

This is an electronic reprint of the original article. This reprint may differ from the original in pagination and typographic detail.

---

The EU's Interaction with Institutions in the Baltic Sea Region  
Engström, Viljam

*Published in:*  
The EU and the Baltic Sea Area

Published: 01/01/2023

*Document Version*  
Final published version

*Document License*  
Publisher rights policy

[Link to publication](#)

*Please cite the original version:*  
Engström, V. (2023). The EU's Interaction with Institutions in the Baltic Sea Region. In A. Rosas, & H. Ringbom (Eds.), *The EU and the Baltic Sea Area* (modern studies in european law). Bloomsbury academic.  
<https://urn.fi/URN:NBN:fi-fe20231228157492>

**General rights**

Copyright and moral rights for the publications made accessible in the public portal are retained by the authors and/or other copyright owners and it is a condition of accessing publications that users recognise and abide by the legal requirements associated with these rights.

**Take down policy**

If you believe that this document breaches copyright please contact us providing details, and we will remove access to the work immediately and investigate your claim.

---

## The EU's Interaction with Institutions in the Baltic Sea Region

---

VILJAM ENGSTRÖM

### I. Introduction

Out of the Baltic Sea Region (BSR) coastal states, all but Russia are European Union (EU) members. The activities of these states in the region are governed by EU law and policies. At the same time, there is a vast number of other institutions active in the BSR. A 'Europeanisation' of the BSR is complemented by activities of a complex mix of actors with both substantively and normatively diverse approaches to governance of the BSR.<sup>1</sup> The EU has a formalised relationship with some of these actors, whereas with many there is none. In between, there is a range of institutions with different connections to the EU.

The aim of the present chapter is to illustrate modes of normative interaction between the EU and BSR institutions.<sup>2</sup> The chapter does this by looking at three BSR institutions in particular: the Baltic Marine Environment Protection Commission (HELCOM); the Council of the Baltic Sea States (CBSS); and Visions and Strategies Around the Baltic Sea (VASAB). The choice of these institutions is by no means random. First, they are pan-Baltic institutions. Second, they are implicated in the EU Strategy for the Baltic Sea Region (EUSBSR) and its Action Plan.<sup>3</sup> At the same time, all three illustrate different aspects of normative interaction with the EU.

<sup>1</sup> For an overview, see V Engström, 'Regulating the Baltic Sea – A Showcase of Normative Pluralism' (2018) 61 *German Yearbook of International Law* 347.

<sup>2</sup> 'Normative' in this context being used synonymously with 'regulatory'.

<sup>3</sup> 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; Commission, 'Commission Staff Working Document EU Strategy for the Baltic Sea Region Action Plan [COM(2009) 248 final] Revised Action Plan replacing the Action Plan of 17 March 2017 – SWD(2017) 118 final' SWD(2021) 24 final.

HELCOM is the monitoring body of the Helsinki Convention for the Protection of the Marine Environment of the Baltic Sea Area (Helsinki Convention).<sup>4</sup> The EU is a party to the Helsinki Convention, which brings the Convention into the realm of EU law. What also makes the interaction between EU and HELCOM of interest is the fact that the activities of the EU and HELCOM overlap in multiple ways. Whereas the Helsinki Convention and HELCOM are focused on the marine environment, the CBSS has a substantively broader purpose. At the time of its establishment, the CBSS was identified by the European Commission as the main regional actor for the coordination of EU activities in the BSR.<sup>5</sup> VASAB is a cooperation platform in spatial planning and development of BSR countries. Although VASAB may be the least prominent out of the three BSR institutions in terms of institutionalisation, its activities do, nevertheless, bring it within the realm of EU law and governance.

Although it is unclear whether the three institutions qualify as intergovernmental organisations in a strict sense of the term, the boundary between formal intergovernmental organisations and other institutional forms of cooperation is not decisive as far as regulatory impact is concerned. The present chapter identifies forms and functions of the interaction between the EU and the three BSR institutions and discusses ways in which this interaction can generate normative effects. The chapter begins with outlining the regionalisation of EU law and the Europeanisation of BSR governance. Both of these phenomena explain the central role of the EU in the region, and help to understand the impact of the EU's governance approach to regions. The chapter will then exemplify and discuss three normative features of EU engagement with BSR institutions: being a party to a treaty or a member of an institution; regulatory interdependence; and interaction through implementation. The chapter concludes by making some remarks on the pros and cons of EU interaction with other BSR institutions.

## II. The Regionalisation of the EU and Europeanisation of the Region

The EU has evolved into the main regulatory actor in the BSR, exercising various degrees of competence in different policy areas.<sup>6</sup> As regulatory Europeanisation

<sup>4</sup> Convention on the Protection of the Marine Environment of the Baltic Sea Area (Helsinki Convention) 22 March 1974, 1507 UNTS 166; revised Convention on the Protection of the Marine Environment of the Baltic Sea, 1992 (with annexes, Helsinki Convention) 9 April 1992, 2099 UNTS 197.

<sup>5</sup> Commission, 'Communication from the Commission to the Council Orientations for a Union Approach Towards the Baltic Sea Region' SEC(94) 1747 final.

<sup>6</sup> In respect of shared competence, when EU law only sets minimum standards, members are free to adopt more strict obligations as long as they are compatible with secondary EU law, are proportional and not arbitrarily discriminatory in their effects on trade between the Member States. See, eg, G de Baere, 'EU External Action' in C Barnard and S Peers (eds), *European Union Law* (Oxford, Oxford University Press, 2014).

has become a feature of BSR cooperation, EU membership creates a de facto regulatory hierarchy for Baltic Sea States. In addition, policymaking in the BSR also becomes characterised by the governance approach of the EU. In this respect, a ‘turn to governance’ is a development particularly notable in the EU’s approach to regions.<sup>7</sup> One expression of this is the adoption and ongoing development of macro-regional strategies. The Treaty of Lisbon elevated ‘territorial cohesion’ to one of the main aims of the EU.<sup>8</sup> European territorial cooperation is one of the goals of cohesion policy and provides a framework for the implementation of joint actions and policy exchanges between national, regional and local actors from different Member States. Macro-regional strategies are a means for the structuring and development of territorial cooperation.<sup>9</sup> The EUSBSR constitutes the overarching governance paradigm for the BSR, with the accompanying revised Action Plan identifying 14 Policy Areas (PAs) around which to cooperate in the region.<sup>10</sup>

EU legislation, as a point of departure, is of general applicability.<sup>11</sup> The Treaty on European Union (TEU) states that ‘[t]he Union shall respect the equality of Member States before the Treaties.’<sup>12</sup> This means that all provisions of EU law are to have the same meaning and are to be applied in the same fashion throughout the EU. As this is the case, the tailoring of EU law to regions requires intermediary mechanisms, such as the EUSBSR and its Action Plan. The EUSBSR sets priorities, highlights actors and cooperation patterns, and gives the Commission a notable role in governing EU BSR policies. As a device for regional implementation of EU legislation, it is both an example and generator of multi-level governance.<sup>13</sup> A distinguishing feature of macro-regional strategies is the rule of the ‘three NOS’. This rule states that no new legislation can be introduced for developing and implementing macro-regional strategies, there is no own budget, and that instead of creating new institutions, the macro-regional strategies are to be supported by a multi-level and multi-actor governance approach. It hereby lies at the very heart of EU macro-regional strategies to think ‘more strategically and imaginatively about the available means.’<sup>14</sup>

<sup>7</sup> For a general account, see PJ Cardwell, “Governance” as the Meeting Place of EU Law and Politics’ in PJ Cardwell and M-P Granger (eds), *Research Handbook on the Politics of EU Law* (Cheltenham, Edward Elgar Publishing, 2020); on this ‘turn’ and regionalisation, see, eg, S Gänzle and K Kern (eds), *A Macro-regional Europe in the Making: Theoretical Approaches and Empirical Evidence* (Basingstoke, Palgrave Macmillan, 2016).

