

Baltic Area Legal Studies BALEX
Advisory Board meeting no. 2**Date, time:** Friday 23.10.2015 at 10.00-12.00**Place:** Åbo Akademi University, Domvillan, Auditorium Magnus Dahlström (2nd floor)
Gezeliussgatan 2, Turku, Finland

Present:	Allan Rosas (Chair)	Judge at the European Court of Justice; Senior Fellow of the University of Turku and Visiting Professor, College of Europe and University of Helsinki
	Jussi Mälkiä	President, Meriaura Group
	Erja Tikka	Ambassador for Baltic Sea Issues, Ministry for Foreign Affairs, Finland
	Felix Collin	<i>BALEX Steering Group member</i> , Project Researcher / AAWA project, Faculty of Law, University of Turku
	Marko Joas	<i>BALEX Steering Group member</i> , Professor, Åbo Akademi University
	Jussi Tapani	<i>Chair of BALEX Steering Group</i> , Dean, Professor, Faculty of Law, University of Turku
	Henrik Ringbom	Adjunct Professor (Docent) in Maritime Law and the Law of the Sea, Åbo Akademi University
	Salla-Maria Lauttamäki (Secretary)	Planner, Faculty of Law, University of Turku
Absent:	Kari Häkämies	Region Mayor, Regional Council of Southwest Finland
	Marie Jacobsson	Principal Legal Adviser on International Law, Ministry for Foreign Affairs, Sweden
	Anita Mäkinen	Chief Adviser, Finnish Transport Safety Agency
	Anne Kumpula	<i>Member of the BALEX Steering Group</i> , Professor, Faculty of Law, University of Turku
	Markku Suksi	<i>Chair of the BALEX Steering Group</i> , Professor, Department of Law, Åbo Akademi University

MEMO**1. Opening of the meeting**

Chair *Allan Rosas* opened the meeting at 10.05 and welcomed everybody to Turku and to the second meeting of the BALEX Advisory Board. As there were new members present, an introductory round of presentations was made.

It was decided that items 3 and 4 will be combined and discussed simultaneously.



2. Memo from previous meeting 19.2.2015

The memo from Advisory Board's first meeting on 19.2.2015 was approved.

3. *Tour de table* on timely issues from the members

4. Update on BALEX activities

Henrik Ringbom begun by briefly mentioning other ongoing projects such as AAWA (Advanced Autonomous Waterborne Applications Initiative) and the study of the implementation procedure for international transport conventions in Finland. These projects that have begun earlier this year are proceeding successfully. A new EU-sponsored project relating to the enforcement of the "sulphur directive" on ships' fuels is expected to commence later this year.

a. BONUS Blue Baltic research project application (Attachment 1)

Henrik Ringbom briefly presented preliminary plans for an application for the upcoming BONUS Blue Baltic Call on maritime spatial planning. The Advisory Board warmly supported this effort with the following remarks:

- Due to the specific features of the BONUS programme, a strong basis in natural sciences is needed
- The equality of partners is to be ensured from the early phases of planning
- If possible, it was advised to seek for partners from Poland, Germany and the Baltic countries

The Advisory Board also encouraged BALEX to find out whether the project could apply for a EUSBSR flagship project status. The team was advised to contact HA Spatial Planning coordinator *Talis Linkaits* from VASAB and Advisory Board member *Anita Mäkinen*.

b. European Maritime Day 2016, BALEX workshop concept (Attachment 2)

Salla-Maria Lauttamäki briefly presented the European Maritime Day Conference and the preliminary information about the application procedure to arrange a stakeholder workshop at the Conference in Turku in May 2016. The Advisory Board suggested that the workshop could touch upon the following issues:

- Maritime spatial planning and its operative and practical significance
- Case examples to be considered a) building projects in the sea area - responsibilities and insurance questions in unforeseen situations such as ammunitions or wreckages in the sea bottom in the construction area, b) rearrangements in shipping lanes to avoid protected areas - what are the

criteria and determining factors and what is considered reasonable (longer routes may protect habitats but create more carbon dioxide emissions).

c. News from the BaltReg project (Attachment 3)

Marko Joas gave an update on the newly started BaltReg project (The multi-level regulation and governance of the Baltic Sea Region), which in June 2015 received 3-year funding from the Academy of Finland.

