

Executive summary: report by the Government to the Parliament of the Principality of Liechtenstein on 25 years of EEA membership¹

On 1 May 2020, Liechtenstein will look back on 25 years of membership in the European Economic Area (EEA). The Government is taking this opportunity to inform Parliament and the Liechtenstein public on the experiences of EEA membership in a Government Bill (with data through February 2020) – as it already did on the first, fifth, tenth, fifteenth, and twentieth anniversaries of membership². Compared with previous reports by the Government, the current report provides a compact overview of the last five years, with reference to other publicly available reports by the involved agencies and other bodies.

Positive overall assessment despite challenges in adoption

Even after 25 years of EEA membership, the Government's overall assessment is positive. Over the last five years, however, timely incorporation of EEA law has been a particular challenge. In particular, incorporation of the European system of financial supervision led to major delays of adoption in the financial services sector and ultimately to obstacles to market entry for Liechtenstein companies. A solution was found in the end that takes sufficient account of both the goal of homogeneity and the EEA's two-pillar-structure. Through intensified efforts, on both the EU and the EFTA side, it was also possible to reduce backlog concerning the adoption of EEA relevant EU acts in the financial services sector by 85% in 2019. This will continue to be given the utmost priority in future.

Despite the challenges in adopting EEA law, feedback from stakeholder associations in regard to the EEA has been consistently positive. The statements received from these associations confirm that the EEA is a model for success, offering many opportunities alongside the challenges. As an important factor for the Liechtenstein business location, the associations emphasise access to the EU single market with its more than 518 million inhabitants while maintaining access to the Swiss market. The stakeholders also mention, however, that the EEA has brought with it a flood of regulations, posing great challenges for individual companies. The General Data Protection Regulation and public procurement are mentioned specifically in this regard.

High level of public acceptance of the EEA

It is noteworthy that, according to an evaluation of the survey on Liechtenstein's EEA membership conducted by the Liechtenstein Institute, the Liechtenstein public's assessment of the EEA is once again (extremely) positive. This shows that – as was already the case in the 2015 survey on 20 years of EEA membership – 76% of the population has a positive opinion of the EEA and considers it to be the best option for Liechtenstein's European policy.

Positive economic development

The generally positive economic development since 1995 suggests that EEA membership has made it possible to maintain and even expand the good business conditions offered by Liechtenstein. The competitive pressure due to the EEA posed a great challenge for individual industries and companies when Liechtenstein joined the EEA Agreement. But it has once again become apparent over the past five years that the Liechtenstein economy is able to meet the new challenges and make good use of the opening of the EU single market. Unhindered access to the EU single market for goods and services, encompassing a total of 30 countries and more than 518 million citizens, represents a significant location advantage that is also reflected in Liechtenstein's export statistics. Also positive is the further diversification and internationalisation seen in the services sector over the past five years. Overall, the Liechtenstein economy is in very good shape today.

¹ Bericht und Antrag der Regierung an den Landtag des Fürstentums Liechtenstein betreffend 25 Jahre Mitgliedschaft des Fürstentums Liechtenstein im Europäischen Wirtschaftsraum (EWR), Nr. 34/2020 (https://www.llv.li/files/sewr/bua_034_2020_25-jahre-ewr_mit-beilage.pdf).

² Reports on first, fifth, tenth, fifteenth, and twentieth anniversary of EEA membership (see <https://www.llv.li/inhalt/11078/amtsstellen/ewr-abkommen-berichte-und-antrage>).

Strengthening of autonomy

Similarly to Liechtenstein's accession to the United Nations, accession to the EEA has made an important contribution to an independent Liechtenstein foreign policy. Over the last five years, EEA membership has continued to enable Liechtenstein to raise its foreign policy profile and to increase Liechtenstein's image as an active and reliable member of the international community. At the same time, it cannot be overlooked that the costs of EEA membership, including the costs of participation in EU programmes and the EEA Financial Mechanism, have increased. These costs now account for a considerable share of the total costs of Liechtenstein's membership in international organisations and associations.

Relations with Liechtenstein's neighbouring countries: Switzerland, Austria, and Germany

Despite EEA accession, Liechtenstein has been able to preserve its especially close ties with Switzerland. In regard to the movement of goods, the system of "parallel marketability" has worked smoothly. It is becoming increasingly apparent, however, that the divergent integration paths of Liechtenstein and Switzerland can lead to problems due to differing regulations and regulatory approaches. So far, solutions have always been found in the interest of both sides. This might pose an even greater challenge in future. Unlike Switzerland, Austria and Germany are members of the EU. Due to shared membership in the EEA, relations with Austria and Germany have become more intensive and deeper over the past five years.

