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ESTONIA AMID COOPERATION IN THE BALTIC SEA REGION AND EU MEMBERSHIP*

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Abstract

This Article examines the Republic of Estonia's position in the Baltic Sea region and the European Union from a constitutional law perspective. The Article is divided into two parts. Part I is based on the assumption that Estonia must be set in its own context - the Baltic Sea region, which does not only involve the three Baltic states. International organizations and forums ensuring cooperation in that area are looked through. Furthermore, the European Union Strategy for the Baltic Sea Region, adopted in 2009, is analyzed. Part II, instead, aims at demonstrating that Estonia is a well-integrated EU Member state. Firstly, Estonia's new orientation to the West in the early 1990s is described. Secondly, it is argued that the Constitution approved in 1992 did not boil down to restoring Pre-Soviet constitutional order. The relation between the Constitution and EU law is then explored. Thirdly, scrutiny of EU matters by the Estonian Parliament is addressed. Fourthly, Part II also deals with recent financial stabilization and economic governance measures taken at EU level and their

* The style used in this Article is experimental as I strived to merge together the American and European approach to writing legal papers.

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implications on Estonia's sovereignty. The Supreme Court has deemed strengthening stability within the euro area to be included among Estonia's constitutional values.

TABLE OF CONTENTS: Introduction. - I. Cooperation in the Baltic Sea region. - A. The "Baltic states" concept. - B. Inter-parliamentary and inter-governmental cooperation in the Baltic Sea region. - C. The European Union Strategy for the Baltic Sea Region - II. Estonia and the European Union. - A. Estonia in the aftermath of regained independence: approaching the West. - B. Estonia's Constitution and accession to the EU. - C. The Estonian Parliament dealing with EU matters. - 1. The European Union Affairs Committee of the Parliament and the Riigikogu Rules of Procedure and Internal Rules Act. - 2. Control of subsidiarity. - 3. IPEX database and COSAC meetings. - D. Financial stabilization and economic governance measures. - 1. Estonia's fiscal austerity policy in 2009. - 2. Measures taken at EU level in recent years and Estonian sovereignty. - Conclusion.

Introduction

This Article examines the Republic of Estonia's position in the Baltic Sea region and the European Union from a constitutional law perspective. The Article is divided into two parts. Part I intends to shed some light into the broad range of international organizations and forums ensuring cooperation in the Baltic Sea region. Estonia, indeed, cannot be analyzed without taking into account its own context, which includes EU member states and neighboring countries. Section A starts by touching upon criticism that has been directed at the "Baltic states" concept in the last two decades and dwells on a theory put forward by Toomas Hendrik Ilves, current President of the Republic of Estonia, in the late 1990s. Despite its questionable scientific foundation, this theory is interesting for two reasons. Firstly, it stresses the fact that the overlapping history of the Baltic states in the twentieth century is essentially related to their annexation into the Soviet Union. Secondly, this theory argues that Estonia belongs to the Nordic countries' tradition and, in so doing, it implies that Estonia is different from Latvia and Lithuania - such an issue will be addressed in Part II of the Article. Section B overviews the tangle of international organizations and forums for cooperation in the Baltic Sea region. Only some of those forums are restricted to the three Baltic states. Section C analyses the European Union Strategy for the Baltic Sea Region, adopted in 2009. It was the first macro-regional strategy devised at EU level and proves the increasing interest of EU institutions in the area.

Part II of the Article aims at demonstrating that Estonia is a well-integrated EU member state. Section A outlines the major reforms made by the Estonian government in 1992 to sanction the new orientation to the West after the country regained independence from the USSR. The three Baltic states took on a path towards EU membership, and Estonia showed a more pronounced inclination to becoming a free-market economy from the outset. Overall, Estonia has featured better performances on economic and financial indicators than Latvia and

Lithuania have since the early 1990s. Section B looks through the constitutions Estonia adopted in the twentieth century and maintains that enactment of 1992 Constitution was not tantamount to merely restoring pre-Soviet constitutional order. The current Constitution contains no express reference to either accession to the European Union or to EU law. A 2003 act of the Parliament approved by referendum, however, resulted in rendering Estonia's European integration process constitutional without formally amending the Constitution. Section C explores the Estonian Parliament approach to EU matters. Subsection 1 focuses on the parliamentary committee dealing with EU matters - the European Union Affairs Committee. A chapter of the Riigikogu Rules of Procedure and Internal Rules Act, added in 2004, lays down rules for scrutinizing EU matters. Subsection 2 looks into the control of subsidiarity carried out at parliamentary level. Subsection 3 briefly accounts for the Estonian Parliament's usage of IPEX database¹ and attendance at COSAC² meetings by members of the Parliament. Finally, Section D is concerned with financial stabilization and economic governance measures. Subsection 1 looks through the fiscal austerity policy the Estonian government adopted in 2009. This policy prompted *The Economist*, in 2009, to talk about the "Estonian exception" among the Baltic states³ and enabled the country to switch to the euro on 1 January 2011⁴. Estonia was the first Baltic state to join the euro zone⁵. Subsection 2 deals with the restrictions on Estonian sovereignty arising from the measures taken by the European countries at EU and inter-governmental level since 2010 to cope with the financial crisis. Those restrictions have been deemed to be compatible with Estonia's Constitution by the Supreme Court. The Court has argued that strengthening stability within the euro area is now one of Estonia's constitutional values.

¹ IPEX database makes available on the Internet draft legislative proposals and other documents coming from EU institutions, as well as national parliaments' material.

² The Conference of the Parliamentary Committees for Union Affairs of Parliaments of the European Union.

³ *The Economist*, *The Estonian Exception. Estonia Gets a Boost, but Worries Persist about Its Baltic Neighbors*, 29 October 2009, available at <http://www.economist.com/node/14774730>.

⁴ See COUNCIL OF THE EUROPEAN UNION, Decision of 13 July 2010 in accordance with Article 140(2) of the Treaty on the adoption by Estonia of the euro on 1 January 2011 (2010/416/EU), O.J. 2010 L 196/1.

⁵ Latvia introduced the euro on 1 January 2014. See COUNCIL OF THE EUROPEAN UNION, Decision of 9 July 2013 on the adoption by Latvia of the euro on 1 January 2014 (2013/387/EU), O.J. 2013 L 195/24. Lithuania, instead, will face the changeover to the common currency on 1 January 2015. See COUNCIL OF THE EUROPEAN UNION - GENERAL AFFAIRS, Press Release 12092/14, 23 July 2014, 2 (reporting that the General Affairs Council of the EU, at a meeting held on 23 July 2014, adopted a decision "allow[ing] Lithuania to become the 19th member of the euro area on 1 January 2015"). See, also, EUROPEAN COMMISSION, COM(2014) 489 final, Report from the Commission to the European Parliament, the Council, the European Central Bank, the European Economic and Social Committee and the Committee of the Regions, *Fourteenth Report on the practical preparations for the future enlargement of the euro area*, 23 July 2014.

I. Cooperation in the Baltic Sea region

A. The "Baltic states" concept

Estonia, Lithuania, and Latvia are often referred to as "Baltic states." They have experienced plenty of analogies in political and constitutional history since the Russian Empire's domination ended. After gaining independence in the late 1910s, each of these countries adopted a constitution providing for a parliament as the dominant institution. The democratic phase did not last long. Lithuania, however, shifted to an authoritarian regime some years earlier than Estonia and Latvia did⁶. History of those countries got back onto the same track when they underwent occupation by the Red Army in 1940. Estonia, Lithuania, and Latvia shared subjection to the Soviet Union for nearly fifty years⁷. At least since the end of the Cold War, however, many historians and political scientists have challenged propriety of the phrase "Baltic states"⁸. Considering those countries as a whole is straining, even though simplification is a recurrent method of addressing issues when it comes to geopolitics⁹. It has been maintained that "the Baltic concept begins in Latvia and ripples out to include Estonia

⁶ After a successful coup d'état, Antanas Smetona became President of the Republic of Lithuania (for the second time) in 1926 and progressively installed an authoritarian regime lasting until 1940. See R.J. MISIUNAS - R. TAAGEPERA, *The Baltic States. Years of Dependence, 1940-1990* [hereinafter, *The Baltic States*], 11 (Berkeley and Los Angeles: University of California Press, 1993) (noting that "[t]he process of democratic disintegration was somewhat more long-drawn out in Estonia and Lithuania [than in Lithuania]"). Estonia became an authoritarian state between late 1933 and early 1934, while Latvia had a changeover to authoritarianism in 1934, upon initiative of then-Prime Minister Kārlis Augusts Vilhelms Ulmanis. ID., at 12 (adding that the anti-democratic regime in Latvia turned out to be harsher than those Estonia and Lithuania underwent).

⁷ On 17-18 June 1940, the Red Army occupied the three Baltic countries, thereby carrying into effect the Secret Additional Protocol to the German-Soviet Nonaggression Pact, signed on 23 August 1939. The Protocol stipulated that "[i]n the event of a territorial and political rearrangement in the areas belonging to the Baltic States [...], the northern boundary of Lithuania [should] represent the boundary of the spheres of influence of Germany and U.S.S.R." See R.J. SONTAG - J.S. BEDDIE (eds.), *Nazi Soviet Relations 1939-1941. Documents from the Archives of the German Foreign Office*, 78 (Department of State - G.P.O., 1948). Those countries' occupation led to the establishment of three Soviet socialist republics. The Secret Additional Protocol to the Molotov-Ribbentrop Pact included Finland among the Baltic states, thus within the Soviet sphere of influence. See P. PIIRIMÄE, *The Idea of "Yule Land"*, *Baltic Worlds*, 4, 2011, 36, 36 (laying stress on the fact that Finland was commonly regarded as a Baltic state before World War II broke out). Finland, however, put up a gallant resistance, which prevented the Red Army from taking over the country. Nobody included Finland among the Baltic States anymore. Finland has perfectly fit in with the Nordic countries since the end of World War II. Accordingly, the Baltic Sea region has conventional borders depending on the Soviet Union's expansion in the twentieth century. As Piirimäe maintains, "the term "Baltic" still carries a lot of its Soviet legacy and is therefore a constant reminder of the less fortunate period in the history of the region." ID. See, also, E. ANNUS, *The Problem of Soviet Colonialism in the Baltics*, *Journal of Baltic Studies* 43, 2012, 21.

⁸ See A. PURS, *Baltic Facades: Estonia, Latvia and Lithuania since 1945*, 11 (London: Reaktion, 2012) (characterizing the concept of Baltic States as one of the "geographic constructs" forged during the Cold War). The Author also points out that "the number of people [in Estonia, Lithuania, and Latvia] that would exclusively identify themselves as Baltic is infinitesimally small." ID.

⁹ ID., at 12 (noting that the phrases "Baltic States" and "Baltic Countries" are still of common usage at international level to pinpoint the Baltic Sea region, so the underlying concept "continues to have meaning").

and Lithuania."¹⁰ The three countries do not have the same language¹¹, religion¹², or historical roots¹³. Toomas Hendrik Ilves stated in a famous speech delivered in 1999 that those countries have in common only tragic memories - "occupations, deportations, annexation, sovietization, collectivization, russification."¹⁴ Apart from such "unhappy experiences, [there exists] no Baltic identity."¹⁵

In his address, not only did Ilves direct severe criticism at the "Baltic states" concept¹⁶. He also argued that Estonia was "a member of Yuleland,"¹⁷ and by that he meant a Nordic country. By assuming that geographic regions are just mentally molded¹⁸, Ilves pinpointed an area which "extend[ed] from Iceland and Britain through the Scandinavians to the Finnic lands [and] include[d] Estonia . . ."¹⁹ He based his assertion on linguistic data. The term for Christmas, which is "Yule" in English, has a common origin - he observed - in all the languages

¹⁰ ID. Furthermore, the Author characterizes Latvia as "the glue that holds Estonia and Lithuania together." ID.

¹¹ Estonian is a Finno-Ugric language closely related to Finnish. On the contrary, Latvian and Lithuanian are the only Baltic languages still spoken today and they belong to the Indo-European language family, like most European languages. See PIIRIMÄE, *The Idea of "Yule Land"*, *supra*, note 7, at 38 (noting that linguistic affinity between Estonian and Finnish is one of the factors "prompting [the Estonians] to look toward the North in search of kin, rather than toward the South"). After all, the Estonian name for the Baltic Sea - "*Läänemeri*," which means "the Western Sea" - does not hint at the term "Baltic." ID.

¹² Estonia is known for being one of the least religious countries in the world as the overwhelming majority of the population does not profess any belief in a god. According to official statistics, Eastern Orthodox Christianity comes first among those feeling an affiliation to a religion and is practiced mainly by the Russian minority dwelling in the country. Most ethnic Estonians who do not identify themselves as either atheist or agnostic are Lutheran Christians. See PC0454: At Least 15-Year-Old Persons by Religion, Sex, Age Group, Ethnic Nationality and County, 31 December 2011, available at <http://pub.stat.ee/px-web.2001/Dialog/varval.asp?ma=PC0454&lang=1> (retrieved 26 July 2014). The Evangelical Lutheran Church, instead, is the most spread religion in Latvia. Roman Catholics form the second largest religious group. See *Tieslietu ministrija iesniegtie reliģisko organizāciju pārskati par darbību 2011. gadā* (in Latvian) (retrieved 26 July 2014). In Lithuania, finally, roughly 77% of citizens belong to the Roman Catholic Church. See DEPARTMENT OF STATISTICS TO THE GOVERNMENT OF THE REPUBLIC OF LITHUANIA, *Ethnicity, mother tongue and religion*, 15 March 2013.

¹³ See H. REBAS, *Can the Baltics Be Defended*, *Baltic Defence Review* 1 (1999) 24, 1 (contending that "[h]istorically . . . 'the Baltics' is a fairly new and a rather hollow concept"). The Author also argues that "[t]he partly propagandistic notion 'the Baltics' simply carries along far too much of historical and present insignificance." ID., at 6.

¹⁴ T.H. ILVES, *Estonia as a Nordic Country*, speech to the Swedish Institute for International Affairs, 14 December 1999, available at <http://vm.ee/en/estonia-nordic-country>.

¹⁵ ID. See, also, REBAS, *Can the Baltics Be Defended*, *supra*, note 13, at 6 (observing that there has never existed "any noteworthy feeling of a 'Baltic identity' anywhere - except in some exile centres like the Pinneberg University outside Hamburg in the late 1940's, in Stockholm, New York and Toronto, during the ad hoc 'Baltic Peace and Freedom Cruise' in the Baltic Sea in 1985, and of course in Soviet GULAG prison camps") (referring to H. REBAS, *Balti koostöö - probleem või võimatus?*, *Akadeemia* 9/1998, Tartu, 1795, 1808-10) (in Estonian).

¹⁶ See PURS, *Baltic Facades*, *supra*, note 8, at 9 (noting that "[Ilves'] attacks on the core of the Baltic idea, developed while he was Minister of Foreign Affairs, have become the most celebrated and withering critiques of the entire concept").

¹⁷ ILVES, *Estonia as a Nordic Country*, *supra*, note 14, ID. Ilves first developed the concept of "Yule-land" in 1998. See T.H. ILVES, *Jõulumaa ehk vaimse geograafia enesemääramine* (Yule Land or the self-definition of mental geography), *Eesti Ekspress*, 24 December 1998.

