council Conclusions on a homogenous extended single market relations with Non-EU Western European countries*. Brussels, 16 December.
- Council of the European Union (2014b). *Council adopts mandate to negotiate association agreement(s) with Andorra, Monaco and San Marino*. Brussels, 16 December.

- Democracy Barometer (2015). *Database*. University of Zürich and Social Science Research Centre Berlin. <http://www.democracybarometer.org>. Accessed: February 2015.
- De Wilde, P. (2011). No Polity for Old Politics? A Framework for Analyzing the Politicization of European Integration. *Journal of European Integration* 33(5), 559-575.
- EEA Coordination Unit (2014). *Der Europäische Wirtschaftsraum (EWR)*. Vaduz. <http://www.llv.li/files/sewr/ewr-kurzinformation-deutsch-april-2015-web.pdf>. Accessed: February 2015.
- EFTA Secretariat (2015a). The European Economic Area. *EFTA Factsheet*. Geneva. <http://www.efta.int/media/publications/fact-sheets/EEA-factsheets/EFTAFactsheetEuropeanEconomicAreaEEA.pdf>. Accessed: February 2015.
- EFTA Secretariat (2015b). *The Basic Features of the EEA Agreement*. Geneva. <http://www.efta.int/eea/eea-agreement/eea-basic-features>. Accessed: February 2015.
- EFTA Surveillance Authority (2014). *Internal Market Scoreboard*. EEA EFTA States of the European Economic Area No. 34. Brussels, July 2014.
- EFTA Surveillance Authority (2015). *Internal Market Scoreboards*. Brussels. <http://www.eftasurv.int/press--publications/scoreboards/internal-market-scoreboards/> Accessed: April 2015.
- European Commission (2012). *EU Relations with the Principality of Andorra, the Principality of Monaco and the Republic of San Marino Options for Closer Integration with the EU*. Brussels, 20 November.
- Frommelt, Christian (2011a). Die Europäisierung der Landtagsarbeit. *Arbeitspapiere Liechtenstein-Institut* No. 29. doi:10.13091/li-ap-29
- Frommelt, Christian (2011b). Die Europäisierung der liechtensteinischen Rechtsordnung. *Arbeitspapiere Liechtenstein-Institut* No. 28. doi:10.13091/li-ap-28
- Frommelt, C. (2014). Zuwanderungspolitik in Liechtenstein nach dem Ja zur Masseneinwanderungsinitiative in der Schweiz. *Vortragsmanuskript*, 22. November 2014. [http://www.liechtenstein-institut.li/Portals/0/contortionistUniverses/408/rsc/Publikation\\_downloadLink/Masseneinwanderungsinitiative%20und%20Liechtenstein.pdf](http://www.liechtenstein-institut.li/Portals/0/contortionistUniverses/408/rsc/Publikation_downloadLink/Masseneinwanderungsinitiative%20und%20Liechtenstein.pdf). Accessed: February 2015.
- Frommelt, C. (2015a). 20 Jahre EWR-Abkommen: Wie stehen die Liechtensteinerinnen und Liechtensteiner heute zum EWR? Ergebnisse einer repräsentativen Umfrage. *LI AKTUELL* 2/2015. doi:10.13091/li-aktuell-2015-2
- Frommelt, C. (2015b). 20 Jahre EWR-Abkommen: Einschätzungen von EWR-Experten und Führungskräften. Ergebnisse einer Onlinebefragung. *Unterlagen zuhanden der Regierung*