<sup>8</sup> Treaty on European Union [2012] OJ C326/13 Art 3 (TEU).

<sup>9</sup> B Cristino et al, *New Role of Macro-regions in European Territorial Cooperation* (European Parliament, 2016) para 3; 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 [COM(2013) 468 final]’ SWD(2013) 233 final.

<sup>10</sup> Commission, ‘EU Strategy for the Baltic Sea Region Action Plan’ (2021).

<sup>11</sup> Treaty on the Functioning of the European Union [2012] OJ C326/47, Art 288 (TFEU).

<sup>12</sup> TEU, Art 4(2).

<sup>13</sup> COM(2009) 248 final.

<sup>14</sup> Commission, ‘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]’ COM(2013) 468 final, 2.

The concrete impact of the EUSBSR is policy area specific.<sup>15</sup> However, the explicit aim of the Strategy is to reinforce the implementation of EU Directives.<sup>16</sup> As to its function, the EUSBSR Action Plan sets forth a list of concrete actions to be pursued. The characterisation of the EUSBSR as normatively ‘soft’, in other words, downplays its regulatory significance.<sup>17</sup> As with soft or guiding instruments more generally, macro-regional strategies also influence the implementation of EU policies and legislation.<sup>18</sup> When strategies highlight interconnections between actors and identify some as central for the cooperation, they also set priorities. Most importantly for present purposes, the PAs have an institutional presence, institutionalising cooperation with and among BSR actors. While cooperation with HELCOM is pinpointed as particularly important for the implementation of the EUSBSR, the Action Plan also acknowledges other institutions, including the CBSS and VASAB. In the Action Plan, the CBSS is granted the role as joint coordinator of PA Secure, while VASAB is designated together with HELCOM the role as coordinator of PA Spatial Planning.<sup>19</sup>

### III. Characteristics of the Three Institutions

As the monitoring body of the Helsinki Convention, HELCOM consists of representatives of all Contracting Parties to the Convention, including the EU. Its tasks comprise monitoring the implementation of the Convention, making recommendations, setting objectives and promoting cooperation with other bodies.<sup>20</sup> Through state reporting and assessments, HELCOM follows up on the compliance by state parties with the Helsinki Convention and HELCOM recommendations. Reporting also serves the purpose of data production, and of displaying gaps in the framework. The HELCOM Monitoring and Assessment Strategy states as one of its purposes the production of assessment products for region-specific management purposes by also making use of data and

<sup>15</sup> Commission, ‘Report from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on the Implementation of the EU Strategy for the Baltic Sea Region (EUSBSR)’ COM(2011) 381 final, 8; K Böhme, ‘Added Value of Macro Regional Strategies: A Governance Perspective Commission’ in 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.

<sup>16</sup> Commission, COM(2009) 248 final, 10 (n 3).

<sup>17</sup> On the function of soft law in EU law, see, eg, L Senden, *Soft Law in European Community Law* (Oxford, Hart Publishing, 2004); and M Eliantonio, E Korkea-aho and O Ştefan (eds), *EU Soft Law in the Member States: Theoretical Findings and Empirical Evidence* (Oxford, Hart Publishing, 2021).

<sup>18</sup> See M Hartlapp and A Hofmann, ‘The Use of EU Soft Law by National Courts and Bureaucrats: How Relation to Hard Law and Policy Maturity Matter’ (2021) 44 *West European Politics* 134; F Terpan, ‘Soft Law in the European Union – The Changing Nature of EU Law’ (2015) 21 *European Law Journal* 68.

<sup>19</sup> Commission, SWD(2021) 24 final (n 3).

<sup>20</sup> Helsinki Convention, Art 20.

information produced for other fora, such as EU directives and various international institutions.<sup>21</sup> Through the Europeanisation of BSR governance, a claim has been made that HELCOM has been replaced by the EU as the most important actor in the region.<sup>22</sup> While this may be true as far as the capacity to issue normatively binding decisions is concerned, as will be explained below, EU legislative activity is closely intertwined with HELCOM work.

While the Helsinki Convention and HELCOM are focused on the marine environment, the CBSS has a substantively broader purpose. The members of the CBSS are all Baltic Sea States (plus Norway and Iceland) as well as the EU. The CBSS started as a loose framework in 1992, but established a permanent secretariat in 1998. By gradually widening its scope of action, the CBSS now covers almost every field of governmental activity.<sup>23</sup> At the time of its establishment, the CBSS was identified by the European Commission as the main regional actor for the coordination of EU activities in the BSR. For this reason, the Commission envisaged 'a permanent and active presence in this forum with a view to enhancing an efficient co-ordination of Union activities and programmes with those of other Baltic Sea States'.<sup>24</sup>

Like HELCOM, the CBSS displays many features of an intergovernmental organisation. The CBSS was established by the region's Foreign Ministers in 1992 through the adoption of a declaration. Even if the institutional structures of the CBSS are quite loose, it does have a permanent secretariat with legal personality, the capacity to contract, the right to acquire and possess property, and to participate in legal proceedings. The CBSS itself addresses its participants as 'Member States'.<sup>25</sup> The CBSS Council communiqués and Heads of State Summit declarations or statements are in legal terms best characterised as recommendations (ie, political commitments). The CBSS has also refrained from sponsoring legal instruments. Whereas HELCOM recommendations, although formally non-binding, are subject to reporting and monitoring procedures, no such oversight mechanisms exist in the CBSS. There is also a notable difference in the substantive outcomes of the two institutions, with CBSS documents being more programmatic, whereas HELCOM recommendations define explicit thresholds for states to reach. This also means that the normative impact of CBSS acts is more difficult to quantify. While direct regulatory impact is absent,

<sup>21</sup> HELCOM, 'HELCOM Monitoring and Assessment Strategy' (HELCOM Ministerial Meeting, Copenhagen, 3 October 2013) para 2.3–2.5.

<sup>22</sup> N Tynkkynen et al, 'The Governance of the Mitigation of the Baltic Sea Eutrophication: Exploring the Challenges of the Formal Governing System' (2014) 43 *AMBIO* 105.