¹⁸ See PIIRIMÄE, *The Idea of "Yule Land"*, *supra*, note 7, ID. (referring to the concept of "Yule Land" elaborated by Ilves as "an example of a conscious reconstruction of mental geographies"). This concept, indeed, "is based on an entirely plausible assumption that "regions" do not exist in nature but are formed in people's heads." ID.

¹⁹ ILVES, *Estonia as a Nordic Country*, *supra*, note 14, ID.

spoken in the region²⁰. This lexical similarity is found neither in the other Baltic states nor in Russia²¹ - they are not believed to fall within Yuleland, indeed. Clearly, Ilves was just seeking to find evidence to back up the case that Estonia belongs in the Nordic region rather than the Baltic Sea one. He claimed that Estonia shared much more than linguistic affinity with the other Yulelanders. Finland, Sweden, Norway, Denmark, Iceland, and the British Isles are known for having a low rate of corruption in the public sector and being among the world leaders in information and communications technology (ICT)²². As Ilves gave its speech, Estonia was catching up with those countries²³. Nowadays, Estonia is performing well in both ICT and shortage of corruption, according to recent world rankings, and tops Lithuania and Latvia²⁴. The gap that used to separate Estonia from the UK and Nordic countries, however, has not been entirely filled up and Estonia still lags behind a little²⁵.

B. Inter-parliamentary and inter-governmental cooperation in the Baltic Sea region

Countries in the Baltic Sea region broadly considered have developed forms of cooperation since the early 1990s. Firstly, those countries cooperate at parliamentary level. The Baltic Sea Parliamentary Conference (BSPC) is a forum for political dialogue gathering

²⁰ Actually, Ilves clarified that the term "Yule" also means solstice, i.e., "the return of the sun, one of the two highpoints in the pre-Christian Calendar of the hyperboreans." ID.

²¹ ID. (In Latvian "Yule" is *Ziemastvetki*, in Lithuanian *Kaledos*, in Russian *Rozhdestvo*).

²² ID. ("Today, Yulelanders rank the highest in the world in Internet connections and in mobile phone penetration, lowest in the world in corruption").

²³ Ilves pointed out that, at the time of his speech, Estonia ranked eleventh in the whole of Europe in Internet connections - a really astonishing position for a country which had regained its independence only eight years before. Estonia turned out to be "by far the highest ranked former Communist country and . . . more internetted than half [of the then EU Member States]." ID. By the same token, Estonia was exhibiting constant improvements in mobile phone penetration. ID. (noting that Estonia's membership in Yuleland was further proved by "high-tech identity, mobile-phone use, where [Estonia was] ahead of even Germany and quickly catching up to the world leaders, the Scandinavians"). Ilves also stressed the fact that Estonia was markedly reducing its level of corruption in public administration and thus approaching the low rate registered in the UK and Nordic countries. ID.

²⁴ The Global Information Technology Report (GITR) has been published yearly by the World Economic Forum since 2002. That report employs the so-called "Networked Readiness Index (NRI)" to detect "the . . . state of ICT readiness in the world." *The Global Information Technology Report 2014*, v, available at http://www3.weforum.org/docs/WEF_GlobalInformationTechnology_Report_2014.pdf. According to the Networked Readiness Index 2014 [hereinafter, NRI 2014], Estonia ranks 21st, whereas Lithuania and Latvia rank respectively 31st and 39th. *The Global Information Technology Report 2014*, xxi. As to level of corruption, recent statistics show that Estonia's public sector is perceived to be the 28th least corrupt in the world. Lithuania, instead, ranks 43rd and Latvia 49th. See, *Corruption Perceptions Index 2013*, available at <http://www.transparency.org/cpi2013/results>.

²⁵ The NRI 2014 finds that the UK and Nordic countries are positioned among the top ten, except for Denmark and Iceland, which rank respectively 13th and 19th. Finland comes first. See *The Global Information Technology Report 2014*, *supra*, note 24, ID. Similarly, Estonia is trumped in low rate of corruption by Northern European countries, all of them featuring among the top 15. Denmark ranks first. See *Corruption Perceptions Index 2013*, *supra*, note 24, ID.

members of national and regional parliaments in the Baltic Sea region, as well as representatives of supranational organizations²⁶. Finland promoted and hosted the first parliamentary conference on the Baltic Sea area in 1991²⁷. Such a conference was replicated in 1992 and 1994²⁸. The conference has been held once a year - in August or September - since 1995²⁹. According to the 2011 Rules of Procedure³⁰, the BSPC's mission is "to raise awareness and opinion on issues of current political interest and relevance for the Baltic Sea Region; to promote and drive various initiatives and efforts to support a sustainable environmental, social and economic development of the Baltic Sea Region; and to enhance the visibility of the Baltic Sea Region and its issues in a wider European context."³¹ The Baltic Sea area turns out to be a collection of heterogeneous situations. Nonetheless, the Rules of Procedure stipulate that the BSPC is also aimed at "strengthen[ing] the common identity of the Baltic Sea Region by means of close co-operation between national and regional parliaments on the basis of equality."³²

Secondly, cooperation in the Baltic Sea region occurs at governmental level. In particular, the Council of the Baltic Sea States (CBSS) is a twelve-member³³ political forum ensuring inter-governmental coordination. CBSS chairmanship is subject to yearly rotation - every year a member state takes over presidency from another. The CBSS was established in 1992 by the ministers of foreign affairs of the Baltic Sea area upon Denmark and Germany's initiative³⁴. Those ministers realized that the end of the Cold War should lead to a notable rise

²⁶ The parliaments of 11 countries are members of the BSPC: Denmark, Estonia, Finland, Germany, Iceland, Latvia, Lithuania, Norway, Poland, Russian Federation (Federation Council and the State Duma), Sweden. Furthermore, the assemblies of 11 regions or cities have membership in the BSPC - the Åland Islands (or Åland), Free and Hanse City of Bremen, Free and Hanse City of Hamburg, Faeroe Islands, Greenland, Kaliningrad Region, the Karelian Republic, the Leningrad Region, Mecklenburg-Vorpommern, the City of St. Petersburg, Schleswig-Holstein. The BSPC also includes the Baltic Assembly, the European Parliament, the Nordic Council, Parliamentary Assembly of the Council of Europe, and the Parliamentary Assembly of the Organization for Security and Co-operation in Europe (OSCE).

²⁷ The 1st Baltic Sea Parliamentary Conference took place in Helsinki, Finland, on January 7-9 1991. In addition to discussing the Baltic states' transition to market economy and other economic issues, the conference dealt with cooperation in trade, culture, and environment in the Baltic Sea region.

²⁸ The 2nd Baltic Sea Parliamentary Conference took place in Oslo, Norway, on April 22-24 1992 and the 3rd in Warsaw, Poland, on May 5-6 1994.

²⁹ The 4th Baltic Sea Parliamentary Conference, Roenne, Denmark, September 12-13 1995.

³⁰ BSPC Rules of Procedure were first adopted by the 8th Baltic Sea Parliamentary Conference (BSPC) on 8th September 1999 in Mariehamn and amended several times over time. The version of the rules currently in force was adopted by the 20th Baltic Sea Parliamentary Conference, Helsinki 30 August 2011.

³¹ BSPC Rules of Procedure (2011), 1.1.

³² Rules of Procedure, 1.2.

³³ CBSS's members are Denmark, Estonia, Finland, Germany, Iceland, Latvia, Lithuania, Norway, Poland, Russia, Sweden, and the European Commission. Furthermore, twelve countries are officially recognized as having the status of observers - Belarus, France, Ireland, Italy, Netherlands, Romania, Slovakia, Spain, Turkey, Ukraine, United Kingdom, United States of America.

³⁴ 1992 CBSS 1st Ministerial Session - Copenhagen Declaration, Conference of Foreign Ministers of the Baltic Sea States, Copenhagen, Denmark, 5-6 March 1992.

in relations within the Baltic Sea region. The so-called Copenhagen Declaration, which sanctioned the creation of the CBSS, pointed out that "recent dramatic changes in Europe herald[ed] a new era of European relations where the confrontation and division of the past [were] replaced by partnership and cooperation."³⁵ In the Copenhagen Declaration, the CBSS was defined as "a regional undertaking to promote new ideas for cooperation while maintaining close relations with other States and international organizations."³⁶ Furthermore, the ministers gathered in Copenhagen deemed enhancing cooperation in the Baltic Sea area to be "an important step towards further economic integration in Europe as a whole."³⁷ Like the BSPC, the CBSS encompasses "strengthen[ing] the idea of regional identity"³⁸ among its objectives. The Copenhagen Declaration, indeed, asserted that "a shared basis cultural heritage - but with different expressions - binds the countries surrounding the Baltic Sea together [...]."³⁹ In addition to ministers' meetings⁴⁰, summits gathering heads of governments in the Baltic sea area have been held since 1996. At their first summit, the heads of governments stressed that their cooperation was essentially aimed at improving "the living and working conditions of [the Baltic Sea region's] peoples within the framework of sustainable development, sustainable management of natural resources and protection of the environment."⁴¹ Besides economic development and environment, areas of interest for cooperation pinpointed at that summit were civil security, maritime and nuclear safety⁴². The 7th Baltic Sea States Summit held in Riga in 2008 approved CBSS long-term priorities⁴³, which in 2014 were renewed and reformulated

³⁵ ID., at 1. The Copenhagen Declaration also argued that boosting cooperation in the Baltic Sea region required that all countries in the area enjoy democratic institutions and market economies. ID., at 1-2 ("The Ministers of the Baltic Sea States . . . stressed that they are prepared to protect, support and develop democratic institutions, especially in the new democracies . . . [They also] noted that in the new Europe, the market mechanism is the basic principle of economic relations within and between the Baltic Sea States").

³⁶ ID., at 1.

³⁷ ID., at 2.

³⁸ ID., at 3.

³⁹ ID. The alleged common heritage was considered to be "a fertile starting point for the further development of cultural ties between the participating countries." ID.

⁴⁰ See C. KASACK, *Interaction of inter-parliamentary with inter-governmental bodies: The example of the Baltic Sea Region*, in A. KASEKAMP (ed.), *The Estonian Foreign Policy Yearbook 2005*, 139 (Tallinn: Estonian Foreign Policy Institute, 2005) (noting that since CBSS was established, member states' foreign ministers have held meetings yearly, while other ministers have met to discuss specific issues without a regular schedule). The Author also recalls that at the Kolding Summit in 2000, the heads of government agreed that the CBSS would act as a sort of linking body, capable of overseeing "all regional inter-governmental, multilateral cooperation among CBSS states." ID., at 139, note 6 (referring to *Chairman's Conclusions, Baltic Sea Co-operation and European Stability and Integration*, Baltic Sea States Summit, Kolding, Denmark, 12-13 April 2000).

⁴¹ *Presidency Declaration*, 1st Baltic Sea States Summit, Visby, 3-4 May, 1996, 1.

⁴² ID.

⁴³ *The Declaration on the reform of the Council of the Baltic Sea States*, adopted at CBSS Ministers' Deputies Meeting in Riga on 3 June 2008, established some long-term priorities for CBSS - environment, including climate change; economic development; energy; education and culture; civil security and the human dimension. On the following day, CBSS member states' heads of

as follows - "Regional Identity, Sustainable and Prosperous Region and Safe and Secure Region."⁴⁴ Moreover, at the 8th Baltic Sea States Summit, the heads of governments adopted a declaration committing CBSS member states to improving cooperation in the Baltic Sea region⁴⁵. This declaration was implemented in 2014⁴⁶. Thirdly, the Baltic Sea States Subregional Co-operation (BSSSC), an organization founded in 1993, ensures that regions and other sub-national entities in the Baltic Sea area⁴⁷ also enjoy a political network to enhance cooperation in various fields⁴⁸.

Some forums for inter-parliamentary and inter-governmental cooperation relate to only Estonia, Latvia, and Lithuania - the Baltic states. The main organization embodying cooperation at parliamentary level among those countries is the Baltic Assembly (BA). It was established on 8 November 1991 but its roots date back to the late 1980s, when the Baltic countries' frustration over the Soviet domination sprang up⁴⁹. Indeed, a 1990 joint resolution

government endorsed the declaration and the long-term priorities it set out. *See* 7th Baltic Sea States Summit, Riga, Latvia, 4 June 2008 - Chairman's Conclusions.

⁴⁴ *Decision by the Council of the Baltic Sea States on a review of the CBSS long term priorities*, 20 June 2014, 2.

⁴⁵ *See Vilnius Declaration, A Vision for the Baltic Sea Region by 2020*, 8th Baltic Sea States Summit, Vilnius, Lithuania, 2 June 2010.

⁴⁶ *See Declaration of the Council of the Baltic Sea States on the implementation of the Vilnius Declaration on A Vision for the Baltic Sea Region by 2020*, 20 June 2014.

⁴⁷ BSSSC members are regional entities in an area where ten countries are located - the nine countries bordering the Baltic Sea (Denmark, Estonia, Finland, Germany, Latvia, Lithuania, Poland, Russia, Sweden), and Norway.

⁴⁸ *Declaration on Baltic Sea States Subregional Co-operation*, Stavanger, Norway, 7-8 October 1993, 1-2 (identifying some areas "particularly well suited for expanded co-operation at the subregional level," such as trade and investments, environmental protection and energy, health, education and research, networks of transportation and communication).

⁴⁹ *See* K. O'CONNOR, *The History of the Baltic States*, 154 (Connecticut: Westport, 2003) (noting that the elections of the USSR's Congress of People Deputies (CPD) held in March 1989 provided the Baltic movements for independence - the Popular Front of Estonia (*Rahvarinne*), the Popular Front of Latvia (*Tautas Fronte*), and the reform movement of Lithuania (*Sajudis*) - with an actual chance to make their voice heard). Those movements, indeed, influenced the selection of the Baltic States' representatives to the CPD, a good deal of whom came from the very popular fronts. Baltic deputies found in the CPD "a medium through which to articulate their demands for sovereignty within the USSR." *Id.* In addition to requesting economic autonomy, those deputies fought for having illegitimacy of the Soviet rule over the Baltic States recognized. *Id.* The popular fronts joined forces beginning from 1989 and raised the level of opposition. *Id.*, at 155 (maintaining that "[f]rom 1989 onwards Baltic nationalists saw cooperation as a vital component of their effort to break free of Soviet rule.") Frustration over the USSR reached its apex when the three Baltic States' popular fronts organized a rally loaded with symbolic meaning - the so-called "Baltic Way." On 23 August 1989, exactly fifty years after the Molotov-Ribbentrop pact and its now-notorious secret protocol, almost two million people held one another by the hand, thereby forming an unbroken human chain from Tallinn to Vilnius. This telling demonstration, which rendered the world aware of the Baltic States' request for greater autonomy, fit in with the Singing Revolution. The phrase "Singing Revolution" was coined by Estonian artist Heinz Valk and refers to a series of spontaneous mass gatherings - beginning from 1987 - during which Estonian people used to sing national songs at music festivals. Symbolically defying the USSR and crying for independence by singing patriotic songs became a spread practice in the Baltic states in the period from 1987 to 1991. *See* U. KOCKEL, *Everyday culture in Europe*, 112 note 1 (laying stress on the fact that the Singing Revolution "drew upon a hundred-year tradition of mass singing, and [it] took place during annual National Folk Song Festivals that were organized regularly since the end of nineteenth century").

adopted by the Baltic states' supreme councils⁵⁰ laid the foundation for the BA⁵¹. According to the Baltic Assembly Statutes⁵², the three countries' parliaments appoint representatives to the BA⁵³. Other than mooting matters falling within the member states' national parliaments and governments, the BA is empowered to issue decisions on those matters⁵⁴. The Statutes also shaped the BA as a dynamic body building and keeping relations with other international - or regional - organizations⁵⁵. The Baltic Council of Ministers (BCM), instead, embodies inter-governmental cooperation among the Baltic states. Its structure includes different bodies made up of the three member states⁵⁶, even though the Prime Ministers' Council enjoys the leading role⁵⁷. In addition to coordinating actions taken by the national governments in matters that are of interest to the Baltic states, BCM has properly executive functions⁵⁸. The BCM's activities, however, need to be chimed with those carried out by the BA. Such harmonization is guaranteed by the Baltic Council - a political forum for coordination between the Baltic states' national parliaments and governments⁵⁹. Basic regulation of the Baltic Council was provided for in a 1994 agreement entered into by the republics of Estonia, Latvia, and Lithuania⁶⁰. A 2003 protocol amended the agreement and defined the Baltic Council simply as "an annual joint meeting" of the BA and BCM⁶¹. Priority areas for Baltic cooperation are annually

⁵⁰ The supreme councils acted as Supreme Soviets in Estonia, Latvia, and Lithuania in the period 1990 to 1992-1993. Therefore, they were just transitional legislative bodies leading up to the Baltic states' adoption of new (democratic) constitutions.

