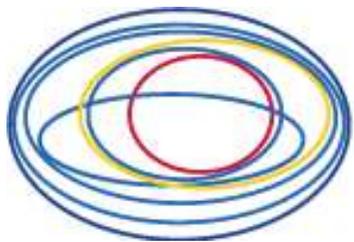


EU External Differentiated Integration and Compliance: Theoretical and Legal Aspects

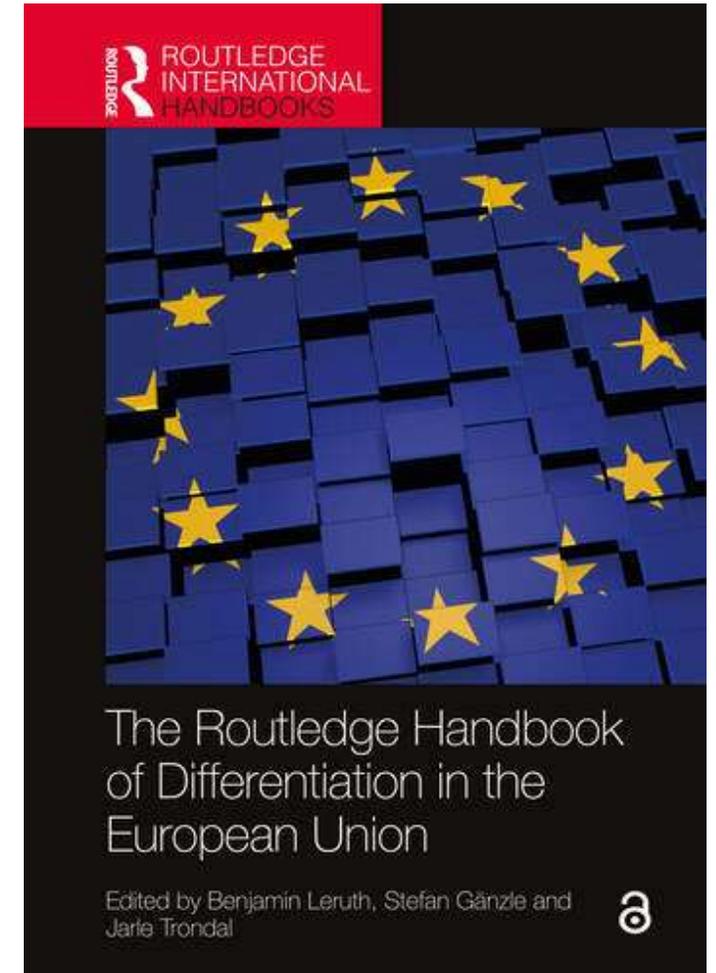
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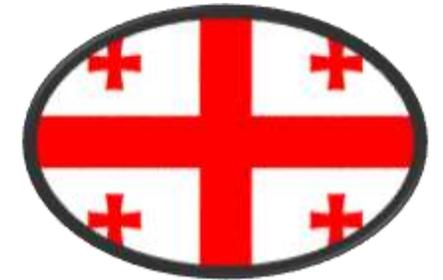
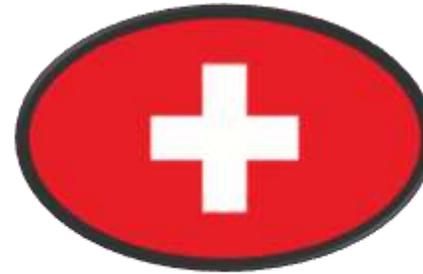
Introduction

- Proliferation of external DI constellations
- Crucial role of compliance in external DI due to
 - The unavailability of infringement procedure
 - Limited incentives
 - Capacity challenges
- Lack of systematic accounts of compliance in EU external DI
- **Two-fold objective of the chapter:**
 - Formulating key expectations of compliance theories with respect to EU external DI
 - Illustrating how these theoretical expectations are translated in legal compliance instruments



External DI constellations

- EU sectoral agreements with Switzerland
- The draft EU-Switzerland Framework Agreement
- EU Association Agreements with Eastern Neighbours
- The European Economic Area (EEA) Agreement
- The Schengen Area
- The EU-UK Trade and Cooperation Agreement (TCA)