The Advisory Board considered the project very valuable. They especially underlined its importance in furthering regional common understanding for example in industry and commerce rules and law. In this, it will also support the efforts of EUSBSR to develop the region's internal market.

The Advisory Board was also reminded that in connection with BaltReg there will be a conference on unregulated issues in the Baltic Sea region in April 2016, and a special issue on Marine Policy Journal. More information on these will be provided later on.

5. Operational changes in BALEX for 2016

The BALEX coordinator's fixed-term contract will come to an end on 31.12.2015. After this, BALEX will continue to operate through various research projects mentioned above, but the coordination resource and overall management of the initiative will significantly decrease unless other funding forms can be found.

The Advisory Board decided to explore the possibilities of financing a coordinator or secretary for BALEX. With the Chair's help, a financing plan will be formulated and sent for the Advisory Board members for comments. The idea is that funding of a small secretariat (1-1.5 persons) should be shared among several parties, including the two founding universities in Turku.

6. Composition of the BALEX Advisory Board

The Advisory Board decided to invite Professor Adam Wiśniewski from the University of Gdańsk to the Advisory Board. Members may contact the Chair with other suggestions.

7. Other issues

a. Background materials for Finnish Minister of Justice

Erja Tikka brought to the Advisory Board's attention that the Finnish Minister of Justice and Employment will be visiting Estonia later this year. Foreseen topical questions will include impediments of commerce between these two countries, for example.

It was decided, that the BALEX team should prepare a short introductory material about BALEX and its expertise for the Minister to consider whether BALEX participation could be seen in one way or another. Depending on the discussions in Estonia, BALEX would then decide on its role in the potential setting up of a new independent body to study such commercial barriers. It was noted that this represented a new activity compared to existing ones, and that funding would need to be secured, but that nothing in BALEX's origin or intended functions would prevent it from enlarging its activities in this way, in particular if a broader geographical scope could be achieved in the longer run.

b. Summer course plans

Salla-Maria Lauttamäki gave the Advisory Board a short update on BALEX plans for a summer course on multilevel governance in the BSR. Due to lack of sufficient resources, the team is currently looking into possibilities to realize the course in cooperation with other actors. The focus is likely to be shifted from students to experts (vocational training). This was accepted and endorsed by the Advisory Board.

c. BALEX newsletter

Salla-Maria Lauttamäki informed the Advisory Board that the next BALEX Newsletter will be sent before Christmas with updates on projects, events and plans. The members are also welcome to suggest topics for the Newsletter.

d. BALEX memos

It was decided that BALEX memos are public and can be made available at the BALEX website after their approval.

8. Next meeting

The next Advisory Board meeting date will be announced later. The meeting is likely to be organized in connection to the European Maritime Day (18.-19.5.2016) or the BaltReg project seminar (April 2016). Attendance via video will be made possible in either case.

9. Closing of the meeting

The Chair *Allan Rosas* thanked everyone for an active and fruitful discussion and closed the meeting at 11.55.

BALEX Advisory Board meeting 23.10.2015

Agenda item 4.a. BONUS Blue Baltic research project application

A JOINT PROJECT ON MARITIME SPATIAL PLANNING

The **BONUS Blue Baltic Call** opens 9 November 2015 and proposal submission deadline is 10 March 2016. Maximum funding available per project is 3 million euros. Projects are so-called “collaborative projects”, and must have minimum 3 partners from 3 different EU member states. Funding can be 100 %. Projects start in January 2017 and last maximum 3 years.

The calls target multi-partner and transnational projects, encouraging participation of small and medium-sized enterprises and other end-users. BONUS calls include research, innovation, training and dissemination activities. The projects to be funded will be selected according to the principles of transparency, independent evaluation, co-financing, non-profit, non-retroactivity and financing not cumulated with other EU sources.