⁵¹ On 1 December 1990, in Vilnius, members of the supreme councils of Estonia, Latvia, and Lithuania came out with the decision of establishing the Baltic Assembly.

⁵² The Statutes of the Baltic Assembly were adopted on 29 May 1999 at the 14th Session, held in Vilnius. They replaced the Regulations of the Baltic Assembly, originally enacted in 1993. The BA Statutes have been amended several times. The latest amendments go back to 25 November 2011.

⁵³ Article 2 of the Statutes provides that the parliament of each Baltic state appoints "from 12 to 20 parliamentarians to the Baltic Assembly (national delegation, including its chairman and vice chairman), in accordance with the approved rules of procedure and the principle of proportional political representation in the national delegation."

⁵⁴ See Article 3 of the Statutes.

⁵⁵ ID.

⁵⁶ Article 2 of the Terms of Reference for the Baltic Council of Ministers, adopted by the heads of government of Estonia, Latvia, and Lithuania in Tallinn on 13 June 1994 and amended on 28 November 2003 [hereinafter, Terms of Reference], includes the following bodies within the BCM's structure - the Prime Ministers' Council, the Co-operation Council, the Secretariat, and the Committees of Senior Officials.

⁵⁷ Article 3 of the Terms of Reference stipulates that the BCM acts "under the guidance" of the Prime Ministers' Council.

⁵⁸ Pursuant to Article 1 of the Terms of Reference, not only does the BCM promotes "extensive and substantial co-operation," but it also drafts and implements "relevant measures" and fulfills "the tasks assigned in accordance with the agreements concluded."

⁵⁹ The Protocol of Co-operation between the Baltic Assembly and the Baltic Council of Ministers signed on 14 April 1996 stated that the Baltic Council represented "the highest form of co-operation" between the BA and BCM.

⁶⁰ Agreement on Baltic Parliamentary and Governmental Co-operation Between the Republic of Estonia, the Republic of Latvia and the Republic of Lithuania, Tallinn, 13 June 1994 (in particular, Article 6).

⁶¹ Article 3 of the Protocol amending the Agreement on Baltic Parliamentary and Governmental Co-operation between the Republic of Estonia, the Republic of Latvia and the Republic of Lithuania, Vilnius, 28 November 2003 [hereinafter, "the 2003 Protocol"]. Article 3 of the 2003 Protocol replaced Article 6 of the 1994 agreement. Under the new provision, the

pinpointed by the BA and BCM within the Baltic Council⁶². Since 2003, one member state rotating every calendar year has taken over chairmanship of both the BA and BCM. Therefore, the Baltic country being entrusted with annual chairmanship also presides over that year's session of the Baltic Council⁶³.

C. The European Union Strategy for the Baltic Sea region

In recent years, the European Union has taken into great account the Baltic Sea region, considered as a whole. In 2009, the European Council approved the EU Strategy for the Baltic Sea Region (EUSBSR)⁶⁴, prepared by the European Commission⁶⁵. The EUSBSR applies to eight countries - Denmark, Estonia, Finland, Germany, Latvia, Lithuania, Poland, Sweden. It is aimed at fostering cooperation among those countries in various fields, ranging from environment to energy, from competitiveness of markets to research and innovation⁶⁶. The EUSBSR was the first macro-regional strategy devised at EU level. Another strategy, the EU Strategy for the Danube Region (EUSBDR), was adopted by the Commission in December 2010⁶⁷ and endorsed by the European Council in June 2011⁶⁸. A third one - the EU Strategy for

Baltic Council is meant to include: a session of the BA; a meeting between the Presidium of the Baltic Assembly and the Co-operation Council of the Baltic Council of Ministers; a meeting of the latter which BA bodies are precluded from attending. Furthermore, the Chairman of the Co-operation Council of the Baltic Council of Ministers has the duty to report during the BA session of the Baltic Council "on co-operation between the Baltic States during the previous year, on activities related to the resolutions adopted by the Baltic Assembly during the year in question, and on plans for further co-operation."

⁶² Article 3 of the Protocol provides that "[p]riorities for Baltic co-operation for the coming year shall be approved by the Baltic Assembly and the Co-operation Council of the Baltic Council of Ministers in their respective sessions during the Baltic Council."

⁶³ Estonia has chairmanship of the Baltic Council in 2014. A joint statement issued at the 19th Baltic Council (2013) set out the priorities for Baltic cooperation that the Estonian presidency would focus on. *See* Joint Statement of the 19th Baltic Council, Riga, 28 November 2013.

⁶⁴ *See* EUROPEAN COUNCIL, *Presidency Conclusions*, 15265/1/09, 29-30 October 2009, 11 (maintaining that the EUSBSR should "contribute to the economic success of the region and to its social and territorial cohesion, as well as to the competitiveness of the EU").

⁶⁵ *See* EUROPEAN COMMISSION, *Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions concerning the European Union Strategy for the Baltic Sea Region*, COM(2009) 248 final, 10 June 2009.

⁶⁶ *See* EUROPEAN COMMISSION, *Commission Staff Working Document accompanying the document Report from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions concerning the added value of macro-regional strategies*, SWD(2013) 233 final, 27 June 2013, 77 (stating that the EUSBSR "provides an integrated framework for improving the environmental condition of the [Baltic Sea], transport bottlenecks and energy interconnections as well as facilitating the development of competitive markets across borders and common networks for research and innovation").

⁶⁷ EUROPEAN COMMISSION, *Communication from the Commission to the European Parliament, the Council, the European Economic And Social Committee and the Committee of the Regions concerning the European Union Strategy for Danube Region*, COM(2010) 715 final, 8 December 2010.

⁶⁸ EUROPEAN COUNCIL, *Conclusions*, EUCO 23/11, 23-24 June 2011, 13.

the Adriatic and Ionian Region - was adopted by the European Commission in June 2014⁶⁹ and endorsed by the European Council at the meeting held on 23-24 October 2014⁷⁰. Moreover, a strategy concerning the Alpine region is currently going through public consultation. All the strategies pinpointed both issues to tackle - and eventually overcome - and goals to achieve by boosting cooperation within the area involved. Issues and goals are grouped under the name "challenges." The EUSBSR listed four key challenges - developing a sustainable environment; enhancing the area's prosperity; increasing economic attractiveness of the region; ensuring its security⁷¹. Furthermore, the macro-regions identified at EU level embrace not only EU member states, but also third countries. Article 2(31) of 2013 Common Provisions Regulation (CPR)⁷² defines a macro-regional strategy as "an integrated framework endorsed by the European Council, which may be supported by the ESI Funds among others, to address common challenges faced by a defined geographical area relating to Member States and third countries located in the same geographical area which thereby benefit from strengthened cooperation contributing to achievement of economic, social and territorial cohesion."

Programs, actions, and projects involving various stakeholders⁷³ need financial resources to implement the EUSBSR and other strategies. European funds, member states' resources, and so-called seed money instruments⁷⁴ are to be harmonized with the goals the EU institutions intend to achieve through macro-regional strategies. The European Commission has pointed to "the importance of aligning the relevant existing and future sources of funding with the

⁶⁹ EUROPEAN COMMISSION, *Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions concerning the European Union Strategy for the Adriatic and Ionian Region*, COM(2014) 357 final, 17 June 2014.

⁷⁰ See EUROPEAN COUNCIL, *Conclusions*, EUCO 169/14, 23-24 October 2014, 15.

⁷¹ EUROPEAN COMMISSION, COM(2009) 248 final, *supra*, note 65, at 3.

⁷² Regulation (EU) No. 1303/2013 of the European Parliament and of the Council of 17 December 2013 laying down common provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund, the European Agricultural Fund for Rural Development and the European Maritime and Fisheries Fund and laying down general provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund and the European Maritime and Fisheries Fund and repealing Council Regulation (EC) No 1083/2006.

⁷³ EUROPEAN COMMISSION, *Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions concerning the European Union Strategy for the Baltic Sea Region*, COM(2012) 128 final, 3 March 2012, 5 (assigning different roles and tasks to the main four groups of stakeholders - National Contact Points (NCPs), Priority Area Coordinators (PACs), Horizontal Action Leaders (HALs), Flagship Project Leaders (FPLs) - in order to improve the governance of the EUSBSR's implementation process, with the Commission itself ensuring "overall coordination" of that process).

⁷⁴ See EUSBSR, *Seed Money Facility Manual*, last updated: 25 August 2014, available at http://seed.eusbsr.eu/images/downloads/2014.08.14_Facility%20Manual_FINAL.pdf. See, also, EUROPEAN COMMISSION, *Commission Staff Working Document accompanying the Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions concerning the European Union Strategy for the Baltic Sea Region - Action Plan*, SEC(2009) 712/2, February 2013, 20 (clarifying that the EUSBSR Seed Money Facility "focuses on the preparation phase of project applications contributing to the objectives of the Strategy").

objectives of the EUSBSR" in order to maximize the impact of the EUSBSR itself⁷⁵. The Commission has suggested various paths that could be taken for member states "and bodies in charge of implementing programmes" to achieve alignment of funding with the EUSBSR's objectives and priorities⁷⁶. One of the ways proposed by the Commission to gain the alignment is "identifying potential cooperation projects (projects idea) and its partners in the Partnership Agreement and/or Operational Programmes."⁷⁷ In June 2014, the European Commission adopted partnership agreements with the three Baltic states for the use of European Structural and Investment Funds (ESIF)⁷⁸ in the period 2014 to 2020⁷⁹. As noted in the Estonia Partnership Agreement, ESIF are crucial to founding the implementation of EUSBSR objectives and priorities⁸⁰.

In updating the overall framework of the EUSBSR, a 2012 communication of the European Commission identified three main objectives - "Save the Sea; Connect the Region; Increase Prosperity."⁸¹ In the same communication, the Commission maintained that effective implementation of the EUSBSR called for cooperation with third countries⁸². The document also recommended increasing relations with neighboring countries, especially with the Russian Federation. The Baltic Sea Region Programme 2014-2020 is a European Territorial Cooperation programme involving eight EU member states⁸³ and three neighboring countries - Norway, Belarus, and Russia. The Joint Programming Committee, made up of all participating states, approved the Cooperation Programme on 14 May 2014. The European Commission is expected to give its approval by the end of year. The Programme includes four priorities, one

⁷⁵ ID., at 21.

⁷⁶ ID.

⁷⁷ ID.

⁷⁸ ESIF include five EU-level funds - the European Regional Development Fund (ERDF); the European Social Fund (ESF); the Cohesion Fund (CF); the European Agricultural Fund for Rural Development (EAFRD); the European Maritime and Fisheries Fund (EMFF). The legislative package establishing the new EU funds was adopted on 17 December 2013 - Regulation (EU) No. 1301/2013 on ERDF; Regulation (EU) No. 1304/2013 on ESF; Council Regulation (EU) No. 1300/2013 on CF; Regulation (EU) No. 1305/2013 on EAFRD. That package also encompassed CPR Regulation (*see, supra*, note 72) as well as Regulations (EU) No. 1299/2013 and No. 1302/2013 - respectively, on the European Territorial Cooperation (ETC) and European grouping of territorial cooperation (EGTC). Basic legislation concerning the EMFF, instead, was passed on 15 May 2014 - Regulation (EU) No. 508/2014.

⁷⁹ EUROPEAN COMMISSION, *Commission adopts 'Partnership Agreements' with Baltic States for EU Structural and Investment Funds, 2014-20*, Press Release, 20 June 2014, available at http://europa.eu/rapid/press-release_IP-14-701_en.htm.

⁸⁰ MINISTRY OF FINANCE OF THE REPUBLIC OF ESTONIA, *Partnership Agreement for the use of European Structural and Investment Funds* [hereinafter, *Estonia Partnership Agreement*], available at http://www.strukturifondid.ee/public/PA_EE_20062014_EN.pdf, 199 (conceding that "[t]he EU Strategy for the Baltic Sea Region, updated in 2012, has been one of the strategic bases for programming EU funds for the period 2014–2020, as the ESI Funds constitute a very important source of financing for the priorities of the strategy").

⁸¹ EUROPEAN COMMISSION, COM(2012) 128 final, *supra*, note 73, at 3.

⁸² ID., at 6.

⁸³ They are the same countries participating in the EUSBSR.

of which is intended to support stakeholders of the EUSBSR. The Programme and EUSBSR, indeed, are supposed to be more interdependent than they used to be under the funding period 2007-2013, so as to "reinforce each other."⁸⁴ Among the EUSBSR overall objectives, the environment issue has been considered particularly compelling from the outset⁸⁵.

Improving the environment in the Baltic Sea region requires coordination with international forums such as the Baltic Marine Environment Protection Commission (HELCOM). HELCOM, aka the Helsinki Commission, is the body governing application of the 1992 Helsinki Convention - the Convention on the Protection of the Marine Environment of the Baltic Sea Area. Contracting parties to the Convention, entered into force in 2000, are eight EU member states⁸⁶, the European Union, and Russia. The Convention laid down principles the contracting parties committed to follow in coping with pollution of the Baltic Sea "in order to promote the ecological restoration of the Baltic Sea Area and the preservation of its ecological balance."⁸⁷ The HELCOM Baltic Sea Action Plan (BSAP) adopted in 2007 pinpointed a comprehensive goal to achieve - "a Baltic Sea in good environmental status by 2021."⁸⁸ The BSAP was updated in 2013 by the contracting parties. They "reconfirmed the commitment to implement[ing] the Baltic Sea Action Plan (BSAP) and decided on further action needed as well as the future strategic approach of HELCOM."⁸⁹ Estonia Partnership Agreement of 2014 stressed that reducing pollution in the Baltic Sea and boosting cooperation aimed at the protection of the marine environment is of pivotal interest to Estonia⁹⁰. The country, however, is not yet eligible to fulfill all the obligations resulting from the BSAP⁹¹.

II. Estonia and the European Union

A. Estonia in the aftermath of regained independence: approaching the West

⁸⁴ Cooperation Programme of the Baltic Sea Region Programme 2014-2020, Final Version as of 21 May 2014, available at <http://eu.baltic.net/download.php?type=file&id=2561>, 5.