Compliance theories

Theory	Key foci
External enforcement	<ul style="list-style-type: none">• States as rational decision-making actors• Cost-benefit analysis• Focus on incentive structures (benefits, sanctions + monitoring) in the DI
Management	<ul style="list-style-type: none">• Non-intentional violation of treaties• Ambiguous language of treaties• Capacity challenges (incl. the government's autonomy to act, i.e. the role of veto-players)• Temporal dimension of change
Domestic pressure	<ul style="list-style-type: none">• Political parties, NGOs and interest groups' pressure on the government• Transnational networks of non-government actors• National courts and media
Legitimacy	<ul style="list-style-type: none">• Focus on rules' legitimacy, stemming from their unambiguous nature, symbolic validation, relation to general principles and rules' approval through accepted procedures

Legal instruments of ensuring compliance in EU external DI (1)

- **Common values and market access conditionality**
 - SAAs with Western Balkans and AAs with Eastern Neighbours
 - *External enforcement logic*
- **Monitoring and evaluation mechanisms**
 - AAs, EEA, EU-Switzerland FTA, EU-Switzerland Air Transport Agreement, Schengen Agreement
 - ‘Intermediary’ mechanism that can open path to consultations or dispute settlement
 - *Both external enforcement and management logic*
- **Civil society mechanisms**
 - EU AAs, EU-UK TCA
 - ‘Trade and sustainable development’ chapters
 - *Domestic pressure logic*

Legal instruments of ensuring compliance in EU external DI (2)

- **Consultations**

- All the DI constellations in question
- Obligatory/non-obligatory nature of consultations & different links to DSM
- *External enforcement, management & legitimacy logic*

- **Dispute settlement**

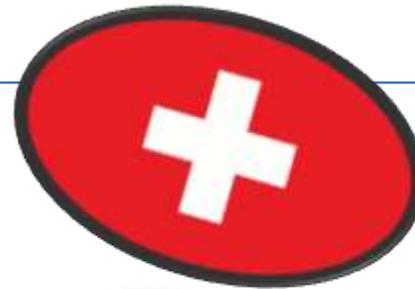
- Conducted by the EEA Joint Committee, EU-Switzerland sectoral committees, arbitration panels (EU-UK TCA, draft EU-Switzerland Institutional Framework Agreement, EU-Ukraine AA)
- The CJEU's authorities to interpret rules
- *External enforcement logic*

Legal instruments of ensuring compliance in EU external DI (3)

- **Unilateral remedies, safeguard and compensatory measures and suspension clauses**
 - ‘Emergency action’ under the EEA, EU-Switzerland sectoral agreements, EU-UK TCA, EU AAs with Neighbours
 - Two-step procedure with a chance for voluntary compensation (EU-Ukraine AA, EU-UK TCA)
 - *External enforcement logic*
- **Technical assistance, capacity-building**
 - AAs with Eastern Neighbours
 - *Management logic*

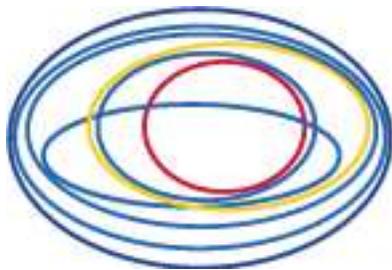
Conclusion

- Compliance is linked to several key factors, such as costs and benefits, rules' certainty, domestic capacity and pressure, and rules' legitimacy
- Variegated tools to enforce compliance
- Intensified dialogue required to increase partner countries' capacity to implement norms, engage with domestic interest groups and increased rules' legitimacy
- Need for new venues for multistakeholder dialogue and cooperation
- Need for empirical studies of compliance in various DI contexts



Disclaimer

This presentation is part of the activities of the Jean Monnet Centre of Excellence “Laboratories of Differentiated Integration in a Post-Brexit Europe” at the University of Agder, funded under the Erasmus+ programme of the European Union. It reflects only the authors’ views. The European Education and Culture Executive Agency and the European Commission are not responsible for any use that may be made of the information it contains.



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