Given that projects funded by BONUS are to generate new knowledge, products and services in support of decision making in the Baltic Sea region in particular, the project proposers also provide information on how impact will be achieved.

http://www.bonusportal.org/programme/competitive_calls/bonus_call_2015_blue_baltic

One of the themes opened for the Call, “**Maritime spatial planning (MSP) from local to Baltic Sea region scale**”, is very timely and connected with BALEX objectives. MSP is a new tool for ocean governance which is growing in popularity worldwide and has recently been subject to regulation in an EU Directive. By better planning of the oceans, their use and protection can be coordinated in an integrated manner, taking all relevant factors into account. Planning in the Baltic Sea region requires particular prudence due many unique characteristics of the sea and its surroundings.

It is not always clear which authority is responsible for MSP or at what level decision and action should be undertaken. Several pilot projects operating at local, national and international levels and general-level have been executed in the Baltic Sea region but the overall picture is still vague. HELCOM-VASAB has set baseline principles for MSP but these are not operative or binding. A holistic framework for the practical implementation of MSP in the Baltic Sea is missing. The title of the call suggests that an effort is made to raise the level of planning to an international scale in the Baltic region.

Planning sea areas obviously is a multi-disciplinary task and needs to be supported by many types of scientific expertise as well as effective mechanisms for information and competence sharing. The BALEX team has been involved in preliminary meetings aimed at planning a **project application** for the BONUS Blue Baltic Call on the above mentioned theme. Meetings have been arranged with representatives from:

- University of Turku
 - Faculty of Law
 - Faculty of Mathematics and Natural Sciences / Department of Geography and Geology

- Åbo Akademi University
 - Faculty of Social Sciences, Business and Economics / Public Law
 - Faculty of Science and Engineering / Environmental and Marine Biology
- Centrum Balticum Foundation

Based on these meetings, the overall **project objectives** have been formulated as:

- 1) Identify and characterize the most critical environmental and cultural sceneries that demarcate MSP in the Baltic Sea
- 2) Provide a scientific basis for a geographical and temporal scaling of MSP efforts and data in the Baltic Sea
- 3) Examine how different value settings could lead into different MSP decisions
- 4) Support the adoption of shared legislative concepts and frameworks for MSP in the region
- 5) Study the adaptiveness of the legal MSP framework through scenario-based empirical testing
- 6) Support HELCOM-VASAB to establish appropriate data and information resources to promote congruent MSP in the Baltic Sea.

The overall **project research outcome** will be to establish a foundation for MSP at different scales in the Baltic Sea, from local to Baltic Sea wide. By harmonizing concepts, terminology and identifying the legal and cultural barriers, the outcome will set the foundation for establishing an operational scalable database for plans throughout the region. From the legal perspective the project also links up with forthcoming key environmental obligations in 2020 (i.e. the 'good status' of the marine environment under the EU Marine Strategy Framework Directive, the EU climate change goals and the international Aichi biodiversity targets for having marine protected areas in place). The project is closely linked to the work of HELCOM-VASAB in this area. Although fundamentally scientific, the project will interlink closely with policy-makers and stakeholders and more broadly by utilizing the dissemination and networking potential of events such as the European Maritime Day in Turku in May 2016 and the following Annual Forums for the European Union Strategy for the Baltic Sea Region.

EUROPEAN MARITIME DAY
18–19 May 2016, Turku, Finland
(Public day 20 May 2016)

Working title:

Boosting Blue Growth in Europe and Worldwide

Conference programme includes about **15 stakeholder workshops** in addition to plenaries and thematic sessions.

In 2015 there were 3 sets of workshops, and 6-7 workshops organised parallel in each set.

Each workshop lasted **90 minutes**, and had on average 5-6 speakers and a moderator.