Liechtenstein-specific solution for the movement of persons

The EEA Agreement has proven to be not only a manageable but also an adaptable solution for very sensitive issues specific to Liechtenstein. The provisions relating to the free movement of persons negotiated upon accession to the EEA and adjusted over the course of membership are evidence of this. Liechtenstein was able to negotiate a tailor-made solution that adequately takes into account the geographic, demographic, and sociological circumstances of Liechtenstein. This Liechtenstein-specific solution for the movement of persons not only withstood the EEA enlargements of 2004, 2007, and 2014, but Liechtenstein was even able to negotiate a new, sustainable solution as part of the negotiations on EEA enlargement in 2004. This solution no longer provides for automatic expiry of the provisions governing the movement of persons, but instead merely a review at regular intervals. In August 2015, this review showed that the conditions still hold for continuing the special solution without changes. The review in 2020 is still pending. However, there are no signs that the special solution is being called into question by the EU.

Complexity and costs of implementing EEA law

Without a doubt, the EEA Agreement also contains complex legal provisions that cause problems and sometimes require considerable effort when transposing them into national law and when applying them. A special challenge in the EEA also arises from the fact that the EU single market is constantly developing, so that the legal framework of the EEA Agreement continues to expand. On average, 450 new EU acts are incorporated into the EEA Agreement each year.

In the interest of maintaining homogeneity and effective legal supervision in the EU single market, the EEA/EFTA States have had to adjust in recent years to the fact that increasingly specialised EU authorities, detached from the European Commission, are being employed for regulatory and supervisory activities. Mapping the role of such authorities within the EEA – taking into account the Treaty-based competence of the EFTA Surveillance Authority – has so far required demanding and time-consuming negotiations. It is also indisputable that the increasing depth of integration and density of regulation in European internal market law means that Liechtenstein must accept restrictions of its legislative autonomy. The advantages outweigh the disadvantages, however, given that numerous EU acts also offer new business opportunities, such as in the field of financial services.

Appropriateness to size

In the run-up to EEA accession, some concerns were expressed that EEA membership would lead to disproportionate costs. 25 years of experience have shown that a positive assessment overall can be made in this regard as well, even though more new positions had to be created in the National Administration than originally projected. The EEA Agreement has been administered efficiently and, most importantly, Liechtenstein's interests have been safeguarded in an optimal way thanks to the establishment of the EEA Coordination Unit as a central contact and coordination office, the strengthening of the Liechtenstein Mission in Brussels, the development of expertise in the ministerial and administrative offices, and the involvement of stakeholder associations. The implementation statistics of the EFTA Surveillance Authority show that Liechtenstein is meeting its implementation obligations very well.

Some of the stakeholders invited to comment have criticised the EEA Agreement because the competition required by the EEA interferes with habitual practices and procedures (for example in the field of public procurement), and because Liechtenstein's leeway is limited by the state aid provisions of the EEA Agreement. Some stakeholders and municipalities have also criticised the density of regulation arising from the EEA Agreement, especially the effort that continues to be necessitated by the General Data Protection Regulation.

EEA and taxes

Tax harmonisation is not only an issue raised by the EU within the EU/EEA institutions, but rather concerns all countries with advantageous tax systems (such as some EU states and also Switzerland). In the Government's view, EEA membership should also be considered an advantage in this regard, since only EEA members can benefit from the basic principle of a territory governed by the rule of law as embodied in the EEA Agreement. The conclusion of the EU-Liechtenstein agreement on the automatic exchange of financial account information, as well as the removal of Liechtenstein from the "grey" EU tax list in the autumn of 2018, have caused some EU countries to lift their restrictions imposed on Liechtenstein under EEA law.

EEA Agreement: not merely an economic treaty

The EEA has also brought about numerous, universally beneficial changes in consumer and worker protection, gender equality, and other areas of society. This development has continued over the last five years.

Education and youth

With regard to participation in EU programmes, in particular in the fields of education and youth, expectations were once again far exceeded, as they have been since the beginning of EEA membership. This component of the EEA Agreement is especially important for creating a European identity and should be seen as a long-term investment that promotes peace and increases quality of life.

Good starting point for future developments

The Government considers Liechtenstein's current integration status under the EEA Agreement to be appropriate. Nevertheless, the dynamics within and outside the EEA should not be underestimated, especially with regard to integration policy developments in the EU, our EFTA partner countries, and above all Switzerland. The Government is observing developments very closely so that the appropriate policy adjustments can be made as necessary.