⁸⁵ See EUROPEAN COUNCIL, *Presidency Conclusions*, *supra*, note 64, ID. (laying stress on "the urgent environmental challenges related to the Baltic Sea").

⁸⁶ Those member states are, once again, the ones having membership in the EUSBSR.

⁸⁷ Article 3(1) of the Helsinki Convention.

⁸⁸ HELCOM *Baltic Sea Action Plan (2007)*, HELCOM Ministerial Meeting, Krakow, Poland, 15 November 2007, available at http://helcom.fi/Documents/Baltic%20sea%20action%20plan/BSAP_Final.pdf, 5.

⁸⁹ HELCOM Copenhagen Ministerial Declaration, *Taking Further Action to Implement the Baltic Sea Action Plan - Reaching Good Environmental Status for a healthy Baltic Sea*, Copenhagen, Denmark, 3 October 2013, 1.

⁹⁰ *Estonia Partnership Agreement*, *supra*, note 80, at 16.

⁹¹ ID.

Demise of the Estonian SSR in 1991 marked the country's return to democracy and its shift towards a market economy. Estonia's socialist regime officially ceased to exist on 20 August 1991, when the Supreme Council - the then-existing legislative body - declared the country's full independence. Actually, a 1988 declaration had already stated that Estonian law would override that of the USSR⁹². A referendum, an institution which had not been appealed to since 1936, was held on 3 March 1991 to allow the people express their view on the country's independence. An overwhelming majority of the votes cast - 77,8% - was in favor of restoration of Estonia's sovereignty. Despite Estonian economy was going through dire straits⁹³, the 1992 transition government led by Tiit Vähi⁹⁴ paved the way for the country's future. A legislative package passed on 20 June 1992 introduced - or rather, re-established⁹⁵ - the Estonian kroon⁹⁶, which was pegged to the German Mark⁹⁷. Estonia became the first ex-Soviet republic with independent legal tender, based on a currency board arrangement (CBA). The CBA was shaped by the Bank of Estonia, with IMF⁹⁸ assistance, and resulted in curbing Estonia's economic and fiscal policy⁹⁹. In the same period, a new constitution was also adopted. Its text was approved by a referendum held on 28 June 1992¹⁰⁰. The Constitution¹⁰¹ entered into force on 3 July 1992. In addition, the transition government arranged for elections of a new parliament (and a President of the Republic) to take place in September 1992. The five-

⁹² SUPREME COUNCIL OF THE REPUBLIC OF ESTONIA, *Declaration on the Sovereignty of the Estonian SSR (Deklaratsioon Eesti NSV suveräänsusest)*, issued on 16 November 1988. See I. GRÄZIN, *Constitutional Development of Estonia in 1988*, 65 Notre Dame L. Rev. 141 (1990).

⁹³ For an analysis of Estonia's economy in early 1992, see A. KNÖBL - A. SUTT - B. ZAVOICO, *The Estonian Currency Board: Its Introduction and Role in the Early Success of Estonia's Transition to a Market Economy*, IMF Working Paper WP/02/96, May 2002, 9 (finding that the collapse of the central planning economy hit severely Estonian exports, most of which were directed at the Soviet Union, and a sharp rise in import costs was caused by Russia starting to apply liberalized prices). The new status of Estonian exports and imports resulted in hyperinflation and drastic reduction in real GDP, which dropped by over 25% in the period 1991 to 1992. At the beginning of its transition to a market economy, Estonia was experiencing an economic crisis much bigger than that of the other Eastern European countries, with terms of trade dropping by roughly 20% of GDP. ID.

⁹⁴ On 30 January 1992, Vähi was appointed as Prime Minister and Chairman of the Monetary Reform Committee.

⁹⁵ The kroon had been Estonia's currency from 1928 to 1940, when it was replaced by the Soviet ruble. The rate applied was "artificially low," with 1 kroon amounting to 1.25 rubles, and "approximately [tantamount] to a 7/8 reduction in the kroon's previous worth." D.J. PUDERBAUGH, *My Fatherland is My Love: National Identity and Creativity and the Pivotal 1947 Soviet Estonian National Song Festival*, 74 (University of Iowa, 2006).

⁹⁶ The Foreign Currency Act, the Currency Act, and the Act on the Security of the Estonian Kroon.

⁹⁷ The official exchange rate of the Estonian kroon against the German mark was fixed at EEK 8 = DEM 1.

⁹⁸ Estonia joined the International Monetary Fund on 26 May 1992.

⁹⁹ See KNÖBL - SUTT - ZAVOICO, *The Estonian Currency Board*, *supra*, note 93, at 16 (noting that "base money could only be created against convertible foreign currency," and the currency board arrangement left nearly no room for a discretionary monetary policy). Furthermore, the state budget "needed to be roughly balanced." ID.

¹⁰⁰ An overwhelming majority of the Estonian people - namely, 91,3% - voted in favor of the draft constitution and its implementation act.

¹⁰¹ RT (*Riigi Teataja*, meaning State Gazette), 1992, 26, 349.

party center-right coalition¹⁰² obtaining the majority of votes¹⁰³ expressed a government that looked to the West, thereby breaking off ties with Russia¹⁰⁴. Orientation towards the Western countries contributed to the steep growth of GDP in 1993¹⁰⁵, for this shift gave sap to trade and exports¹⁰⁶. The country was actually turning itself into a free-market economy. As the Bank of Estonia has maintained, "[t]he economic policy of 1993 as a whole was characterized by liberalism and minimal interference by the state."¹⁰⁷

Since they regained independence, Estonia, Latvia, and Lithuania took a path leading up to membership in the European Union, and Estonia was deemed to be the fastest in catching up with EU Member states. The conclusion of agreements on trade and commercial and economic cooperation with the EU in 1992¹⁰⁸ was the first step. On 18 July 1994, the Baltic states entered into free trade agreements¹⁰⁹, which came into force on 1 January 1995. Estonia, Lithuania, and Latvia then signed association agreements - aka Europe agreements - with the EU on 12 June 1995¹¹⁰. The association agreements replaced the arrangements concluded

¹⁰² The Pro Patria - meaning "Fatherland" - National Coalition (*Rabvuslik Koonderakond Isamaaliit*) included - the Christian Democratic Party; the Conservative People's Party; the Christian Democratic Union; the Republican Coalition Party; the Liberal Democrat Party.

¹⁰³ The Pro Patria National Coalition got 22% of the votes, while the Secure Home (*Kindel Kodu*) bloc scored 13,60%. The Popular Front/Peoples's Front (*Rabvarinne*) ranked third, with 12,25% of votes. See NSD - European Election Database, Estonia: Parliamentary Election 1992, available at http://eed.nsd.uib.no/webview/index.jsp?study=http://129.177.90.166:80/obj/fStudy/EEPA1992_Display&mode=cube&v=2&cube=http://129.177.90.166:80/obj/fCube/EEPA1992_Display_C1&top=yes.

¹⁰⁴ See M. LAAR, *Estonia's New Beginning*, in ESTONIAN MINISTRY OF FOREIGN AFFAIRS, *Estonia's Way into the European Union* (Tallinn, 2009) 10 (referring to the new government's so-called "sweep the place clean" policy, which "cut off the link to the Communist past and its traditions and opened the way to establishing a modern state system").

¹⁰⁵ See BANK OF ESTONIA, *Annual Report (1993). Estonian Economy in 1993*, 1 (reporting that Estonia's GDP in current prices in 1993 was approximately 21 billion kroons - 2.63 billion German marks, while it had been 14.225 billion kroons - 1.7 billion German marks - in 1992).

¹⁰⁶ ID. (contending that in 1993, the rise in GDP was achieved "mainly on account of more lively international relations and a considerable growth of exports").

¹⁰⁷ ID.

¹⁰⁸ *Agreement between the European Economic Community and the Republic of Estonia, on trade and commercial and economic cooperation; Agreement between the European Economic Community and the Republic of Latvia on trade and commercial and economic cooperation; Agreement between the European Economic Community and the European Atomic Energy Community, of the one part, and the Republic of Lithuania, of the other part, on trade and commercial and economic cooperation*, O.J. 1992 L 403/2; 11; 20.

¹⁰⁹ *Agreement on free trade and trade-related matters between the European Community, the European Atomic Energy Community and the European Coal and Steel Community, of the one part, and the Republic of Estonia, of the other part*, O.J. 1994 L 373/2; *Agreement on free trade and trade-related matters between the European Community, the European Atomic Energy Community and the European Coal and Steel Community, of the one part, and the Republic of Latvia, of the other part*, O.J. 1994 L 374/2; *Agreement on free trade and trade-related matters between the European Community, the European Atomic Energy Community and the European Coal and Steel Community, of the one part, and the Republic of Lithuania, of the other part*, O.J. 1994 L 375/2.

¹¹⁰ *Europe Agreement establishing an association between the European Communities and their Member States, of the one part, and the Republic of Estonia, of the other part*, O.J. 1998 L 68/3; *Europe Agreement establishing an association between the European Communities and their Member States, of the one part, and the Republic of Latvia, of the other part*, O.J. 1998 L 26/3; *Europe Agreement establishing an association between the European Communities and their Member States, of the one part, and the Republic of Lithuania, of the other part*, O.J. 1998 L 51/3.

formerly and consisted in "legal stepping stones towards EU membership."¹¹¹ The three countries, indeed, submitted their application for membership in 1995¹¹². Those agreements, however, contained provisions shaped to each of the Baltic states, for the countries were not proceeding at the same pace in introducing the principle of liberalization into their economies. As privatization of Estonian companies was proceeding at a brisk pace, Lithuania and - above all - Latvia were still featured by a large number of state-owned enterprises¹¹³. Estonia's competition and enforcement policies were stronger than those Latvia and Lithuania were engaged in¹¹⁴. Estonia also boasted lack of public debt¹¹⁵, and exports ranked the highest among the Baltic states as a percentage of GDP¹¹⁶. Accordingly, the European Union granted Latvia and Lithuania a transitional period ending on 31 December 1999, while Estonia did not need one because of "its economic openness."¹¹⁷ Estonia Association Agreement entered into force on 1 February 1998¹¹⁸. By that date, institutional framework of the state had been reformed to prepare Estonia's membership in the EU and deal with EU matters. On 30 January 1996, the Government issued Order No. 79-k on Implementation of Primary Measures Necessary for Integration of the Republic of Estonia into the European Union¹¹⁹. This executive order established a system aimed at ensuring coordination in Estonia's overall European integration process and arranging inter-ministerial cooperation on EU matters¹²⁰. Furthermore, the Parliamentary Committee on European Affairs was set up in January 1997. Estonia joined the European Union on 1 May 2004, alongside nine other countries including Latvia and Lithuania.

¹¹¹ N. PAUTOLA, *The Baltic States and the European Union - on the Road to Membership*, Review of Economies in Transition, 4, 1996, 21, 21.

¹¹² Latvia formally applied for accession to the EU on 13 October 1995, Estonia on 24 November, and Lithuania on 8 December.

¹¹³ See PAUTOLA, *The Baltic States and the European Union*, *supra*, note 111, at 24 (reporting that in the period 1994 to 1995, more than 50% of Estonia's large state-owned companies were privatized or in the process of switching to private ownership, while the percentage was lower in Lithuania (over 25%) and - above all - in Latvia, which was the slowest in divesting from large enterprises).

¹¹⁴ ID., at 25 (noting that in 1995, Estonia was opening up its markets to competition and taking on enforcement "to reduce abuse of market power and to promote a competitive environment"). At the time, Latvia and Lithuania were adopting similar measures but were lagging behind "in competition legislation and institutions, reduction of entry restrictions and enforcement action against companies with dominant market positions . . ." ID.

¹¹⁵ ID., at 27 (showing statistical data according to which Estonia was the only Baltic state where public debt was absent, both in 1994 and 1995).

¹¹⁶ ID. (reporting that in 1995, exports amounted to 55,5% of GDP in Estonia, while they added up to - respectively - 51,4% and 29,2% of GDP in Latvia and Lithuania).

¹¹⁷ ID., at 22.

¹¹⁸ *Europe Agreement establishing an association between the European Communities and their Member States, of the one part, and the Republic of Estonia, of the other part*, O.J. 1998 L 68/3.

¹¹⁹ RT I 1996, 8, 170.

¹²⁰ See K. VIKS - T. RANDMA-LIIV, *Facing the Challenges of EU Accession: Development of Coordination Structures in Estonia*, International Journal of organization Theory and Behavior, 8(1), 2005, 67, 77.

B. Estonia's Constitution and Accession to the EU

The Constitutional Assembly working between late 1991 and early 1992 did not intend just to bring back to life the pre-Soviet Republic of Estonia, even though "at the birth of the Constitution the retrospective aspect dominated."¹²¹ The Preamble of 1992 Constitution, amended in 2007¹²², is aimed at guaranteeing the preservation of the Estonian nation through the ages. It expressly recalls the republic existing prior to 1940 and the Constitution of 1938. As Chief Justice of the Supreme Court of Estonia Märt Rask has pointed out, however, a lot of water had passed under the bridge since the 1930s. Drafters of the constitution had to deal with Estonian society of the 1990s and not with that of fifty years earlier¹²³. Therefore, not only did the Constitution make a (inevitable) clean break with the socialist experience¹²⁴, but it shaped a brand new republic. In other words, 1992 Constitution did not result in mere restoration of the constitutional order existing before the country was incorporated into the Soviet Union¹²⁵. The

¹²¹ R. NARITS, *The Republic of Estonia. Constitution on the Concept and Value of Law*, Juridica International, VII, 2002, 12.

¹²² RT I 2007, 33, 210. The act entered into force on 21 July 2007.

¹²³ See M. RASK, *Intro*, Juridica International, XIX, 2012, 1 (arguing that "in Estonia it was understood in serious legal and political discussions that the constitution must take account of the current realities of society, of the development of law during the 50 years that had passed, reflect the spirit of the times and be forward-looking in its views").

¹²⁴ Estonia's military occupation by the Red Army led Prime Minister Juri Uluots and the members of his government to resign on 18 June 1940. Member of the Politburo of the Central Committee of the Communist Party of the Soviet Union (CPSU) Andrei Zhdanov was charged with supervising Estonia's transition to a Communist regime. He provided President Päts with a list of ministers and Päts was forced to approve the Soviet-proposed cabinet. Prime Minister Johannes Vares took office on 21 June 1940. The Vares government received orders from Zhdanov and Bochkarev, another representative of CPSU in Estonia. Leading posts most members of the Vares government were later bestowed upon in the Estonian SSR show that the government acted under Soviet Control. See ESTONICA.ORG, *Government of Vares*, available at http://www.estonica.org/en/%E2%80%98Government_of_Vares%E2%80%99/. The Soviet Union also directed the *Riigivolikogu* elected on 14 and 15 July 1940. See MISIUNAS - TAAGEPARA, *The Baltic States*, *supra*, note 6, at 26 (maintaining that parliamentary elections were held "to prevent de facto Sovietization from outpacing the formal constitutional structures by too wide margins . . .") Opposition candidates running for the Parliament experienced undue interference aimed at excluding them from ballot paper. Indeed, it has been noted that "a combination of threats and violence as well as invalidations by district electoral commissions" characterized those elections. ID., at 27. The USSR formally annexed Estonia on 6 August 1940, but the country's entire sovietization was accomplished a year later. Only the Nazi Germany and neutral Sweden recognized the incorporation into the Soviet Union. The other Western Countries, including the U.S., considered the annexation illegal and kept on having relations with diplomats of the former Republic of Estonia. On 25 August 1940, the Parliament adopted a new constitution, based on the 1936 Soviet Constitution. Accordingly, Estonia was declared a Socialist Republic. The Communist Party was the only organization allowed to carry out political activities. The unicameral Supreme Soviet of the Estonian SSR replaced the former Parliament. Its members were elected for a four-year period. The executive power was vested in the Council of People's Commissars. Miljjan points out that despite being formally a sovereign state, the Estonian SSR was in practice "an integral part of the centrally ruled USSR with very limited autonomy." T. MILJIAN, *Historical Dictionary of Estonia*, 146 (Maryland: Lanham; Oxford, Scarecrow, 2004). On 13 April 1978, the Estonian Supreme Soviet enacted a new Constitution adhering to the one adopted by the USSR in 1977.