<sup>23</sup> See, eg, CBSS, 7th Baltic Sea States Summit, 'Chairman's Conclusions' (Riga, Latvia, 4 June 2008).

<sup>24</sup> SEC(94) 1747 final.

<sup>25</sup> Terms of Reference of the Secretariat of the Council of the Baltic Sea States (21 June 2004, revised in April 2009), available at: [www.cbss.org/wp-content/uploads/2012/09/CBSS-Secretariat-Terms-of-Reference-2009.pdf](http://www.cbss.org/wp-content/uploads/2012/09/CBSS-Secretariat-Terms-of-Reference-2009.pdf). The Council of the Baltic Sea States (CBSS) has also been granted privileges and immunities in its host State (Sweden) through the Host Country Agreement. See M Cogen, *An Introduction to European Intergovernmental Organizations* (London, Routledge, 2016) 184–86.

the CBSS might nevertheless perform tasks that at least indirectly affect BSR cooperation.<sup>26</sup>

The third institution of interest for present purposes, VASAB, is a cooperation platform in spatial planning and development. Similar to HELCOM and the CBSS, VASAB includes all Baltic Sea States. VASAB is essentially intergovernmental as far as declarations are adopted by its Ministerial Conference. However, out of the three institutions of interest here, it displays the lowest degree of institutionalisation. VASAB has a secretariat to support its functions, but although decisions at the highest level are made by ministers responsible for spatial planning, VASAB has been characterised as something of a cooperation platform for those ministers. Importantly, however, there is an element of ‘publicness’ to VASAB acts.<sup>27</sup> As will be explained below, institutional interaction with the EU also brings VASAB into the realm of EU governance processes.

## IV. Modes of Interaction

### A. Interaction Through Treaty or Membership

The revised Helsinki Convention entered into force on 17 January 2000 and constitutes one out of four European Regional Seas Conventions. The EU, along with all Baltic Sea coastal states, is a party to the Helsinki Convention (ratified by the European Community in 1994). The Helsinki Convention covers the entire Baltic Sea, including internal waters, and is binding upon its parties.<sup>28</sup> The purpose of the Convention is two-fold. First, state parties undertake obligations that are to be implemented nationally. Article 3 establishes that states are to implement the Convention through relevant legislative, administrative and other measures. Second, it creates a legal basis for cooperation. Parties undertake to prevent and eliminate pollution caused by harmful substances from all sources.<sup>29</sup> The Convention incorporates several environmental law principles, but also contains more technical Annexes, which for example ban the discharge of a number of substances.<sup>30</sup> The Annexes are, according to Article 28, an integral part of the Convention. The Convention requires state parties to report regularly to HELCOM on legal and other measures taken.<sup>31</sup> HELCOM is also the forum

<sup>26</sup> T Koivurova and A Rosas, ‘The CBSS as a vehicle for institutionalised governance in the Baltic Sea Area, in comparison with its two sister organisations in the north’ (2018) 98 *Marine Policy* 211.

<sup>27</sup> A feature central to identifying actors with potential regulatory effects. See B Kingsbury, ‘The Concept of “Law” in Global Administrative Law’ (2009) 20 *European Journal of International Law* 23.

<sup>28</sup> Helsinki Convention, Art 32.

<sup>29</sup> *ibid.*, Arts 5–15.

<sup>30</sup> *ibid.*, Annex I, Part 2.

<sup>31</sup> *ibid.*, Art 16.

within which environmental standards not set in the Convention or its Annexes are negotiated.

International agreements to which the EU is a party in principle prevail over EU secondary legislation.<sup>32</sup> As to agreements to which the EU is a party in addition to its Member States (like the Helsinki Convention), an obligation parallel to that of the Member States is created for the EU to implement the agreements, and to thereby transform the international obligations into EU law. There is, consequently, a large body of EU legislation that implements international obligations. This is particularly the case with respect to environmental agreements.<sup>33</sup>

In all areas of shared competence, there is a possibility of concluding mixed agreements that have both EU Member States and the EU as parties. Mixed agreements are concluded when EU competences do not cover the agreement in its entirety, as is the case of the Helsinki Convention.<sup>34</sup> Provisions falling under the Union's shared competence are a source of EU law obligation for the Member States, whereas implementation becomes a matter for Member States.<sup>35</sup> The Helsinki Convention constitutes a special case in being a so-called incomplete mixed agreement.<sup>36</sup> In such agreements only part of the EU Member States participate, which potentially gives rise to a set of concerns.<sup>37</sup> Nevertheless, the Court of Justice of the EU (CJEU) in *l'étang de Berre* concerning the Convention for the Protection of the Marine Environment and the Coastal Region of the Mediterranean, illustrates that regional mixed agreements can have direct effect. This means that both individuals and the Commission of the European Union can invoke those agreements before courts (domestic and CJEU).<sup>38</sup> By analogy, the same could apply to the Helsinki Convention.

For Contracting Parties to the Helsinki Convention recommendations adopted by HELCOM also become a part of the treaty regime. Following the sources of law doctrine, HELCOM recommendations do not, as a point of departure, create legal obligations. However, amendments to the Helsinki Convention Annexes

<sup>32</sup> Case C-344/04 *International Air Transport Association and European Low Fares Airline Association v Department for Transport* [2006] ECR I-403, ECLI:EU:C:2006:10.

<sup>33</sup> M Mendez, *The Legal Effects of EU Agreements: Maximalist Treaty Enforcement and Judicial Avoidance Techniques* (Oxford, Oxford University Press, 2013) xviii.

<sup>34</sup> P Eeckhout, *EU External Relations Law* (Oxford, Oxford University Press, 2011) 212.

<sup>35</sup> E Neframi, 'Mixed Agreements as a Source of European Union Law' in E Cannizzaro (ed), *International Law as Law of the European Union* (Leiden, Martinus Nijhoff, 2011) 348–49.

<sup>36</sup> H Ringbom, *The EU Maritime Safety Policy and International Law* (Leiden, Martinus Nijhoff Publishers, 2008) 88–91.

<sup>37</sup> See Joined Cases 3, 4 and 6/76 *Kramer* [1976] ECR-1279, ECLI:EU:C:1976:114; A Rosas, 'Mixity Past, Present and Future: Some Observations' in M Chamon and I Govaere (eds), *EU External Relations Post-Lisbon: The Law and Practice of Facultative Mixity* (Leiden, Brill/Nijhoff, 2020).

<sup>38</sup> Case C-213/03 *Syndicat professionnel coordination des pêcheurs de l'étang de Berre and de la région v Electricité de France (EDF)* [2004] ECR I-07357, ECLI:EU:C:2004:464; TFEU, Art 358; V Frank, *The European Community and Marine Environmental Protection in the International Law of the Sea: Implementing Global Obligations at the Regional Level* (Leiden, Martinus Nijhoff Publishers, 2007) 143; Ringbom (n 36) 120–21.



(which in themselves are binding) can be made through recommendations.<sup>39</sup> This places HELCOM recommendations normatively in two different categories. Notably, the CJEU has held that legally binding decisions taken by bodies established by an international agreement to which the EU is a party, can have the same legal status as the agreement itself.<sup>40</sup> Annexes and amending recommendations would consequently fall under this category of acts.