Stakeholders can apply to organize a workshop. The **application for the workshops in Turku will open in early 2016**. (For the Conference in 2015 the submission deadline was in the beginning of February and decisions on acceptance were made within 4 weeks after the deadline.)

Conference themes that are currently negotiated about are:

- High North Special Challenges and Opportunities
- Drivers for Flourishing, Sustainable Maritime and Coastal Tourism
- Maritime Safety and Security
- Blue Growth through Blue Bioeconomy
- Maritime Spatial Planning

Selection of themes will be announced in late November 2015.

BALEX considers applying for a workshop on **maritime spatial planning**. In qualitative assessment of the applications the following things will be taken into account:

- The way your workshop addresses maritime policy;
- The objectives of your workshop regarding the main theme of the Conference;
- The selected speakers;
- The representativeness of your organisation(s) in terms of its European dimension.

BALEX Advisory Board meeting 23.10.2015
Agenda item 4.c. News from BaltReg project

BaltReg in brief

Project PI/leader: Marko Joas, Professor in Public Administration, Åbo Akademi University
Project coordinator/vice-leader: Henrik Ringbom, Docent in Law, Åbo Akademi University.
Project title: Multi-level Regulation of the Baltic Sea Region (BaltReg)

Summary:

The Baltic Sea region is arguably world's most regulated international marine area, with up to six layers of regulation (general international law, regional conventions, EU-law, national laws, local and municipal rules, non-binding norms and other 'soft law' arrangements) acting in parallel. Yet these layers do not always interact well. The norms of different regulatory layers display both overlaps and gaps and that are inter-related through a complex and constantly evolving relationship, which varies from one subject area to another and thus needs to be assessed case by case.

The proposed research project aims at analyzing the legal interaction and interrelationship between these layers of regulation in the Baltic Sea region and hence to improve the understanding of how multilevel governance works in the region, both generally and in specific fields, from the points of view of law as well as political science (public administration). The project has three main parts: Part I consists of a 'horizontal' analysis of the Baltic Sea regulatory framework, including an assessment of the key institutions involved in governing the area and regulatory gaps and overlaps; Part II includes detailed 'vertical' analyses of how the multi-level regulation operates in individual selected topics, ranging from various environmental issues to energy security and human rights. Part III analyzes the outcome of the previous two parts, seeking to identify trends and conclusions on what type of regulation appears to working well in different circumstances and to establish more general conclusions and recommendations on that basis.

Objectives and expected results

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In *Part I*, a legally-oriented 'mapping' of the regulatory landscape in the Baltic Sea region is undertaken. What are the key players in the region, what are their respective functions, constitutional scope and competences and where are the main overlaps and gaps between them in terms of their roles and responsibilities? The intention of the exercise is to provide an analytical bird's eye view of the different international/transnational players which are active in the region and to identify certain key issues of concern in this setup. The principal focus lies on organizations that are intergovernmental or otherwise active in the public domain, hence excluding purely non-governmental organizations set up without public involvement. The exercise is likely to illustrate not

only that a very rich flora of such organizations and institutions is active in the Baltic Sea region, but also a significant overlap of functions, which will necessarily call for a discussion on the horizontal interaction between the institutions and the vertical delimitation of tasks and competences as well as on the effectiveness of the current institutional setting more generally.

An imbalance appears to have emerged between the high number of institutions which are equipped to identify and discuss the region's challenges and the very few institutions that can take measures to change the situation in a normative sense. In the meantime, regulation has increasingly shifted to the EU-level, but the EU's capacity to act effectively in the region is constrained by important limitations with respect to scope (not all Baltic Sea States are EU members), content (not all subject matters are EU-wide concerns or subject to EU competence) and procedure (non-Baltic region States represent a majority in the EU). A fresh look at the institutional landscape of the region is therefore justified, along with an assessment of the need for a clarification of the roles and responsibilities of the key players of the region.