¹²⁵ See MILJIAN, ID., at 150 (contending that as the 1992 Constitution was being drafted, nobody questioned the fact that "the three prewar [sic] Constitutions were dated and therefore unsuitable").

old constitutional order, moreover, does not prove to be consistent. Estonia adopted its first Constitution as an independent state in 1920¹²⁶. The Constitutional Assembly opted for parliamentarism and devised a system that did not include a President of the Republic.

¹²⁶ After years of russification imposed by the Russian Empire, the 1918 Estonian Declaration of Independence led to the foundation of an autonomous republic. As to the impact of russification on Estonia, see T.U. RAUN, *The Estonians*, in E.C. THADEN (ed.), *Russification in the Baltic Provinces and Finland, 1855-1914*, 285 (Princeton University Press, 1981). A Constituent Assembly (*Asutav Kogu*) was elected on 5-7 April 1919. After passing a temporary Constitution in 1919 (the Provisional Regulation on the Government of the Estonian Republic), the Constituent Assembly adopted on 15 June 1920 a Constitution which entered into force on 21 December 1920. It has been noted that the 1920 Constitution mainly looked to the British parliamentary system and was influenced by the Weimar Constitution, as well. Furthermore, the Bill of Rights contained in the Constitution (Articles 6 to 26), regarded by many observers as "one of the most extensive and democratic in Europe at that time," was drawn up by relying on the U.S. experience. See I. GRÄZIN, *A New Old Constitution for Estonia (Genetic Aspects of the Constitution and Parliamentarism versus Presidentialism)* [hereinafter, *A New Old Constitution for Estonia*], in S. FRANKOWSKI - P.B. STEPHAN III (eds.), *Legal Reform in Post-Communist Europe: The View from Within*, 76 note 5. According to the 1920 Constitution, sovereignty pertained to the Estonian people, which Article 27 defined "the supreme executor of the State Power in Estonia . . ." Such supreme power of the people was exercised through indirect representation: citizens eligible to vote elected a unicameral parliament - the *Riigikogu* (literally, State Assembly). The Parliament was made up of 100 members (Article 36). They got elected for a three-year period (Article 39) by deploying the D'Hondt method, which allows seats to be allocated in proportion to the number of votes received. The Parliament was empowered to pass legislative acts by simple majority, even though "at least one-half of the legal number" of representatives had to be present for laws to be approved (Article 46). The executive power was vested in the government (*Valitsus*), which was appointed by and accountable to the *Riigikogu* (Articles 59-64). The Prime Minister (the *Riigivanem*, which means State Elder) was designed directly by the Parliament and had a pivotal role. In addition to the functions of Prime Minister, the *Riigivanem* was assigned the authority to represent the State in foreign relations. The Supreme Court (*Riigikohus* - the State Court) was composed of State Judges appointed by the Parliament (Article 69). Constitutional architecture did not include a President of the Republic. The Parliament turned out to be "almost omnipotent," since neither the executive nor the judicial branch acted as effective counterbalances. GRÄZIN, *A New Old Constitution for Estonia*, at 76-77. Furthermore, no qualified majority was ever required for the *Riigikogu* to pass laws and bills could not be vetoed by the *Riigivanem*. Gräzin has pointed out, however, that the 1920 Constitution established "a relatively powerful referendum procedure." ID. Pursuant to Article 30, indeed, "one-third of the legal number of members of the State Assembly" had the power to prevent acts of the Parliament from entering into force in the two months after they were passed. During this period, 25,000 enfranchised citizens were authorized to demand that a passed law be put to a referendum "for acceptance or rejection." Article 31 also permitted 25,000 enfranchised citizens to require that a certain law be "passed, changed or cancelled" by submitting "an elaborated draft [act]" to the *Riigikogu*. A referendum had to be called whenever the Parliament decided not to approve the bill put forward by the people. Article 32 provided that new elections were to be called when a referendum rejected a law passed by the Parliament or accepted a law the Parliament had refused to approve. Still, according to Article 34, the overall referendum procedure did not apply to laws concerning specific matters, such as the budget, taxation, declaration of war, and international treaties. Moreover, constitutional amendments had to be approved by referendum. Article 88 provided: "The alteration of the Constitution whether initiated in the way of the people's initiative or by the State Assembly, is decided by the people by way of plebiscite." Under the 1920 Constitution, all of the three main coalitions - Left, Center, and Right - proved "too weak to form an effective government based on a clear majority." GRÄZIN, *A New Old Constitution for Estonia*, at 79. The political deadlock resulted in "a situation of almost permanent governmental crisis." ID. From 1919 to 1933 Estonia had twenty-one cabinets, whose average tenure was eight months and twenty days. See T.U. RAUN, *Estonia and the Estonians*, 114 (2nd ed., Hoover Press, 2001). It has been contended that the system, however, "worked more or less normally, as judged by the experience of other countries, at least until 1932." GRÄZIN, *A New Old Constitution for Estonia*, ID. Political parties and public opinion began blaming Estonia's constitutional framework, featured by supremacy of the Parliament, for the weakness of governments.

Amendments approved by referendum in 1933¹²⁷ overrode the "ultra-democratic nature"¹²⁸ of that Constitution. They were "so essential . . . that they are often called the 1933 Constitution."¹²⁹ Those amendments, combined with domestic political events, turned the country into an authoritarian state. A new institution, the Head of the State, was introduced and put at the core of the constitutional framework. The next stage was the Constitution enacted in 1938¹³⁰. It equipped the President of the Republic with strong powers, such as issuing

¹²⁷ Military threats springing up in Europe and the economic crisis of the 1930s rendered "parliamentary and governmental instability [in Estonia] an intolerable luxury." GRÄZIN, *A New Old Constitution for Estonia*, *supra*, note 126, at 79. Two different attempts of significantly amending the Constitution failed as they got rejected by referendum. In 1933, the League of Veterans of the Estonian War of Independence (*the Eesti Vabadussojalaste Liit - EVL*) presented a new set of amendments to the Constitution. This time, the proposal was approved by the majority of Estonian active citizens - 56,3% of the voters. The EVL "has often been regarded as a fascist movement." A. KASEKAMP, *The Estonian Veterans' League: A Fascist Movement?*, *Journal of Baltic Studies*, 24, 3 (1993), 263, 263. Although it never succeeded in seizing power, "both its style and ideological pronouncements showed the strong influence of European Fascism." RAUN, *Estonia and the Estonians*, *supra*, note 126, at 116. Those amendments entered into force on 24 January 1934 and are commonly referred to as the "second constitution" of Estonia. *See, e.g.,* R. RAUDLA, *Constitution, Public Finance, and Transition: Theoretical Developments in Constitutional Public Finance and the Case of Estonia*, 71, note 78 (Peter Lang, 2010). The 1933 amendments - and the resulting 1934 Constitution - placed the mark of authoritarianism into the Estonian system of powers. Professor Von Rauch maintains that during this period, the country experienced "authoritarian democracy." G. VON RAUCH, *The Baltic States: The Years of Independence: Estonia, Latvia, Lithuania, 1917-1940*, 154 (St. Martin's Press, 1995). In particular, 1934 Constitution introduced a new institution - the Head of the State, which was equipped with important powers ranging from appointing and removing members of the cabinet to enacting decrees. In 1934, Head of State Konstantin Päts called upon his power of ruling by decree to cope with an alleged threat of coup by the EVL. Päts declared a state of emergency, disbanded that fascist movement, and forbade parties from carrying out their political activities. He later abolished political parties themselves and replaced them with corporations modeled upon Fascist Italy's corporatism. It has been argued that, regardless, Estonia never became a totalitarian state. GRÄZIN, *A New Old Constitution for Estonia*, *supra*, note 126, at 80. The period of Päts' authoritarianism - known as "Era of Silence," a phrase coined by then-Prime Minister Kaarel Eenpalu - was characterized as "a link in the transition to a less parliamentary and more presidential regime." ID. For an overview of scholars' various assessments of Päts'era, *see* RAUN, *Estonia and the Estonians*, *supra*, note 126, at 122-123.

¹²⁸ J. HIDDEN - P. SALMON, *The Baltic Nations and Europe: Estonia, Latvia, and Lithuania in the Twentieth Century*, 48 (Routledge, 2013).

¹²⁹ J. LAFFRANQUE, *A Glance at the Estonian Legal Landscape in View of the Constitution Amendment Act*, *Juridica International* XII, 2007, 55, 55.

¹³⁰ In 1937, a Constitutional Assembly drew up a new Constitution, which was adopted on 28 July 1937 and entered into force on 1 January 1938. Features of an authoritarian State also persisted *de facto*, as the parliamentary elections held in February 1938 demonstrated. *See* RAUN, *Estonia and the Estonians*, *supra*, note 126, at 121 (reporting that only Päts' political organization - the National Front for the Implementation of the Constitution - was permitted to campaign and yet "the popular vote was hardly an overwhelming victory for [it]"). ID. The Author maintains that, by and large, the 1938 Constitution did not result in any outstanding increase in democratization, as "[p]olitical parties remained proscribed . . . and the new parliament played a minor role in public life." ID., at 122. Article 38 of the 1938 Constitution provided for the President of the Republic/Head of the State - an institution "embod[ing] the unity of the power of the State and represent[ing] the State." Pursuant to Article 40, the President of the Republic was elected for six years among candidates designed by the Parliament and assembly of representatives "of local self-government bodies . . ." The Parliament was made up of two chambers - the Chamber of Deputies (the *Riigivolikogu*) and the National Council (the *Riiginõukogu*). The former was composed of 80 members elected by universal suffrage (Article 67). According to Article 84, the National Council had 40 members partly elected by local governments and professional corporations and partly appointed by the President of the Republic. In addition, some high officials served as members *ex officio*. Gräzin notes that the purpose of providing for such a composition of the upper chamber was to avoid the parliamentary deadlock that used to occur under the 1920 Constitution.

legislation by decree, appointing the government, and even dissolving the Chamber of Deputies. The elements of authoritarianism which had emerged *de facto* were thus partially acknowledged. To put it differently, 1938 Constitution dampened authoritarianism without getting rid of it entirely. The range of powers assigned to the Head of the State represents a telling example of the differences between the 1938 Constitution and that of 1992. The current constitution, indeed, lays down a parliamentary system where the President of the Republic is vested with "mostly symbolic (and weak executive) powers . . ." ¹³¹ Ergo, despite "reflect[ing] the idea of legal restoration [of Estonia's former democratic republic]," the 1992 Constitution is actually new, for it innovated in the institutional framework ¹³².

The Constitution of Estonia lacks any express reference to either the law of the Council of Europe or EU legislation. Laffranque, however, has noted that the Estonian Constitution

Indeed, the National Council's members "represented the interests of those most concerned with the continuation of state power and the avoidance of a situation of *interregnum*." GRÄZIN, *A New Old Constitution for Estonia*, *supra*, note 126, at 82 (italics in original). Therefore, the 1938 Constitution acknowledged the corporatism that Pääts had introduced a few years earlier. ID., at 81 (laying emphasis on the fact that corporatism never became the cornerstone Estonia's comprehensive society depended upon). The Author also contends that the strong powers constitutionally vested in the President of the Republic turned out to further authoritarianism much more than corporate elements in professions and the Parliament. ID., at 81 note 22. For instance, Article 68 conferred upon the President of the Republic the power to dissolve the Chamber of Deputies "for reasons of State." Furthermore, according to Article 50, it was incumbent on the President to appoint the members of the government. Gräzin underscores the fact that unlike the 1920 Constitution leaning towards parliamentarism, the 1938 Constitution did not grant the Parliament "supreme legislative power . . ." ID., at 81. Article 99 of the latter Constitution, indeed, equipped the President of the Republic with the authority to legislate by decree. The President, however, could enact decrees only when "[a] case of urgent national necessity" occurred and the Parliament was not in session. Furthermore, laws adopted by presidential decree were to be submitted to the Parliament "at the beginning of [its] following session . . ." At that point, the Parliament was allowed to pass laws to either amend or repeal any issued decree. Apart from the legislative authority vested in the President, both the government and at least one-fifth of the members of the Chamber of Deputies were entitled to initiate legislation (Article 92). Only the government, however, was authorized to initiate "laws concerning the armed forces of the State and the duties of the citizens with regard to national defence . . ." The overall legislative procedure laid down in Articles 93-96 was rather complicated. First, the Chamber of Deputies had to pass draft laws. Then, draft laws were submitted to the National Council for pronouncement. Draft laws approved by both chambers moved on to the next stage - promulgation by the President of the Republic. Amendments made by the upper chamber to a draft law, instead, required the bill to go back to the Chamber of Deputies. If the lower chamber approved the amendments or the two arms of the Parliament came to an arrangement on them, the draft law was ready for promulgation. In case of persistent disagreement, the Chamber of Deputies had to approve the draft law by a three-fifths majority of its members in order for the draft law to be promulgated. In addition, Article 98 authorized the President of the Republic to appeal directly to the people by calling a referendum "for reasons of State," as long as the Standing Committee of the Parliament's plenary meeting gave its consent. The majority of the votes cast in the referendum formed the people's decision, which was "binding on the State authorities . . ." The President was also empowered to conclude and ratify international treaties (Article 101). The Parliament had to approve the treaties before the President ratified them, however. Article 102 allowed the President of the Republic to demand that certain treaties get approved by the plenary. The budgetary power was vested in the Parliament (Article 103), as already provided for in the 1920 Constitution.

¹³¹ R. RAUDLA, *Fiscal Retrenchment in Estonia during the Financial Crisis: The Role of Institutional Factors* [hereinafter, *Fiscal Retrenchment in Estonia*], Public Administration, 91, 1, 2013, 32, 40.

¹³² For an analysis of Estonia's legal continuity between the Estonian SSR and the current Republic, see GRÄZIN, *A New Old Constitution for Estonia*, *supra*, note 126, at 73-93.

was written "in the spirit of the Council of Europe,"¹³³ so it took into great account the rights and freedoms provided for in the European Convention of Human Rights (ECHR) as well as the jurisprudence of the European Court of Human Rights. The drafting of the Constitution began right after Estonia had obtained its independence from the Soviet Union. Therefore, it is understandable - Laffranque argues - that the country was more interested in stressing "the protection of human rights and honoring of the other principles of democracy than [considering] a possible accession to the then primarily economically-oriented European Communities . . ." ¹³⁴ Section 3 Const. stipulates that state authority "is exercised solely pursuant to the Constitution and laws that are in conformity therewith." Laffranque has traced out the fact that Section 3 Const. does not identify the institution empowered to decide whether a given principle or rule, regardless of its origin, "belongs to the Estonian legal order." ¹³⁵ According to Section 162 Const., courts should administer justice by applying only Estonian constitutional and statute provisions. In a decision of 30 September 1994, however, the Constitutional Review Chamber of the Supreme Court included the Council of Europe and EU law among the legal sources Estonian courts could draw upon¹³⁶. The Constitutional Review Chamber of the Supreme Court acts as a constitutional court, so it decides on compatibility of laws with constitutional provisions¹³⁷. The power of constitutional review is vested in the Supreme Court, which is the highest court in Estonia, by Section 149 Const.