Whereas the fact that the EU is a party to the Helsinki Convention introduces the possibility of enforcing it in EU law, the question of legal effect and relationship to EU law of the obligations of the Helsinki Convention can also concern HELCOM non-binding recommendations. This follows from the Treaty on the Functioning of the European Union (TFEU), which states that EU exclusive competence can also arise when international non-binding measures affect common rules or alter their scope. This rule, then, would also apply when a treaty body takes measures for implementing an agreement or commitment. Consequently, non-binding measures affecting EU law would preclude Member States from acting in an organisation.<sup>41</sup> As an instance of institutional interaction, as Mirka Kuisma discusses in her contribution to this book, EU membership may hereby under certain circumstances impose restraints on HELCOM and condition state action therein, with the consequent effect of hampering its functionality.<sup>42</sup>

Apart from the question of formal legal effect, the CJEU has recognised the value of, and directly relied upon, scientific information produced by committees, the decisions of which per se are not legally binding.<sup>43</sup> As to HELCOM acts in particular, the CJEU has explicitly noted the status of the EU as party to the Helsinki Convention, and through that status, indicated that the (non-binding) Baltic Sea Action Plan (BSAP), which constitutes the cornerstone of HELCOM activities,<sup>44</sup> sets the standard for determining whether nitrogen discharges from the inland and coastal waters of Finland and Sweden into the Bothnian Bay contribute to eutrophication of the Baltic Sea.<sup>45</sup> While this testifies to the scientific status of HELCOM data, it also demonstrates how HELCOM acts can have an impact beyond the compliance regime of the Helsinki Convention itself.<sup>46</sup>

<sup>39</sup> Helsinki Convention, Art 32.

<sup>40</sup> Case 30/88 *Hellenic Republic v Commission of the European Communities* [1989] ECR-03711, ECLI:EU:C:1989:422, paras 12–13.

<sup>41</sup> TFEU Art 3(2); Joined Cases C-626/15 and C-659/16 *Commission v Council (Antarctic MPAs)* ECLI:EU:C:2018:925; Case C-45/07 *Commission v Greece Republic (IMO)* [2009] ECR I-00701, ECLI:EU:C:2009:81, paras 21–22.

<sup>42</sup> See ch 6 by Mirka Kuisma in this volume.

<sup>43</sup> See, eg, Case C-344/03 *Commission of the European Communities v Republic of Finland* [2005] ECR I-11033, ECLI:EU:C:2005:770.

<sup>44</sup> For an overview, see eg, H Backer et al, 'HELCOM Baltic Sea Action Plan – A Regional Programme of Measures for the Marine Environment Based on the Ecosystem Approach' (2010) 60 *Marine Pollution Bulletin* 642.

<sup>45</sup> Case C-335/07 *Commission of the European Communities v Republic of Finland* [2009] ECR I-09459, ECLI:EU:C:2009:612; and Case C-438/07 *Commission of the European Communities v Kingdom of Sweden* [2009] ECR-09517, ECLI:EU:C:2009:613.

<sup>46</sup> For another example of HELCOM/EU interplay, see M Karlsson and M Gilek, 'Governance of Chemicals in the Baltic Sea Region: A Study of Three Generations of Hazardous Substances' in M Gilek et al (eds), *Environmental Governance of the Baltic Sea* (Heidelberg, Springer, 2016) 107–08.

As a matter of EU law, such reference is not equivalent to the HELCOM BSAP itself being reviewable before the Court. In order to be reviewable, a measure needs to be authored by an EU institution as well as be intended to produce legal effects.<sup>47</sup> As to the authorship criteria in *Deutsche Shell*, the CJEU concluded that ‘measures emanating from bodies which have been established by an international agreement ..., and which have been entrusted with responsibility for its implementation, are directly linked to the agreement which they implement, they form part of the Community legal order.’<sup>48</sup> The most important concern in respect of the second requirement is a mismatch between the effects of soft law and the readiness of the CJEU to acknowledge them. In other words, justiciability depends on the extent to which the CJEU is willing to give legal weight to the effects of such instruments in practice.<sup>49</sup> Recent studies note that soft law is mostly used as interpretative tools by Advocates General, whereas the CJEU does not, as yet, clearly acknowledge a legal effect of soft law acts.<sup>50</sup>

Out of the institutions discussed in this chapter, the EU also has a formalised relationship with the CBSS. Although there does not seem to have been an original intention to provide the CBSS with the status of an intergovernmental organisation, as noted above, its institutionalisation has consequently evolved through the establishment of a permanent secretariat, with legal personality as well as privileges and immunities. The CBSS refers to itself as an intergovernmental forum, consisting of Member States and the EU (the European External Action Service attending CBSS meetings).<sup>51</sup>

Once the EU has joined an international organisation, the decisions of that organisation do not only influence the EU, but – when binding – also become an integral part of its legal order. Also legally non-binding decisions can have an effect on EU decision-making, but do not become part of the legal order as such.<sup>52</sup> CBSS Council communiqués and Heads of State Summit declarations or statements do not create legal obligations for Member States. Consequently, while the Helsinki Convention and HELCOM binding recommendations (amendments to Annexes) become part of the EU legal order, other HELCOM recommendations as well as CBSS communiqués do not consequently assume a formal status in EU law.

<sup>47</sup> TFEU, Arts 264 and 267.

<sup>48</sup> Case C-188/91 *Deutsche Shell AG v Hauptzollamt Hamburg-Harburg* [1993] ECR I-00363, ECLI:EU:C:1993:24; M Eliantonio, ‘Soft Law in Environmental Matters and the Role of the European Courts: Too Much or Too Little of it?’ (2018) 37 *Yearbook of European Law* 496.

<sup>49</sup> O Ştefan, ‘Helping Loose Ends Meet? The Judicial Acknowledgement of Soft Law as a Tool of Multi-Level Governance’ (2014) 21 *Maastricht Journal of European and Comparative Law* 359, 367.

<sup>50</sup> See, eg, Case C-461/13 *Bund für Umwelt und Naturschutz Deutschland, Opinion of Advocate General Jääskinen* ECLI:EU:C:2014:2324; M Eliantonio, ‘Judicial Review of Soft Law before the European and the National Courts: A Wind of Change Blowing from the Member States?’ in M Eliantonio, E Korkea-aho and O Ştefan (eds), *EU Soft Law in the Member States: Theoretical Findings and Empirical Evidence* (Oxford, Hart Publishing, 2021).

<sup>51</sup> Koivurova and Rosas (n 26).

<sup>52</sup> RA Wessel and S Blockmans, ‘The Legal Status and Influence of Decisions of International Organisations and Other Bodies in the European Union’ in P Eeckhout and M Lopez-Escudero (eds), *The European Union’s External Action in Times of Crisis* (Oxford, Hart Publishing, 2016).