A particular area of interest in the horizontal analysis of the Baltic Sea regulatory framework is also the regulatory 'voids' in the Baltic Sea region. Despite the wealth of regulation, several key issues of a distinctively multilateral character are left unregulated, or to be ruled only by general principles of international law. This is not least the case in relation to sea-bed activities, where a variety of novel applications have been introduced since the completion of the 1982 UN Law of the Sea Convention. The vulnerability and risks linked to transnational pipelines, key data cables or off-shore energy installations are pertinent examples, but older issues like the responsibility for removing toxic material dumped during the World Wars are becoming increasingly urgent to resolve as well. In the relative absence of guidance by international (or EU) rules in these areas, the regulation of key matters of public interest, such as liability and responsibility, has in many cases has been left to be dealt with in the private contractual relationships between the individual operators, hence introducing yet another, completely private law based, regulatory layer into the picture.

Part II of the project analyzes the more detailed working of multiple regulatory layers in specific sectors. By focusing the case studies on comparatively narrow substantive topics, the interaction between the regulatory layers can be studied in detail. A selection of 12-15 substantive sectors is made with the aim to highlight a broad spectrum of different regulatory realities. In view of the availability of examples, environmental regulation will feature prominently among the selected topics, but other areas, such as military and energy security and human rights will also be included among the more detailed studies. A particular focus will naturally be on substantive areas that are governed by legislation at multiple levels, hence giving rise to issues related to hierarchy and competition between the layers. Examples will include both areas where the different rules and policies tend to complement and support each other (an example being the regulation of ships' waste in the Baltic sea area) and areas where the difference between the layers is not so clear and where uncertainties in relation to the substantive obligations have given rise to legal proceedings (e.g. the regulation of wastewater from urban areas). The assessments go beyond an analysis of the prescriptive rules as such, by including an analysis on the extent to which they have been implemented and enforced in practice at national and sub-national level.

The substantive assessments are primarily done by invited experts, which includes, but is not limited to, the members of the scientific committee and researchers at the academic partner institutions of the BALEX initiative. The research team will invite experts for the selected fields and guide the experts to ensure consistency between the different substantive analyses. The analyses will be presented at an international conference in 2017 and will be published in an international peer-reviewed journal along with the conclusions and recommendations.

Part III of the project will assemble and analyze the findings of Parts I and II. Conclusions will be made on trends with respect to the levels of law-making, but also with respect to the content of regulation and the content affects the dynamism between the different levels of regulation. How does, for example, the flexibility of EU's increasingly goal-oriented environmental legislation, affect the national and sub-national regulatory layers? Are market-based measures (such as trading schemes on emissions or, in the future perhaps, nutrition discharges) particularly suited for a multi-level regulatory environment, or are there particular benefits in such an environment of clear and easily monitored prescriptive rules? How are issues that are not subject to any supranational regulation handled from a regulatory point of view? A particular attention in this Part will be given to the analysis of the selected thematic case studies, focusing on the number and level of layers involved, the nature of regulation (flexibility versus strict requirements, voluntary versus binding standards, formal versus informal networks, holistic versus sector-based regimes, market-based versus 'command and control'-type of regulation, timing and scope of the different layers of legislation etc.) What aspects appear to make the multiple layers of regulation work in concert and are there general conclusions to be drawn from the examples in this respect? If so, how does that translate into advice for policy-makers and regulators in the region and what are the larger theoretical implications for the theory of multi-level regulation more generally?

It is believed that such a comprehensive study of multi-level governance 'at work' at a very practical level in the world's most regulated sea area will be of significant international interest. All publications will therefore be published in English through international channels. The main publication will be the proceedings of an international conference to be held in Turku in 2017. *Marine Policy*, one of the leading international peer-reviewed journals in the field, has already indicated a preliminary interest in publishing the findings of the research in a special issue devoted to the Baltic Sea, in which Docent Ringbom would act as guest editor.

A separate publication in a book-format, which will be completed in 2016, will deal specifically with regulatory gaps or voids in the Baltic Sea and how they have been addressed in law and practice.

A text book on law of the sea from the point of view of the Baltic Sea and Finland in particular is also under preparation.