The original version of the 1992 Constitution did not make for the restrictions on sovereignty that membership in the European Union entails. The Constitution of Estonia is deemed to be one of the most "souverainist" in Europe¹³⁸, as it furnishes sovereignty with steep protection. Section 1(1) Const. pinpoints two essential elements of the Estonian republic - independence and sovereignty, which are necessarily "timeless and inalienable" according to Section 1(2). It has been pointed out that according to legislative history, Section 1 Const. requires both a constitutional amendment and a referendum for Estonia to be able to join international organizations dealing with political, economic and/or military issues¹³⁹. Section 162 Const. compels a referendum for any amendment to the Constitution itself concerning

¹³³ J. LAFFRANQUE, *Co-existence of the Estonian Constitution and the EU*, *Juridica International*, VII, 2002, 17, 17.

¹³⁴ *ID.*, at 17-18.

¹³⁵ *ID.*, at 21.

¹³⁶ *ID.* (referring to decision of the Constitutional Review Chamber of the Supreme Court, 30 September 1994, (III-4/A-5/94), RT I 1994, 80, 1159 (in Estonian)).

¹³⁷ For an analysis of the Constitutional Review Chamber of the Supreme Court, see C. TAUBE, *Constitutionalism in Estonia, Latvia and Lithuania. A study in comparative constitutional law* [hereinafter, *Constitutionalism in Estonia, Latvia and Lithuania*], 105-108 (Iustus Forlag AB, Upsala, 2001).

¹³⁸ See A. ALBI, *Estonia's Constitution and the EU. How and To What Extent to Amend It*, *Juridica International*, VII, 2002, 39, 42.

¹³⁹ *ID.* (referring to *Põhiseaduse ja Põhiseaduse Assamblee* (Constitution and Constitutional Assembly), 560 (Tallinn: Õigusteabe AS Juura, 1996) (in Estonian)).

Chapter I (General Provisions) and Chapter XV (Amendment of the Constitution). On 16 April 2003, the European Union and Estonia signed a treaty on accession of the latter to the EU. The Treaty was signed in Athens between the then EU member states and the representatives of Estonia as well as those of other nine countries. The related Act of Accession, expressly considered as part of the Treaty, set out specific conditions of admission¹⁴⁰. Estonia's accession to the EU "had to be formalised in a legally correct manner."¹⁴¹ Therefore, a referendum on Estonia joining the EU was called for. The referendum was held on 14 September 2003 and resulted in adopting the Constitution of the Republic of Estonia Amendment Act (CREAA)¹⁴², aka the Third Constitutional Act. Section 65(4) Const. assigns the Parliament the power to ratify and denounce international treaties. Furthermore, Section 106 of the Constitution explicitly prohibits that international treaties be ratified by referendum. Accordingly, accession to the EU and approval of the CREAA were merged together into a sole question presented to the voters at the referendum¹⁴³. The CREAA, which entered into force on 6 January 2004, made Estonia's accession to the EU compatible with the Constitution without formally amending the constitutional text. Therefore, the CREAA's "constitutional content" is evident¹⁴⁴. It has been argued that the CREAA substantially amended the Constitution, for the CREAA's provisions "embody the crucial constitutional questions related to the accession to the EU . . ."¹⁴⁵ In other words, despite being just made up of four concise sections, the CREAA "builds a bridge between the Estonian legal order and EU law."¹⁴⁶ According to Section 1 of the CREAA, Estonia's EU membership calls for compliance "with the fundamental principles of the Constitution of the Republic of Estonia." Section 2 of the CREAA provides that "[a]s of Estonia's accession to the European Union, the Constitution of the Republic of Estonia [shall apply by taking into account] the rights and obligations arising from the Accession Treaty." As the Administrative Law Chamber of the Supreme Court held in

¹⁴⁰ O.J. 2003 L 236/33.

¹⁴¹ R. NARITS, *About the Principles of the Constitution of the Republic of Estonia from the Perspective of Independent Statehood in Estonia* [hereinafter NARITS, *About the Principles of the Constitution of the Republic of Estonia*], *Juridica International* XVI, 2009, 56, 57.

¹⁴² The CREAA was approved since 66,83% of the votes were cast in favor of it.

¹⁴³ The question on the ballot paper was the following - "Kas Teie olete Euroopa Liiduga ühinemise ja Eesti Vabariigi põhiseaduse täiendamise seaduse vastuvõtmise poolt?" ("Are you in favor of accession to the European Union and the passage of the Constitution of the Republic of Estonia Amendment Act?"). See P. VAN ELSUWEGE, *From Soviet Republics to EU Member States: A Legal and Political Assessment of the Baltic States' Accession to the EU*, Vol. I, (Martinus Nijhoff, 2008) 374 (contending that the matter of Estonia's accession to the EU and the people's approval of the CAA were put together "to avoid the risk of a constitutional deadlock in case voters would accept EU accession and reject the Third Constitutional Act or the other way around . . .").

¹⁴⁴ NARITS, *About the Principles of the Constitution of the Republic of Estonia*, *supra*, note 141, ID.

¹⁴⁵ ID., at 57 note 9 (quoting *Eesti Vabariigi Põhiseadus. Kommenteeritud väljaanne* (The Constitution of the Republic of Estonia. Commented edition), 28 (Tallinn: Juura, 2008)).

¹⁴⁶ LAFFRANQUE, *A Glance at the Estonian Legal Landscape*, *supra*, note 129, at 57.

a 2006 decision¹⁴⁷, the CREEA sets out the relation that underpins EU law incorporation into the Estonian legal system. The CREEA requires EU legislation to be compatible with the fundamental principles laid down in the Constitution. Yet, at the same time, the CREEA recognizes that EU law enjoys "supremacy and in certain cases direct applicability . . ." ¹⁴⁸ Estonia officially joined the EU on 1 May 2004. Estonia's European integration proceeded smoothly. Unlike the opinion expressed by the Chancellor of Justice, the Parliament held that a referendum was not called for to approve the Lisbon Treaty¹⁴⁹. The act ratifying the Treaty was passed by the Parliament on 11 June 2008 with 91 votes in favor and signed by the President of the Republic on 19 June 2008¹⁵⁰.

C. The Estonian Parliament dealing with EU matters

1. The European Union Affairs Committee of the Parliament and the Riigikogu Rules of Procedure and Internal Rules Act

The *Riigikogu* is Estonia's unicameral parliament and is made up of 101 members. According to Section 60(1) Const., a proportional method is used to allocate seats in the Parliament¹⁵¹.

The Riigikogu Rules of Procedure and Internal Rules Act [hereinafter, Riigikogu Procedure Act], passed on 11 February 2003,¹⁵² lays down rules and procedures for the Estonian Parliament and its committees. The Parliament made several amendments to this act as of 2004. Pursuant to an amendment adopted on 8 December 2005¹⁵³, the Estonian Supreme Court is empowered to assess compatibility of proposed legislation implementing EU law with the Constitution. Accordingly, the power of interpreting the Constitution in connection with EU primary and secondary law is vested in the Supreme Court. Section 36(1) of Riigikogu Procedure Act allows members of the government to participate in committees' sittings and grants them the right to speak. Committees' sittings are featured by confidentiality. Pursuant to

¹⁴⁷ ALCSCr, 25 April 2006, matter 3-3-1-74-05, available at www.riigikohus.ee (in Estonian).

¹⁴⁸ ID., at 59 (referring to ALCSCr, 25 April 2006, ID., at 12).

¹⁴⁹ See E. LIIVIK, *Referendum in the Estonian Constitution: Historical and Comparative Constitutional Aspects*, *Juridica International*, XVIII, 2011, 17, 24.

¹⁵⁰ *Lissaboni lepingu, millega muudetakse Euroopa Liidu lepingut ja Euroopa Ühenduse asutamise lepingut, ratifitseerimise seadus* (Act Ratifying the Treaty of Lisbon amending the Treaty of the European Union and the Treaty establishing the European Community), RT II 2008, 14, 36 (in Estonian).

¹⁵¹ For an overview of the national electoral system in Estonia, see M. MÖLDER, *Fluid Voters behind a Stabilising Party System? Investigating Party System Parameters in Estonia*, paper presented at 41st ECPR Joint Sessions of Workshops Johannes Gutenberg Universität, Mainz 11 - 16 March 2013, 4-5.

¹⁵² Act RT I 2003, 24, 148. Entry into force: 17 March 2003.

¹⁵³ Act RT I 2005, 68, 524. Entry into force: 23 December 2005.

Section 36(3), however, the public may be granted access to a committee's sitting "if more than one-half of the members of the committee vote in favour thereof." Section 38, amended in 2003¹⁵⁴, sets out procedures for the adoption of committee resolutions. Furthermore, Section 39(2) requires minutes to contain basic information about the committees' sittings, including the participants' positions, decisions made, and "the voting results." Under Section 39(3), a speaker may call for his or her opinion to be put on the record. Finally, Section 47 establishes the *Riigikogu's* and parliamentary committees' working schedule.

The European Union Affairs Committee of the *Riigikogu* is charged with examining draft legislative acts and other EU documents. It is endowed with an administrative staff - a secretariat made up of six civil servants. In addition to the European Union Affairs Committee, the Foreign Affairs Committee scrutinizes EU matters concerning common foreign and security policy (CFSP)¹⁵⁵. The European Union Affairs Committee participates in EU policy formulation. So does the Foreign Affairs Committee when CFSP is at issue. In dealing with EU matters, the European Union Affairs Committee tends to rely on opinions expressed by one or more standing committees. Section 25(2) of Riigikogu Procedure Act provides that the European Union Affairs Committee is composed of at least 15 members, among whom there shall be "at least one member or alternate member from each of the standing committees . . ." Double membership in the European Union Affairs Committee and another committee ensures regular exchange of information between the former and specialized standing committees. In addition to taking an official stand on EU matters, the European Union Affairs Committee and the Foreign Affairs Committee oversee the government's conduct in implementing policies adopted by the European Union. The *Riigikogu* has stated that controlling the government's stance in the EU is more important than scrutinizing activities carried out by the Council of the EU. At the same time, the *Riigikogu* has argued that checking the Council of the EU outweighs the monitoring of the European Commission and the European Council¹⁵⁶. The Parliament has also stressed that the government has the duty to control that the conclusions of European Council meetings are in accordance with Estonia's positions¹⁵⁷. Chapter 181 of Riigikogu Procedure Act, which was added in 2004,¹⁵⁸ lays down legislative procedures for European Union affairs. Section 152¹, amended in 2011¹⁵⁹, sets out rules concerning the flow of EU materials from the government to the Parliament. The

¹⁵⁴ Act RT I 2003, 90, 601. Entry into force: 1 January 2004.

¹⁵⁵ See Section 18(11)(3) of Riigikogu Procedure Act, amended by Act RT II, 14.09.2012, 1. Entry into force: 15 September 2012.

¹⁵⁶ See Twentieth Bi-annual Report of COSAC on EU Practices and Procedures (October 2013) - Annex, 119.

¹⁵⁷ See Nineteenth Bi-annual Report of COSAC on EU Practices and Procedures (May 2013) - Annex, 142.

¹⁵⁸ Act RT I 2004, 12, 77. Entry into force: 15 March 2004.

¹⁵⁹ Act RT I, 01.10.2011, 1. Entry into force: 2 October 2011.

government transmits 100-200 EU documents to the Parliament on average every year¹⁶⁰. The Estonian Parliament also receives information directly from the European Commission¹⁶¹. Section 152¹(1) imposes on the government the duty to send the *Riigikogu* proposed EU legislation on matters falling within the Parliament's competence. The Parliament is also involved when adoption of a given proposal "would bring about important economic or social consequences." The Parliament shall express its view on the draft legislative act. According to Section 152¹(2), amended in 2012¹⁶², the government also forwards "other European Union affairs of significance to the European Union Affairs Committee or the Foreign Affairs Committee for an opinion." The additional material is submitted to the *Riigikogu* by the government upon the former's request or the latter's initiative. This set of provisions has been deemed to grant the parliament the right to be informed of the government's position concerning the items on the agenda of European Council meetings and euro zone summits. Furthermore, the Prime Minister has to appear before the European Union Affairs Committee to explain the stance taken by the government on those topics¹⁶³. Section 152²(1), amended in 2010¹⁶⁴, identifies some documents the government is required to attach to each EU proposal transmitted to the Parliament. In particular, those documents are: "[a]n explanatory memorandum which sets out the purpose of the draft European Union legislation, the procedure and schedule for proceedings regarding the draft legislation in the institutions of the European Union, an overview of the effects related to passage of the draft legislation as legislation, analysis of the compliance of the draft legislation with the subsidiarity principle, and the opinion of the Government of the Republic on the draft legislation . . ." Section 152²(3) clarifies that the government has to transmit draft legislative acts to the Board of the *Riigikogu*, which - in turn - submits them "promptly" to the European Union Affairs Committee. EU proposals concerning CFSP, however, are to be submitted to the Foreign Affairs Committee. In addition, the Board of the *Riigikogu* designates one or more standing committees to express their opinion on the draft legislation at issue. The Board also establishes a deadline for selected committees to submit the opinion to the European Union Affairs Committee or the Foreign Affairs Committee. According to Section 152⁴(2), the opinion prepared by the European Union Affairs Committee or the Foreign Affairs Committee "shall be indicated in the minutes of the sitting of the committee." The committee involved may also decline to give its opinion. Either

¹⁶⁰ See Seventeenth Bi-annual Report of COSAC on EU Practices and Procedures (April 2012) - Annex, 114.

¹⁶¹ ID., at 113.

¹⁶² Act RT II, 14.09.2012, 1, *supra*, note 155.

¹⁶³ P. EHIN, *Estonia, in* EUROPEAN PARLIAMENT - CITIZENS' RIGHTS AND CONSTITUTIONAL AFFAIRS, *Democratic Control in the member states of the European Council and the Euro zone summits*, Annex 1 - *Questionnaires On The 27 Member States*, 36 (2013).

¹⁶⁴ Act RT I 2010, 28, 144. Entry into force: 14 June 2010.

ways, the committee is to inform the government of its decision. Pursuant to Section 152⁴(3), the committee's opinion is binding on the government. In case of disagreement on the contents of the opinion, the government has to explain its reasons "to the European Union Affairs Committee or the Foreign Affairs Committee at the earliest opportunity."

Section 152⁵, amended in 2009¹⁶⁵, provides for accountability of the government to the Parliament on implementation of policies adopted by the European Union. Section 152⁵(1) imposes on the Prime Minister the duty to present an overview assessing the government's way of implementing EU policies during the autumn session of the plenary assembly of the *Riigikogu*. Presentation of the overview has to comply with the procedure laid down in Section 155 of *Riigikogu* Procedure Act. It has been noted that such an overview represents a form of *ex-post* control by the Parliament over the government's conduct in dealing with EU matters¹⁶⁶. The overview usually contains rather general statements, which are "focus[ed] on the foundations and guiding principles of the government's EU policy."¹⁶⁷ Even so, Section 152⁵(2) provides that upon request, the Chairman of the European Union Affairs Committee is permitted to make a report concerning the overview. Members of the Parliament (MPs) are authorized to pose oral questions to the Chairman.