It should be noted, however, that the EUSBSR Action Plan confers several tasks to the PA Secure coordinators (Sweden and the CBSS). As part of the strengthening of mechanisms for joint strategic and operational actions in protecting against criminal threats, the Action Plan envisages the development of an agreement on an international coordination platform for law enforcement agencies, as well as the development of a cooperation agreement for cross-border comprehensive assistance and/or transfer of trafficked persons.<sup>53</sup> The adoption of such agreements would have an impact on the current mode of cooperation and trigger the question of treaty-making competence. EU membership in the CBSS could hereby affect the possibility of states to act within the realm of the CBSS.<sup>54</sup>

## B. Regulatory Interdependence

Apart from formal treaty relationships, EU interaction with BSR institutions also takes place through implying one another in regulatory acts. Appreciating this as a form of normative interaction builds on a broad conception of law-making, acknowledging that both well-established legal actors as well as less formal institutions produce outcomes, the impact of which can be difficult to square with formal sources of law.<sup>55</sup> In this light, a formal categorisation of acts of BSR institutions as ‘soft’ can fail to capture the normative outcome of interaction of these institutions with the EU.

The EU’s relationship with international organisations is not always easily reducible to an external–internal dichotomy. Instead, these relationships often become ones of mutual influence.<sup>56</sup> From the point of view of BSR interaction, it has been claimed that the HELCOM and EU processes, in particular, are so intertwined that it would be futile to discuss them as separate phenomena.<sup>57</sup> Although the institutions explicitly embed and build upon the normative activities of one another, the Helsinki Convention and the EU Treaties are, strictly speaking, separate as legal regimes, as are HELCOM and the EU as institutions.

The Marine Strategy Framework Directive (MSFD) is the environmental pillar of EU Maritime Policy.<sup>58</sup> Under the MSFD, regional cooperation assumes special

<sup>53</sup> Commission, SWD(2021) 24 final, 54 (n 3).

<sup>54</sup> See ch 6 by Kuisma in this volume.

<sup>55</sup> J Pauwelyn, RA Wessel and J Wouters (eds), *Informal International Lawmaking* (Oxford, Oxford University Press, 2012); JE Alvarez, *The Impact of International Organizations on International Law* (Leiden, Brill/Nijhoff, 2017) 351–52 and fn 19 with examples.

<sup>56</sup> KE Jørgensen (ed), *The European Union and International Organizations* (London, Routledge, 2010) 14–15.

<sup>57</sup> H Bakker, ‘The HELCOM Ecosystem Approach: time for quantification, integration, and measures: 2003–2018 implementation of the Ecosystem Approach concept in the regional intergovernmental work of the Baltic Marine Environment Protection Commission (HELCOM)’ (PhD thesis, University of Helsinki 2020).

<sup>58</sup> Directive 2008/56/EC of the European Parliament and of the Council establishing a framework for community action in the field of marine environmental policy (Marine Strategy Framework Directive) [2008] OJ L164/19.

importance. The Directive does not provide for a detailed legal framework, nor does it specify particular governance structures. Instead, it establishes an obligation for EU Member States to ‘in respect of each marine region or subregion concerned, develop a marine strategy for its marine waters’, and ‘where practical and appropriate, use existing regional institutional cooperation structures, including those under regional sea conventions, covering that marine region or subregion.’<sup>59</sup> The main goal of the Directive is to reach good environmental status (GES) measured by 11 quality indicators.<sup>60</sup>

For Baltic Sea States, the regional cooperation required in the Directive consists of the implementation of the Helsinki Convention and corresponding HELCOM acts. The HELCOM Moscow Ministerial Meeting held on 20 May 2010 decided ‘to establish, for those HELCOM Contracting States being also EU-Member States, the role of HELCOM as the coordinating platform for the regional implementation of the EU Marine Strategy Framework Directive (EU MSFD) in the Baltic Sea.’<sup>61</sup> The MSFD hereby constitutes the backbone of the normative relationship between the EU and HELCOM.

In the updated HELCOM BSAP implementation is monitored through an online tool as well as through regular HELCOM monitoring and assessments.<sup>62</sup> As the updated BSAP addresses biodiversity, eutrophication, hazardous substances and litter, and sea-based activities, it basically covers relevant EU legislation.<sup>63</sup> Although the BSAP was originally adopted by a HELCOM Ministerial Meeting, it is uncertain whether it can be considered a treaty between states.<sup>64</sup> Nevertheless, the language used in the plan is rather strict, for example, stating that Member States ‘commit to taking into account priorities of the revised Action Plan.’<sup>65</sup> In some areas the BSAP sets even higher standards than EU law.<sup>66</sup>

For the EUSBSR PA Nutri, which explicitly aims to enhance the implementation of the MSFD (and other directives) as well as the Helsinki Convention, the HELCOM BSAP is identified as a core implementation tool.<sup>67</sup> The EUSBSR Action

<sup>59</sup> *ibid.*, Arts 5 and 6(1).

<sup>60</sup> Marine Strategy Framework Directive.

<sup>61</sup> HELCOM, ‘HELCOM Ministerial Declaration on the Implementation of the HELCOM Baltic Sea Action Plan’ (Moscow, 20 May 2010). The revised Convention entered into force on 17 January 2000.

<sup>62</sup> HELCOM, ‘Baltic Sea Action Plan 2021 Update’ (Lübeck, Germany, 20 October 2021), available at: [www.helcom.fi/wp-content/uploads/2021/10/Baltic-Sea-Action-Plan-2021-update.pdf](http://www.helcom.fi/wp-content/uploads/2021/10/Baltic-Sea-Action-Plan-2021-update.pdf).

<sup>63</sup> For a list of ‘Policies and legislation of the European Union supporting the implementation of the Baltic Sea Action Plan’, see HELCOM, ‘Baltic Sea Action Plan’ (n 61) 9.

<sup>64</sup> Engström (n 1).

<sup>65</sup> HELCOM, ‘Baltic Sea Action Plan 2021 Update’ (n 62) 56.

<sup>66</sup> See, eg, E Wojciechowska et al, ‘Nutrient Loss from Three Small-size Watersheds in the Southern Baltic Sea in Relation to Agricultural Practices and Policy’ (2019) 252 *Journal of Environmental Management* 109637, comparing Polish compliance with the BSAP and the Water Framework Directive.

<sup>67</sup> European Commission, *Study on Macroeconomic Strategies and Their Link to Cohesion Policy – Data and Analytical Report for the EUSBSR* (November 2017) (Luxembourg, Publications Office of the European Union, 2018).