- des Fürstentums Liechtenstein*. [http://www.liechtenstein-institut.li/Portals/0/contortionistUniverses/408/rsc/Publikation\\_downloadLink/Entwurf\\_Experten\\_zhd\\_Regierung.pdf](http://www.liechtenstein-institut.li/Portals/0/contortionistUniverses/408/rsc/Publikation_downloadLink/Entwurf_Experten_zhd_Regierung.pdf). Accessed: February 2015.
- Frommelt, C. (2015c). 20 Jahre EWR-Abkommen: Wie stehen die liechtensteinischen Unternehmen heute zum EWR? Ergebnisse einer Onlinebefragung. *LI AKTUELL* 3/2015. doi:10.13091/li-aktuell-2015-3
- Frommelt, C., & S. Gstöhl (2011). Liechtenstein and the EEA: the Europeanization of a (very) small state. *Europautredningen Rapport* no. 18.
- Gajdushek, G. (2003). Bureaucracy: Is it efficient? Is it not? Is that the question? Uncertainty reduction: An ignored element of bureaucratic rationality. *Administration and Society* 34, 700-723.
- Gstöhl, S. (1997). Successfully Squaring the Circle: Liechtenstein's Membership of the Swiss and European Economic Area. In M. O. Hösli & A. Saether (eds.), *Free Trade Agreements and Customs Unions: Experiences, Challenges and Constraints* (pp. 163-176). Brussels/Maastricht: Tacis European Commission and European Institute of Public Administration.
- Gstöhl, S. (2001). *Flexible Integration für Kleinstaaten? Liechtenstein und die Europäische Union*. Vaduz: Verlag der Liechtensteinischen Akademischen Gesellschaft.
- Haas, P. M. (1998). Compliance with EU directives: Insights from international relations and comparative politics. *Journal of European Public Policy* 5, 17-37.
- Henisz, W. (2015). *POLCON Database*. <https://mgmt.wharton.upenn.edu/profile/1327>. Accessed: February 2015.
- Interviews (2014-2015). Author's interviews with experts from the Liechtenstein public administration in Vaduz and the Mission to the EU in Brussels as well as with officials from the EFTA Surveillance Authority, the EFTA Secretariat and the European Commission in Brussels.
- Leuffen, D., Rittberger, B., & Schimmelfennig, F. (2013). *Differentiated Integration: Explaining Variation in the European Union*. Basingstoke: Palgrave Macmillan.
- Liechtenstein (2010). *Bericht und Antrag der Regierung an den Landtag des Fürstentums Liechtenstein betreffend 15 Jahre Mitgliedschaft des Fürstentums Liechtenstein im Europäischen Wirtschaftsraum (EWR)* No. 17. Vaduz, 23 March.
- Liechtenstein (2015). *Bericht und Antrag der Regierung an den Landtag des Fürstentums Liechtenstein betreffend 20 Jahre Mitgliedschaft des Fürstentums Liechtenstein im Europäischen Wirtschaftsraum (EWR)* No. 18. Vaduz, 24 March.

- Liechtensteiner Vaterland (2015). *Onlinearchiv*. <http://www.vaterland.li>. Accessed: February 2015.
- Liechtensteiner Volksblatt (2015). *Onlinearchiv*. <http://www.volksblatt.li>. Accessed: February 2015.
- Office of Statistics (2015). *Beschäftigungsstatistik*.  
<http://www.llv.li/#/11367/beschaeftigungsstatistik>. Accessed: February 2015.
- March, J.G., & Olsen, J.P. (1999). *Rediscovering Institutions: The Organizational Basis of Politics*. New York: Fress Press.
- Marxer, W. (2004). *Medien in Liechtenstein. Strukturanalyse der Medienlandschaft in einem Kleinstaat*. Vaduz: Verlag der Liechtensteinischen Akademischen Gesellschaft.
- Marxer, W. (2013). Manifesto Research - Forschungsbericht Liechtenstein (Stand 2013).  
*Arbeitspapiere Liechtenstein-Institut* No. 40. doi:10.13091/li-ap-40
- Swiss Federal Statistical Office (2015). *Beschäftigungsstatistik*.  
[http://www.bfs.admin.ch/bfs/portal/de/index/infothek/erhebungen\\_\\_quellen/blank/blank/statistique\\_de\\_1\\_emploi/00.html](http://www.bfs.admin.ch/bfs/portal/de/index/infothek/erhebungen__quellen/blank/blank/statistique_de_1_emploi/00.html). Accessed: February 2015.
- Tsebelis, G. (2002). *Veto players: How political institutions work*. Princeton, NJ: Princeton University Press.
- Veenendaal, W. (2015). A Big Prince in a Tiny Realm: Smallness, Monarchy, and Political Legitimacy in the Principality of Liechtenstein. *Swiss Political Science Review* 21(2), 333-349.
- Weber, M. (1980). *Wirtschaft und Gesellschaft*. 5<sup>th</sup> ed. Tübingen: Mohr.
- Wolf, S. (2015). Different Approaches, Different Results in Small State Studies: Complementary Views on the Monarchy and Traditional Governance in Liechtenstein. *Swiss Political Science Review* 21(2), 350-361.
- World Bank (2015b). *Worldwide Governance Indicators*.  
<http://info.worldbank.org/governance/wgi/index.aspx#home>. Accessed: February 2015.