Section 152⁸, added in 2010¹⁶⁸, lays down procedures for the *Riigikogu* to formally communicate its opposition to initiatives taken by the European Council under Article 48(7) TUE. The Estonian Parliament also has to follow those procedures to express its dissent to proposals of decisions made by the European Commission with respect to Article 81(3)(2) TFEU. According to Section 152⁸(1), a standing committee or faction is authorized to issue a draft parliamentary resolution "to make known its opposition . . ." Section 152⁸(2) imposes on the Board of the *Riigikogu* the duty to set a term for standing committees and factions to submit motions aimed at amending the draft resolution. The government is to be heard on the matter, as well. Pursuant to Section 152⁸(4), a representative of the committee or faction drafting the resolution and a representative of the European Union Affairs Committee are required to prepare a report on the issue. If the resolution has been drafted by the European Union Affairs Committee, "members of the *Riigikogu* may each pose two oral questions to the presenter of the report." Section 152⁸(5) provides for a parliamentary debate enabling representatives of standing committees and factions to make comments on the text of the draft resolution. Motions proposing amendments are subject to voting. Whether or not motions are submitted,

¹⁶⁵ Act RT I 2009, 54, 361. Entry into force: 23 November 2009.

¹⁶⁶ ID., at 38.

¹⁶⁷ ID., at 39.

¹⁶⁸ Act RT I 2010, 28, 144, *supra*, note 164.

the final version of the draft resolution is put to vote. The President of the *Riigikogu* is to send the resolution to the competent EU institution.

2. Control of Subsidiarity

Sections 152⁶ and 152⁷, both added in 2010¹⁶⁹, set out procedures for control of subsidiarity - respectively, *ex-ante* and *ex-post* - by the Estonian Parliament. Section 152⁶(1) allows the European Union Affairs Committee to issue a reasoned opinion claiming that a given EU proposal does not comply with the principle of subsidiarity. This opinion has to be formulated as a draft parliamentary resolution. Relevant procedures are those required for the *Riigikogu* to officially object to initiatives taken by the European Council under Article 48(7) TEU or Article 81(3)(2) TFEU. Section 152⁷(1), instead, empowers standing committees and factions to submit a draft resolution concerning *ex-post* control of subsidiarity. This resolution is aimed at requesting the government to file an action before the European Court of Justice for breach of the principle of subsidiarity by a legislative act of the European Union. As clarified in Section 152⁷(2), the draft resolution shall contain the text of the judicial action. Section 152⁷(4) identifies the European Union Affairs Committee as "the leading committee of the draft Resolution." According to Section 152⁷(5), the draft resolution has to be sent to the government, which prepares an opinion on the issue. The government's opinion is to be submitted to the European Union Affairs Committee "within three weeks as of receipt of the draft Resolution." Pursuant to Section 152⁷(6), it is incumbent on the government "[to] organise the filing of an action at the European Court of Justice."

The Estonian Parliament has rated the domestic subsidiarity control mechanism as "satisfactory so far."¹⁷⁰ The *Riigikogu* has also claimed it takes into account proportionality criteria whenever subsidiarity checks are performed. The Estonian Parliament, indeed, has deemed proportionality to be "an inextricable component of the principle of subsidiarity."¹⁷¹ In other words, subsidiarity scrutiny would be less efficient should draft legislative acts not be examined in the light of the principle of proportionality. Moreover, the *Riigikogu* has contended that reasoned opinions submitted by national parliaments are often based on a broader interpretation of subsidiarity checks than the wording of Protocol 2 to the Lisbon Treaty suggests¹⁷². In the *Riigikogu's* view, there is no need for further clarification of the criteria called

¹⁶⁹ ID.

¹⁷⁰ Sixteenth Bi-annual Report of COSAC on EU Practices and Procedures (October 2011) - Annex, 54.

¹⁷¹ Eighteenth Bi-annual Report of COSAC on EU Practices and Procedures (September 2012) - Annex, 126.

¹⁷² ID., at 127.

upon by national parliaments of EU member states in carrying out the control of subsidiarity¹⁷³. The Estonian Parliament has also criticized the practice of presenting EU proposals during Christmas and New Year holidays. Such practice, indeed, has been considered to reduce the national parliaments' capability of conducting "a detailed subsidiarity check as required in the Lisbon Treaty."¹⁷⁴ Furthermore, the *Riigikogu* has maintained that effectiveness of the subsidiarity control over proposed EU legislation "[d]epends on each proposal."¹⁷⁵ In other words, the eight-week period granted to national parliaments to assess EU proposals' compliance with subsidiarity and decide whether to trigger the early warning mechanism (EWM)¹⁷⁶ might not suffice.

3. IPEX Database and COSAC Meetings

The Estonian Parliament considers drawing upon IPEX database and attending COSAC meetings to be useful tools for inter-parliamentary cooperation at EU level. The *Riigikogu* has held that IPEX and COSAC meetings turn out to be - respectively - "partially effective" and "effective" in ensuring democratic legitimacy and accountability¹⁷⁷. The Estonian Parliament's staff consults the IPEX database once a week to gain information about other parliaments¹⁷⁸. Members of the Parliament (MPs), instead, do not turn to IPEX on a regular basis¹⁷⁹. Overall, IPEX has been characterized as a reliable instrument for the legislative branch to be acquainted with national parliaments' proposals and practices¹⁸⁰. Moreover, IPEX database has proved helpful for the Parliament to carry out the control of subsidiarity¹⁸¹. The Parliament's representatives in Brussels, however, are the source the Parliament relies upon the most to conduct both subsidiarity scrutiny and political dialogue¹⁸². The *Riigikogu* also depends on COSAC meetings to bring itself up to date with other parliaments' implementation of EU legislation and steps to closer European integration. According to statistical data showing national parliaments' participation in COSAC meetings held between May 2010 and June 2013,

¹⁷³ ID.

¹⁷⁴ Nineteenth Bi-annual Report of COSAC - Annex, *supra*, note 157, at 146.

¹⁷⁵ Sixteenth Bi-annual Report of COSAC - Annex, *supra*, note 170, ID.

¹⁷⁶ The early warning mechanism is provided for in Protocol No. 2 to the Lisbon Treaty.

¹⁷⁷ See Twentieth Bi-annual Report of COSAC - Annex, *supra*, note 156, at 120.

¹⁷⁸ See Seventeenth Bi-annual Report of COSAC - Annex, *supra*, note 160, at 117.

¹⁷⁹ ID.

¹⁸⁰ ID., at 118.

¹⁸¹ See Nineteenth Bi-annual Report of COSAC - Annex, *supra*, note 157, at 150.

¹⁸² See Seventeenth Bi-annual Report of COSAC - Annex, *supra*, note 160, at 117.

four Estonian MPs attended those meetings on average¹⁸³. In addition, the Estonian Parliament has argued that meetings with few participants, such as "chairman meetings or clusters meeting," foster inter-parliamentary cooperation at EU level more than large-scale meetings do¹⁸⁴. Indeed, "very large conferences" - the *Riigikogu* has pointed out - often entail "[the] risk that discussions will be too wide, and the added value remains low."¹⁸⁵

D. Financial Stabilization and Economic Governance Measures

1. Estonia's fiscal austerity policy in 2009

Unlike other EU member states in Central and Eastern Europe, Estonia engaged in a fiscal austerity policy throughout 2009 to counter the global financial crisis¹⁸⁶. Estonia experienced steady economic growth in the period from 2000 to 2007¹⁸⁷. Yet, the crisis led the country into recession in 2008 and 2009¹⁸⁸. The Estonian government decided to cope with the downturn by cutting expenditures and increasing taxes so as to retain the budget deficit. Raudla and Kattel have pointed out that the aim of joining the euro zone pushed the government into taking fiscal austerity measures¹⁸⁹. An annual government budget deficit at or below 3% of GDP is one of the so-called Maastricht criteria that EU member states have to meet to adopt the euro. Maneuvers capable of affecting compliance with that criterion were put at the core of fiscal policy. Raudla has inferred that "had the Maastricht criteria provided for a lower or higher level of deficit, the Estonian government would have set the goal accordingly."¹⁹⁰ The fiscal austerity policy consisted of three stages spread throughout 2009 - a first set of measures, mainly expenditure cuts, in January; a package combining cuts and tax increases in June; some

¹⁸³ V. KREILINGER, *The New Inter-Parliamentary Conference for Economic and Financial Governance*, Notre Europe - Jacques Delors Institute, Policy Paper No. 100, October 2013, 5.

¹⁸⁴ Nineteenth Bi-annual Report of COSAC - Annex, *supra*, note 157, at 144.

¹⁸⁵ ID.

¹⁸⁶ See RAUDLA, *Fiscal Retrenchment in Estonia*, *supra*, note 131, at 32 (pointing out that in 2009 Estonia went through with a series of budget cuts and tax increases, while some countries - such as the Czech Republic, Poland, Slovakia and Slovenia - "undertook expansionary expenditure policies" and others - such as Latvia, Romania, and Hungary - "had to turn to the IMF for help . . .") (referring to K. STAEHR, *The Global Financial Crisis and Public Finances in the New EU Countries from Central and Eastern Europe*, Bank of Estonia Working Paper Series 2, 2010, 22).

¹⁸⁷ See GOVERNMENT OF ESTONIA, *National Reform Programme "Estonia 2020"*, 25 April 2013, 3 (source: Eurostat data). The economic boom in that timeframe equated to real GDP growing by roughly 8% per year on average. ID.

¹⁸⁸ RAUDLA, *Fiscal Retrenchment in Estonia*, *supra*, note 131, at 32 (reporting that Estonia's GDP dropped by 5,1% in 2008 and by 13,9% in 2009) (source: Eurostat).

¹⁸⁹ See R. RAUDLA - R. KATTEL, *Why Did Estonia Choose Fiscal Retrenchment after the 2008 Crisis?*, *Journal of Public Policy*, 31, 2, 2011, 163.

¹⁹⁰ RAUDLA, *Fiscal Retrenchment in Estonia*, *supra*, note 131, at 42.

fiscal adjustments and single deeds in Autumn¹⁹¹. These maneuvers achieved the aim of restraining the public sector deficit. Despite the sharp fall in GDP, indeed, Estonia's 2009 budget deficit was just 1.7% of GDP - the third lowest among all EU member states. Economic indicators of Latvia and Lithuania in 2009 turned out to be much worse as to both GDP growth and budget deficit¹⁹². Estonia also stood out among the Baltic states - and still does - for its low sovereign debt¹⁹³. The three countries opted for austerity and fiscal consolidation, but Estonia's financial outcomes were better all along¹⁹⁴. Raudla and Kattel have noted that Estonia's leading performances in 2009 prompted most analysts to consider the country "as a shining poster-boy of crisis management."¹⁹⁵ Estonia's real GDP went up again in 2010 and 2011¹⁹⁶. It then had a slowdown in 2012 and dropped further in 2013, despite remaining above 0%¹⁹⁷. An increasing growth is envisaged in 2014 and 2015¹⁹⁸. In the same period 2014-2015, the general government gross debt, which reached 10.0% in 2013, is expected to register a slight decrease¹⁹⁹.

2. Measures taken at EU level in recent years and Estonian sovereignty

As Estonia adopted the common currency, euro area countries were tackling the financial crisis through stabilisation and economic governance measures²⁰⁰. At the extraordinary Ecofin meeting held on 9 May 2010, the EU finance ministers and the European Commission decided on a comprehensive package of measures to safeguard financial stability in Europe. Those measures included the European Financial Stabilisation Mechanism (EFSM), which was established by a Council regulation of 11 May 2010 on the basis of Article 122(2) TFEU. While

¹⁹¹ ID., at 38-39 (providing an overview of Estonia's fiscal policy measures in 2009).

¹⁹² ID., at 33 (reporting that in 2009, GDP dropped by 18% in Latvia and 14.7% in Lithuania, and the budget deficit was - respectively - of 10.2% and 9.2% of GDP) (source: Eurostat data).

¹⁹³ ID. (reporting that the 2009 general government debt was just 7.2% of GDP in Estonia, while it was - respectively - 36.7% and 29.5% in Latvia and Lithuania).

¹⁹⁴ See R. KATTEL - R. RAUDLA, *The Baltic Republics and the Crisis of 2008–2011*, *Europe-Asia Studies*, 65, 3, 2013, 426, 435 (arguing that "Estonia's apparent success can be attributed to a combination of political, institutional and economic factors").

¹⁹⁵ ID.

¹⁹⁶ Estonia's real GDP amounted - respectively - to 2.6% and 9.6% of GDP in 2010 and 2011. See EUROPEAN COMMISSION, *European Economic Forecast. Spring 2014*, *European Economy*, 3, 2014, 57.

¹⁹⁷ Real GDP dropped to 3.9% in 2012 and 0.8% in 2013. ID.

¹⁹⁸ Real GDP is expected to add up to 1.9% in 2014 and reach 3.0% in 2015. ID.

¹⁹⁹ The European Commission has estimated that the debt-to-GDP ratio will be 9.8% in 2014 and 9.6% in 2015. ID.

²⁰⁰ For a rundown of the measures adopted by both European institutions and countries at inter-governmental level to cope with the financial and economic crisis, I will take the liberty to refer the reader to a recent paper of mine. See M. LUNARDELLI, *The Finnish Parliament and its scrutiny of EU matters: an efficient model*, *Nomos. Le attualità nel diritto*, 1, 2014, 25-26, note 113.

such mechanism applied to all EU member states, euro area countries also created the European Financial Stability Facility (EFSF). The EFSF was a temporary loan instrument aimed at granting financial assistance. The EFSF Framework Agreement was signed on 7 June 2010, when Estonia had not become part of the euro zone yet. Estonia, instead, participated in the revision of the EFSF, which occurred in 2011. In June 2011, indeed, the heads of state or government of euro area countries agreed upon increasing the EFSF's scope of activity and guarantee commitments. On 25 September 2011, Estonia's Chancellor of Justice Indrek Teder issued an opinion to the chair of the Economic Affairs Committee of the *Riigikogu* on Draft Resolution 90 OE. The Chancellor of Justice raised some objections on the constitutionality of that draft resolution, whose purpose was to allow Estonia's participation in the EFSF. Section 65(10) Const. provides that the *Riigikogu*, "acting on a proposal of the Government of the Republic, decides whether to authorise government borrowing or the assumption of other financial obligations . . ." Therefore, the Parliament is empowered to approve decisions on aid packages to EU member states after discussing the issue. The government, in turn, must prepare a draft parliamentary resolution and submit it to the Parliament for debate. Furthermore, the Parliament has to receive the draft memorandum of understanding on conditions of loans to be granted to a given country²⁰¹. On 29 September 2011, the *Riigikogu* adopted a resolution²⁰² certifying that Estonia qualified for the EFSF. The Parliament also ensured that all the obligations arising from the framework agreement and its amendments would be fulfilled. According to the resolution, the government had to inform the European Union Affairs Committee of conditions on granting financial assistance to a euro zone country in difficulties. The government would be permitted to take on liabilities to the extent approved by the European Union Affairs Committee. The Committee, too, was required to approve tranches of payment related to assistance programs²⁰³. Moreover, the resolution empowered the government to carry out the procedures needed to provide guarantees concerning financial assistance.