Plan makes it explicit that ‘The EUSBSR PA Nutri, PA Hazards and HELCOM have established functioning cooperation, where HELCOM sets the policy targets in the region and EUSBSR supports Member States in reaching those targets.’<sup>68</sup> Although this does not indicate a formal transfer or delegation of competence, it does expand the function of HELCOM from a treaty-monitoring body of the Helsinki Convention only, into a core actor for reaching the goals of the MSFD (as well as other related directives). The 2021 updated HELCOM BSAP reciprocally encourages regional cooperation in the context of the MSFD in particular (along with a range of other supportive EU legislation).<sup>69</sup>

### C. Modalities of Implementation

‘Implementation’, in the most general sense of the term, is about giving effect to a regulatory act. Implementation is not solely a question of applying or incorporating EU legislation in domestic law, but also concerns questions of monitoring and enforcement. The key actor in this respect is the European Commission as the guardian of the EU Treaties, tasked with ensuring the application of EU law.<sup>70</sup> As the MSFD requires EU Member States to develop strategies for their marine waters and cooperate with states in the same region, it explicitly requires states to report to the Commission on progress in implementation.<sup>71</sup> In addition to this (as noted above) the EUSBSR explicitly grants the Commission a strong role in monitoring and developing the Strategy, as well as in leading the overall coordination of the attached Action Plan.<sup>72</sup>

The most forceful tool in the toolbox of Commission monitoring is to refer failure to implement EU law to the CJEU. Whereas the possibility of instituting infringement procedures based on the Helsinki Convention or HELCOM recommendations has been discussed above, it is interesting to note that the Commission in its monitoring frequently urges Baltic Sea States to implement measures developed by HELCOM as a way of fulfilling their MSFD obligations.<sup>73</sup> The Commission

<sup>68</sup> Commission, SWD(2021) 24 final, 20 (n 3).

<sup>69</sup> HELCOM, ‘Baltic Sea Action Plan 2021 Update’ (n 62) 9.

<sup>70</sup> TEU, Art 17(1).

<sup>71</sup> Marine Strategy Framework Directive, Art 18. See, eg, Commission, ‘Commission Staff Working Document Accompanying the document Report from the Commission to the European Parliament and the Council assessing Member States’ programmes of measures under the Marine Strategy Framework Directive’ SWD(2018) 393 final.

<sup>72</sup> Commission, COM(2009) 248 final, 10–11 (n 3).

<sup>73</sup> See Commission, ‘Commission Staff Working Document Accompanying the document Report from the Commission to the European Parliament and the Council assessing Member States’ monitoring programmes under the Marine Strategy Framework Directive’ SWD(2017) 1 final; Commission, ‘Commission Staff Working Document Background document for the Marine Strategy Framework Directive on the determination of good environmental status and its links to assessments and the setting of environmental targets Accompanying the Report from the Commission to the European

acknowledges the progressive approach of HELCOM in including the whole range of MSFD requirements in its revised Monitoring and Assessment Strategy. The Marine Strategy Coordination Group of the Commission explicitly considers regional seas conventions as crucial for coherent implementation and monitoring of the MSFD around Europe.<sup>74</sup>

The monitoring role of the Commission also invites overlap, as monitoring of the implementation of the Helsinki Convention is one of the main tasks of HELCOM. Article 16 of the Helsinki Convention sets forth an obligation for contracting parties to report to HELCOM at regular intervals on the ‘the legal, regulatory, or other measures taken for the implementation of the provisions of this Convention, of its Annexes and of recommendations adopted thereunder’, on the effectiveness of the measures taken, as well as on problems encountered.<sup>75</sup>

As a system of compliance review, HELCOM monitoring does not provide means for sanctioning non-compliance. Yet, monitoring can have a regulatory impact, for example, by enacting domestic processes and generating knowledge which can feed into the legislative process.<sup>76</sup> Particular knowledge produced, such as definitions of ecological quality, may even be highly influential, raising an expectation of at least ‘managerial compliance’ with HELCOM decisions.<sup>77</sup> State reporting can even be regarded as an efficient means in its own right for inducing systemic change, as it allows taking a broad societal approach to the situation of a country.<sup>78</sup> While this managerial perspective is in normative terms a soft approach to implementation, HELCOM monitoring also covers compliance with (non-binding) recommendations, potentially adding to their impact.

The regional seas convention framework, the Commission finds, is of great benefit in the MSFD context, since there are variances in the implementation of the MSFD among the EU Member States. As to the BSR in particular, the Commission concludes that a high level of coherence between monitoring programmes has

Parliament and the Council on the implementation of the Marine Strategy Framework Directive [Directive 2008/56/EC]’ SWD(2020) 62 final; Commission, ‘Commission Staff Working Document Key stages and progress up to 2019 Accompanying the Report from the Commission to the European Parliament and the Council on the implementation of the Marine Strategy Framework Directive (Directive 2008/56/EC)’ SWD(2020) 60 final.

<sup>74</sup> N Zampoukas et al, *Technical Guidance on Monitoring for the Marine Strategy Framework Directive* (Luxembourg, Publications Office of the European Union, 2014).

<sup>75</sup> See ‘HELCOM Monitoring and Assessment Strategy’ (n 21) para 2.3–2.5.

<sup>76</sup> D Bodansky, ‘The Role of Reporting in International Environmental Treaties: Lessons for Human Rights Supervision’ in P Alston and J Crawford (eds), *The Future of UN Human Rights Treaty Monitoring* (Cambridge, Cambridge University Press, 2000) 365–66.

<sup>77</sup> B Bohman ‘Transboundary Law for Social-Ecological Resilience? A Study on Eutrophication in the Baltic Sea Area’ (PhD thesis, Stockholm University 2017). The definitions could also be considered to function as science-based ‘ethical imperatives’ limiting at least indirectly the freedom that coastal states and the EU have in the implementation of the 1992 Helsinki Convention. See Bakker (n 57) for practical examples.

<sup>78</sup> See, eg, Bodansky (n 76).



been achieved.<sup>79</sup> This, however, should be read against the HELCOM Second Holistic Assessment Report, which finds that the parallel assessment tools could be more integrated, as both the BSAP and the MSFD have the same overarching goal. Whereas in respect of eutrophication, for example, EU assessment of coastal areas relied on indicators mainly derived from the implementation of the Water Framework Directive, HELCOM mostly uses its own indicators.<sup>80</sup> As a consequence, both the parameters as well as the findings of the overlapping HELCOM and EU Commission monitoring may differ from one another.<sup>81</sup>

Another aspect to implementation is its enactment through a broad range of 'compliance-promoting' tools.<sup>82</sup> Mechanisms such as conformity checking studies, scoreboards and barometers, inspections, package meetings, fitness checks, legal reviews, reporting, guidelines, implementation plans, establishment of networks and committees, and even press releases can be thought of as implementation tools.<sup>83</sup> This turns interest to the Common Implementation Strategy (CIS), which is an informal programme of coordination between EU Member States and the European Commission in the implementation of the MSFD. Working groups within the CIS give practical guidance, for example, in technical matters, including interpretation of the Directive.<sup>84</sup> As an expression of 'new governance' in the EU, a lot has been said about its function as an implementation tool, both in terms of risks and benefits.<sup>85</sup> Notably, the CIS builds strongly on regional seas conventions for the reaching of GES as required by the MSFD, and acknowledges a need for aligning CIS and regional seas convention processes. The CIS also explicitly acknowledges HELCOM activities that assist in meeting that objective, including

<sup>79</sup> Commission, 'Report from the Commission to the European Parliament and the Council assessing Member States' monitoring programmes under the Marine Strategy Framework Directive' COM(2017) 3 final.

<sup>80</sup> HELCOM, 'State of the Baltic Sea – Second HELCOM holistic assessment 2011–16' Baltic Sea Environment Proceedings 155 (2018).

<sup>81</sup> As an example: 'The results may differ from those presented here, as the Habitats Directive assessment is bounded by national borders, and the HELCOM assessment is carried out based on populations or sub-populations equivalent to regionally agreed management units. Another difference is that species are evaluated in comparison to a modern or historic baseline under the Habitats Directive, while threshold values in the HELCOM assessment are set in relation to the future viability of the management unit'. A similar discrepancy is noted for assessing waterbird species. HELCOM, 'State of the Baltic Sea' (n 80) 113; For further examples, see M Kahlert et al, 'Knowledge and Monitoring Gap Analysis with Respect to the EU Directives' (Deliverable 1.1 of BONUS FUMARI, 14 June 2019) available at: [www.syke.fi](http://www.syke.fi).

<sup>82</sup> M Ballesteros, *Monitoring the implementation of EU law: tools and challenges* (European Union, 2017) 38.

<sup>83</sup> Commission, 'Information from European Union Institutions, Bodies, Offices and Agencies European Commission Communication from the Commission EU Law: Better results through better application' C(2016)8600, OJ C 18/10.

<sup>84</sup> See, eg, Marine Strategy Framework Directive (MSFD) Common Implementation Strategy, Guidance on Article 15 of the Marine Strategy Framework Directive (4 May 2015), available at: [circabc.europa.eu/](http://circabc.europa.eu/).

<sup>85</sup> See, eg, J Scott and J Holder, 'Law and New Environmental Governance in the European Union' in G de Búrca and J Scott (eds), *Law and New Governance in the EU and the US* (Oxford, Hart Publishing, 2016).

assessment of the status of the Baltic Sea, and the development of tools for making that assessment.<sup>86</sup>

Yet another aspect to implementation of EU law is the role of agencies. EU agencies show great variety. They assist in the implementation of EU law and policy, provide scientific advice for both legislation and implementation, collect information, provide specific services and fulfil central roles in the coordination of national authorities.<sup>87</sup> Although most agencies lack formally binding powers, their policy impact is well acknowledged. Interestingly, the CBSS is, through initiatives like the Baltic Sea Region Border Control Cooperation, brought into close cooperation with the EU agency Frontex, which on its part was initially established to improve the implementation of EU instruments for the management of external borders (and has later turned into the European Border and Coast Guard Agency).<sup>88</sup> A similar linkage can be found through the Baltic Sea Task Force against Organized Crime, acting under the auspices of the CBSS, where CBSS Member States and the European Commission, along with EUROPOL, cooperate. While these may be characterised as law enforcement cooperation initiatives, the initiatives are also mentioned in the EUSBSR Action Plan as cooperation structures ideal for addressing security issues in the region more broadly (and hence for reaching EUSBSR goals).<sup>89</sup> This illustrates how institutional interaction also materialises on levels that escape the EU's formal constitutional framework.<sup>90</sup>

Further still, implementation of EU law and policy also takes place through institutional collaboration external to the EU. This is highlighted by institutional interaction in the field of spatial planning. The EU Maritime Spatial Planning Directive (MSPD) states that all EU Member States must have national plans on spatial planning no later than 2021, and that transboundary and especially cross-border cooperation are important parts of such plans. The MSPD also requires states to 'pursue cooperation through existing regional institutional cooperation structures such as regional sea conventions; and/or (b) networks

<sup>86</sup> Marine Strategy Coordination Group, *Marine Strategy Framework Directive (MSFD) Common Implementation Strategy 2016–2019* (15 June 2017), available at: [circabc.europa.eu/](http://circabc.europa.eu/); Marine Strategy Coordination Group, *Marine Strategy Framework Directive (MSFD) Common Implementation Strategy Work programme 2020–2022* (26 November 2020) 45, available at: [circabc.europa.eu/](http://circabc.europa.eu/).

<sup>87</sup> Commission, 'Communication from the Commission to the European Parliament and the Council European agencies – The way forward' COM(2008) 135 final; E Vos, *EU Agencies, Common Approach and Parliamentary Scrutiny, European Implementation Assessment* (European Parliamentary Research Service, 2018).

<sup>88</sup> See Å Gustafsson, 'The Baltic Sea Region Border Control Cooperation (BSRBCC) and Border Management in the Baltic Sea Region: A Case Study' (2018) 98 *Marine Policy* 309.

<sup>89</sup> Europol and Frontex are even explicitly mentioned in the original Action Plan: Commission, 'Commission Staff Working Document European Union Strategy for the Baltic Sea Region Action Plan [COM(2009) 248]' SWD(2017) 118 final, 129.

<sup>90</sup> Agencies have even been regarded as new sources of authority at the EU level, in between the Member State and the EU; E Guild et al, *Implementation of the EU Charter of Fundamental Rights and its Impact on EU Home Affairs Agencies: Frontex, Europol and the European Asylum Support Office* (Report to the European Parliament's Committee on Civil Liberties, Justice and Home Affairs (LIBE), 2011) 89–91.



or structures of Member States' competent authorities; and/or (c) any other method that meets the requirements of paragraph 1.<sup>91</sup> The Directive hereby strongly promotes regional initiatives and elevates the role of existing actors and instruments, such as the EUSBSR, the HELCOM BSAP and the VASAB Long-Term Perspective.<sup>92</sup> The EUSBSR has assigned VASAB and HELCOM the role of joint Policy Area Coordinators in maritime spatial planning.

In order to ensure coherence in the development of plans, a HELCOM–VASAB Working Group was established in 2010. As to its formal mandate, the task of the working group is to:

Promote the development of maritime spatial planning in the region and follow up its implementation as outlined in VASAB Long Term Perspective as well as HELCOM Baltic Sea Action Plan and relevant HELCOM Recommendations, including supporting the setting-up of governing structures, legislative basis, transboundary consultations as well as developing concepts for common Maritime Spatial Planning Principles.<sup>93</sup>

The Working Group comprises representatives from ministries, national agencies and experts from the Baltic Sea countries. The governance tool at their disposal is the offering of forums for transnational deliberation, with the possibility of adopting for example recommendations and guidelines. One of such acts is the Baltic Sea Broad-Scale Maritime Spatial Planning Principles that were endorsed by both HELCOM and VASAB in late 2010. These principles aim to improve the coordination of national planning strategies. According to the principles, maritime spatial planning is also a tool for contributing to the achievement of GES according to the EU MSFD and HELCOM BSAP.<sup>94</sup>

Furthermore, the HELCOM–VASAB Guideline for the Implementation of an Ecosystem-based Approach in Maritime Spatial Planning in the Baltic Sea Area, sets out to present a common understanding on how the ecosystem-based approach can be applied in drawing up spatial plans for sea areas in accordance with spatial planning legislation in force in the Baltic Sea countries.<sup>95</sup> For EU Member States this legislation in force in essence also includes the EU MSPD and the MSFD. Even if the Working Group outcome lacks legal status, it influences

<sup>91</sup> Directive 2014/89/EU of the European Parliament and of the Council of 23 July 2014 establishing a framework for maritime spatial planning [2014] OJ L257/135, Art 11.