On 17 December 2010, the European Council decided to create a permanent financial crisis resolution mechanism for the euro zone countries, the European Stability Mechanism (ESM), by amending Article 136 TFEU. A European Council decision of 25 March 2011 (2011/199/EU) made the amendment by adding a third paragraph to Article 136. Section 25(1) of the Foreign Relations Act calls for an international treaty to be amended by following the

²⁰¹ On 23 February 2012, the *Riigikogu* held debates on the second Greek aid package. The relevant draft memorandum got approved by 56 votes.

²⁰² 59 votes out of 101 were cast in favor of the resolution.

²⁰³ For instance, the European Union Affairs Committee approved the disbursement of tranches to Ireland and Portugal on 11 January 2013. See RIIGIKOGU, Press Release, 11 January 2013.

procedure used for its conclusion, unless otherwise stipulated in the treaty itself. The TFEU was ratified by the *Riigikogu*, pursuant to Section 121 Const. Hence, the Treaty's amendments had to be ratified by the *Riigikogu*. The amendment concerning Article 136 TFEU was ratified on 8 August 2012²⁰⁴. Competed and published on 16 August 2012, ratification was notified to the Council on 7 September 2012. The Constitutional Committee of the *Riigikogu* argued that a referendum on the amendment was not required since the reform did not result in enhancing the European Union's competence²⁰⁵. Section 20(6) of the Foreign Relations Act provides that a treaty is to be ratified by the *Riigikogu* if ratification is prescribed in the treaty. Article 47(1) of ESM Treaty imposes ratification on signatories. Moreover, Section 106 Const. includes ratification and denunciation of international treaties among the matters which cannot be subject to a referendum. The was thus ratified by The *Riigikogu* ratified the ESM Treaty by passing an act that entered into force on 15 September 2012²⁰⁶. on 17 October 2012²⁰⁷. In particular, the Parliament passed the Act on Ratification and Implementation of Treaty Establishing European Stability Mechanism.

On 12 March 2012, the Chancellor of Justice (or Legal Chancellor)²⁰⁸ turned to the Supreme Court and claimed that Article 4(4) of ESM Treaty was not compatible with the Estonian Constitution. According to Article 4(4), decisions on granting or implementing financial assistance are made by a qualified majority of 85% of the votes. The qualified majority voting may be called upon to break a deadlock "threaten[ing] the economic and financial sustainability of the euro area." The Chancellor of Justice asserted that the exception to the unanimity rule contrasted with the principle of parliamentary democracy resulting from the Constitution and violated Estonian sovereignty. In addition, the Chancellor of Justice considered budgetary powers of the *Riigikogu* to get restricted by the Treaty. Estonia's subscription to the ESM authorized capital stock amounted to nearly €1,3 billion, or 0.1860% of the total capital stock. Estonia's paid-in capital, instead, comes to €148.8 million. By and large, the amount of ESM capital stock subscribed by Estonia equates to a significant portion

²⁰⁴ 86 votes were cast in favor of the amendment.

²⁰⁵ See Second reading of the Bill on Ratification of the Amendment to the Treaty on the Functioning of the European Union 237 SE, *Riigikogu*, 8 August 2012.

²⁰⁶ See Act on Ratification and Implementation of Treaty Establishing European Stability Mechanism (*Euroopa stabiilsusmehhanismi asutamislepingu ratifitseerimise ja rakendamise seadus*), RT II, 14.09.2012, 1, English translation available at https://www.riigiteataja.ee/en/compare_original/530102013029.

²⁰⁷ 59 MPs voted in favor of ratification.

²⁰⁸ For an analysis of the institution of the Chancellor of Justice (*Õiguskantsler*) and of its functions, see TAUBE, *Constitutionalism in Estonia, Latvia and Lithuania*, *supra*, note 137, at 108-111. The Chancellor's functions include assessing constitutionality of legislation of general application and of international agreements. See, also, The Chancellor of Justice Act [*Õiguskantsleri seadus*], RT I 1999, 29, 406.

of the country's GDP²⁰⁹. The Supreme Court, in its judgment of 12 July 2012²¹⁰, conceded that ESM Treaty resulted in curtailing the Estonian Parliament's budgetary powers. Estonian sovereignty also turns out to be affected by provisions of ESM Treaty with respect to financial matters. The emergency procedure of Article 4(4) of ESM Treaty, indeed, calculates the qualified majority for decision making on each EU Member state's contribution to ESM capital. Therefore, "significance of [Estonia's] vote" is as negligible as the percentage of Estonian contribution to the total capital of the ESM²¹¹. Restrictions on the Parliament's budgetary powers and on Estonian sovereignty, however, were justified by applying the principle of proportionality²¹². A equally important value should prevail - economic stability in the euro area. Such a value is also a pre-requisite for protection of constitutional freedoms and rights in Estonia²¹³. As the Supreme Court stated, the purpose of Article 4(4) of the Treaty is "to guarantee for the ESM in an emergency the efficiency of the decision-making mechanism to eliminate a threat to the economic and financial sustainability of the euro area."²¹⁴ Economic and financial sustainability of the euro zone became one of Estonia's constitutional values as the country adopted the euro as its currency²¹⁵. Blatant inability of other euro area member states to meet the Maastricht criteria would end up undermining Estonia's financial and economic stability, as well²¹⁶. Such stability, instead, is necessary for Estonia to fulfill constitutional obligations and perform its core functions. As the Preamble to the Constitution states, Estonia is committed "to strengthen[ing] and develop[ing] the state . . . , which is founded on liberty, justice and the rule of law." Furthermore, Estonia has to guarantee the

²⁰⁹ See C. GINTER, *Constitutionality of the European Stability Mechanism in Estonia: Applying Proportionality to Sovereignty* [hereinafter, *Constitutionality of the ESM in Estonia*], ECLR, 9 (2013), 335, 340 (noting that by ratifying the ESM Treaty Estonia undertook "an extraordinarily large financial obligation," as €1,3 billion amounts to "approximately 8.5% of [the country's] GDP").

²¹⁰ Judgment of the Supreme Court *En Banc* of 12 July 2012, matter 3-4-1-6-12 [hereinafter, Supreme Court *En Banc* of 12 July 2012], English translation available at www.riigikohus.ee/?id=1347&print=1.

²¹¹ GINTER, *Constitutionality of the ESM in Estonia*, *supra*, note 209, at 338.

²¹² See Supreme Court *En Banc* of 12 July 2012, *supra*, note 210, para. 171 (arguing that "in this case the constitutionality of the interference with the principles of the Constitution must be assessed by way of review of proportionality"). See, also, TAUBE, *Constitutionalism in Estonia, Latvia and Lithuania*, *supra*, note 137, at 245-247 (discussing the principle of proportionality as applied by the Constitutional Law Chamber of the Supreme Court in some cases decided between 1994 and 2000).

²¹³ See GINTER, *Constitutionality of the ESM in Estonia*, *supra*, note 209, at 346-347 (contending that in the Supreme Court decision on ESM Treaty, "the ability of Estonia to guarantee fundamental rights and liberties has been made dependent on the economic success of the [euro] area").

²¹⁴ Supreme Court *En Banc* of 12 July 2012, *supra*, note 210, para. 158.

²¹⁵ *Id.*, para. 163 (maintaining that "economic and financial sustainability of the euro area is contained in the constitutional values of Estonia as of the time Estonia become a euro area Member State").

²¹⁶ *Id.*, para. 165 ("The economy and finance of Estonia are closely related to the rest of the euro area and if there are economic and financial problems in the euro area, then it inevitably affects Estonia – export and import of goods and services, state budget and thereby also social and other fields . . . In a situation where the rest of the euro area would be in difficulties it is not probable that Estonia would be financially or economically successful, including in the field of people's income, quality of life and social security").

protection of fundamental rights and freedoms, pursuant to Section 14 Const. The Supreme Court maintained that "[e]xtensive and consistent guarantee of fundamental rights is extremely complicated, if not impossible, without a stable economic environment."²¹⁷ The Supreme Court conceded that "Article 4(4) of the Treaty interferes with the financial competence of the *Riigikogu* and also the sovereignty related thereto, and the principle of a democratic state subject to the rule of law . . ." ²¹⁸ The Court, however, deemed invasion of those constitutional principles not to be "serious."²¹⁹ The interference - the Supreme Court observed - "is justified . . . by very significant constitutional values."²²⁰ As a result, the objections raised by the Chancellor of Justice on constitutionality of Article 4(4) of ESM Treaty were rejected by the Estonian Supreme Court.

The Treaty on Stability, Coordination and Governance (TSCG) was signed by all EU member states except the Czech Republic and the United Kingdom on 2 March 2012. The Treaty, commonly known as "Fiscal Compact," entered into force on 1 January 2013. The *Riigikogu* approved the Treaty on 17 October 2012²²¹. The President of the Republic signed the act implementing the Treaty on 5 November 2012, thus completing the ratification process. Estonia reached its medium-term budgetary objective (MTO) of a structural surplus in 2012²²². In 2013, the European Commission stressed the fact that Estonia's economy was straying from the MTO, but the country would write off the temporary deviation in the short term²²³. The structural budget balance rule was introduced by the 2014 State Budget Act. Despite the Council's recommendations, however, "[t]he four-year expenditure ceiling is [still] not binding within the medium-term budgetary framework . . . , and no progress has been made towards introducing a multiannual expenditure rule."²²⁴ After assessing the 2014 Stability Programme submitted by the Estonian government, the Council of the EU have recently expressed its concern for "[the] risk of significant deviation from [Estonia's] medium-term objective in 2014 and 2015."²²⁵ The Council has also pointed out that the structural balance rule, albeit in force,

²¹⁷ ID., para. 166.

²¹⁸ ID., para. 202.

²¹⁹ ID.

²²⁰ ID.

²²¹ 63 votes in the Parliament were cast in favor of ratification.

²²² See COUNCIL OF THE EUROPEAN UNION, *Recommendation of 9 July 2013 on the National Reform Programme 2013 of Estonia and delivering a Council opinion on the Stability Programme of Estonia, 2012-2017* (2013/C 217/06) (pointing out that "Estonia achieved its MTO one year earlier than foreseen in its Stability Programme for 2012-2015").

²²³ EUROPEAN COMMISSION, *Analysis of the Draft Budgetary Plan of Estonia*, Staff Working Document(2013) 602 final, 9 (defining "appropriate" Estonia's adjustment path towards the MTO).

²²⁴ EUROPEAN COMMISSION, *Assessment of the 2014 national reform programme and stability programme for Estonia*, Staff Working Document(2014) 407 final, 3.

²²⁵ COUNCIL OF THE EUROPEAN UNION, *Recommendation of 8 July 2014 on the National Reform Programme 2014 of Estonia and delivering a Council opinion on the Stability Programme of Estonia, 2014* (2014/C 247/06), O.J. 2014 C 247/26.

"is still to be complemented by a strengthening of the binding nature of the multiannual expenditure targets."

Conclusion

Usage of the phrase "Baltic states" demands caution. On the one hand, part of the twentieth century history of Estonia, Latvia, and Lithuania overlaps. In particular, annexation into the Soviet Union and fifty-year communist regimes marked the three countries and had implications on later outcomes concerning economic and financial indicators. On the other hand, most of the forums for cooperation that were established in the early 1990s involve not only the Baltic states, but the Baltic Sea region as a whole, regardless of membership in the EU. As the European Commission has pointed out, cooperation between EU member states and neighboring countries - especially, the Russian Federation - is essential to tackling the environment issue and the other challenges set out in the EUSBSR. Implementation of the EUSBSR, however, also needs better coordination within the European Union. The Commission, for instance, has repeatedly argued that programs, actions, and projects aimed at implementing the EUSBSR would benefit from alignment of funding. Overall, the EUSBSR, which has become the archetype of macro-regional strategies adopted at EU level, shows that analyzing the Baltic states calls for their contextualization in the Baltic Sea region, broadly meant.

Estonia has stood out among the Baltic states since they regained independence from the Soviet Union. Firstly, as the three countries embarked on the path towards EU membership, Estonia was faster in turning itself into a free-market economy. Unlike Latvia and Lithuania, Estonia did not need a transitional period to catch up with EU member states. Secondly, the fiscal austerity measures taken by the Baltic states to cope with the world financial crisis have turned out to be more efficient in Estonia than in Latvia and Lithuania. The austerity policy Estonia put into effect in 2009 paid off as the country was allowed to switch to the euro in 2011 - the first among the Baltic states.

Estonia's integration into the European Union has proceeded smoothly. The fact that the Constitution did not contain any express reference either to the country's accession to the EU or to EU law was conducive to the 2003 referendum adopting the Third Constitutional Act. As Ginter has pointed out, in providing its reading of the act, the Supreme Court has shown "[a] Europe-friendly approach . . . to constitutional interpretation . . ."²²⁶ The Supreme

²²⁶ GINTER, *Constitutionality of the ESM in Estonia*, *supra*, note 209, at 340 (referring to Judgment of the Supreme Court *En Banc* of 11 May 2006, matter 3-4-1-3-06).

Court, indeed, has conceded that in a conflict between domestic and EU law the latter shall prevail and the former shall undergo disapplication²²⁷. Parliamentary scrutiny of EU matters turns out to be efficient in Estonia. It mainly functions as a form of *ex-ante* control over EU proposals. Other than examining proposed legislation, the Parliament cooperates with the government in formulating national positions on EU matters. Stabilization and economic governance measures taken at EU and inter-governmental level have affected the *Riigikogu's* budgetary powers. Estonian sovereignty has been restricted, as well. The Supreme Court argued that the aim of ensuring stability within the euro zone justifies shrinking of the Parliament's budgetary powers and Estonian sovereignty. Financial and economic problems in other euro area countries, indeed, would eventually bring about Estonia's instability. The Supreme Court also observed that the concept of sovereignty cannot be interpreted too strictly. If that concept were to be considered as absolute, indeed, no international agreements should be legitimate, for "entering into international agreements always means restricting one's sovereignty to some extent."²²⁸ Restrictions on sovereignty are broader when it comes to participating in international organizations such as the European Union and the NATO. The Supreme Court maintained that membership in the EU and other international organizations constitutes "a natural part of sovereignty in this day and age."²²⁹ The Supreme Court finding ESM Treaty compatible with the Estonian Constitution represents Estonia's willingness towards the European integration process. The ESM Treaty, indeed, "was widely promoted in Estonia as the next step in EU integration."²³⁰ Nearly forty days after the country adopted the euro, the Foreign Minister of Estonia stated that "Estonia has become one of the most integrated nations in Europe."²³¹ Even though deviation from the country's medium-term objective is expected to occur in 2014 and 2015, Estonia appears to be ready for further integration.

²²⁷ ID.

²²⁸ Supreme Court *En Banc* of 12 July 2012, *supra*, note 210, para. 130.

²²⁹ ID. (drawing upon the opinion submitted in this very case by Professor Anneli Albi).

²³⁰ GINTER, *Constitutionality of the ESM in Estonia*, *supra*, note 209, at 351.

²³¹ U. PAET, *Overview of Estonia's Foreign Policy*, Address by Foreign Minister to the Riigikogu on behalf of the Government of Estonia, 8 February 2011, available at http://www.riigikogu.ee/index.php?id=172362&parent_id=42793.