<sup>92</sup> VASAB, 'VASAB Long-Term Perspective for the Territorial Development of the Baltic Sea Region' (VASAB Secretariat, 2010), available at: [vasab.org/documents/long-term-perspective/](http://vasab.org/documents/long-term-perspective/).

<sup>93</sup> Mandate for the Joint HELCOM–VASAB Maritime Spatial Planning Working Group (HELCOM HOD 50-2016 and the 72nd VASAB CSPD/BSR Meeting), available at: [www.helcom.fi/wp-content/uploads/2019/08/HELCOM-VASAB-MSP-WG-Mandate.pdf](http://www.helcom.fi/wp-content/uploads/2019/08/HELCOM-VASAB-MSP-WG-Mandate.pdf).

<sup>94</sup> Baltic Sea broad-scale Maritime Spatial Planning (MSP) principles (HELCOM HOD 34-2010 and the 54th Meeting of VASAB CSPD/BSR), available at: [www.helcom.fi/wp-content/uploads/2019/08/HELCOM-VASAB-MSP-Principles.pdf](http://www.helcom.fi/wp-content/uploads/2019/08/HELCOM-VASAB-MSP-Principles.pdf); B Hassler et al, 'Collective Action and Agency in Baltic Sea Marine Spatial Planning: Transnational policy coordination in the promotion of regional coherence' (2018) 98 *Marine Policy* 138.

<sup>95</sup> Guideline for the Implementation of Ecosystem-based Approach in Maritime Spatial Planning in the Baltic Sea Area (adopted by the 72nd meeting of VASAB CSPD/BSR on 8 June 2016 and approved by HELCOM HOD 50-2016, 15–16 June 2016), available at: [portal.helcom.fi/default.aspx](http://portal.helcom.fi/default.aspx).

the evolution of spatial planning frameworks.<sup>96</sup> This positions the VASAB at the fringes of the EU regulatory process in spatial planning, and as an actor in the implementation of EU law.

## V. Concluding Remarks

As the Baltic Sea has become an almost EU-internal sea, the EU has grown into the core policymaker in the BSR. The region is, however, also dense with other actors performing various functions and displaying a diversity of institutional design. This chapter has explored the interaction of the EU with three such actors – HELCOM, the CBSS and the VASAB – with a particular interest in the regulatory implications of this interaction. The EU has taken a strong interest in BSR cooperation, as witnessed, in particular, by its engagement with the CBSS and the Helsinki Convention, along with HELCOM, as well as by the enthusiasm with which regional cooperation is promoted. EU law (such as the MSFD) and policy instruments (such as the EUSBSR) not only interlink the EU with other BSR actors, but also elevates the role of some institutions and infuses a sense of permanence to the interaction by bringing them into the realm of EU law and policymaking.

This chapter has illustrated multiple ways by which BSR institutions become entangled with the EU legislative process. The most normatively formalised form of interaction arises from EU treaty ratification (Helsinki Convention), and membership (CBSS, HELCOM). BSR institutions are also enacted through various processes of implementation of EU law and policy (and vice versa). Each of these forms of interaction give rise to their own set of concerns, both from the perspective of EU law as well as for the BSR institutions. The multiple forms of interaction identified in this chapter, combined with an institutionalisation of cooperation with these three BSR institutions, express a functional approach to regional governance. Although evidence regarding the impact of the interaction on compliance is somewhat inconclusive,<sup>97</sup> such a functional approach does enhance integration in EU macro-regions. In assessing Member States' programmes of measures under the MSFD in 2020, the European Commission noted that states have inadequately implemented measures to tackle the existing pressures. This led the Commission

<sup>96</sup>B Hassler et al, 'New Generation EU Directives, Sustainability, and the Role of Transnational Coordination in Baltic Sea Maritime Spatial Planning' (2019) 169 *Ocean & Coastal Management* 254.

<sup>97</sup>See, eg, Commission, 'Report from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on the implementation of EU macro-regional strategies' COM(2020) 578 final, which states that macro-regional strategies have 'particularly helped to improve the state of the Baltic Sea environment'. However, HELCOM has repeatedly noted the poor state of implementation. See, eg, HELCOM, 'Implementation of the Baltic Sea Action Plan 2018: Three years left to good environmental status' (Background document to the 2018 HELCOM Ministerial Meeting) 13; HELCOM, 'State of the Baltic Sea' (n 80).

to recommend ‘boosting regional cooperation.’<sup>98</sup> This is likely to emphasise the role of macro-regional strategies even further, and in the BSR, entangle the EU with regional institutions ever more.<sup>99</sup>

This enthusiasm should not, however, overlook that the *raison d'être* of HELCOM, the CBSS and the VASAB transcends the EU integration project. Institutional interaction can come with drawbacks for pan-Baltic cooperation. Such concerns have been raised both in respect of HELCOM,<sup>100</sup> and the CBSS.<sup>101</sup> This is a reminder that EU interaction with institutions in the BSR is not only a question of EU law and governance, but of governance of the Baltic Sea. While the gradual enlargement of EU membership has elevated the role of the EU in the region, the inclusion of Russia in all three BSR institutions has positioned them as important platforms for cooperation in the intersection of EU internal and external policies.<sup>102</sup> At the time of writing, HELCOM has suspended all meetings of its bodies and project groups with Russian involvement and both the CBSS and VASAB have suspended Russian membership, as a reaction to the Russian aggression against Ukraine. This is potentially a defining moment for the three institutions. Only time will show whether this also affects their interaction with the EU.

<sup>98</sup> Commission, ‘Report from the Commission to the European Parliament and the Council on the implementation of the Marine Strategy Framework Directive (Directive 2008/56/EC)’ COM(2020) 259 final.

<sup>99</sup> Although macro-regionalisation has also raised criticism. See, eg, R Belloni, ‘Assessing the Rise of Macro-regionalism in Europe: The EU Strategy for the Adriatic and Ionian Region (EUSAIR)’ (2020) 23 *Journal of International Relations and Development* 814.

<sup>100</sup> S Söderström and K Kern, ‘The ecosystem approach to management in marine environmental governance: Institutional interplay in the Baltic Sea region’ (2017) 27 *Environmental Policy and Governance* 619.

<sup>101</sup> A Sergunin, ‘Is Russia a “good CBSS citizen”?’ in A Kuczyńska-Zonik and PF Timofejevs (eds), *The Baltic Sea Region: States, Societies, and Future Development* (Lublin, Instytut Europy Środkowej, 2021).

<sup>102</sup> S Ganzle and K Kern, ‘Macro-regions, “Macro-regionalization” and Macro Regional Strategies in the European Union: Towards a New Form of European Governance?’ in S Ganzle and K Kern (eds), *A ‘Macro-regional’ Europe in the Making: Theoretical Approaches and Empirical Evidence* (Basingstoke, Palgrave Macmillan, 2016).