



PRELIMINARY REFERENCE PROCEDURE: SOME HISTORICAL LESSONS

Zane Sedlova

PhD student

University of Latvia, Faculty of Law

European Integration and Baltic Sea Region: Diversity and Perspectives – 2015

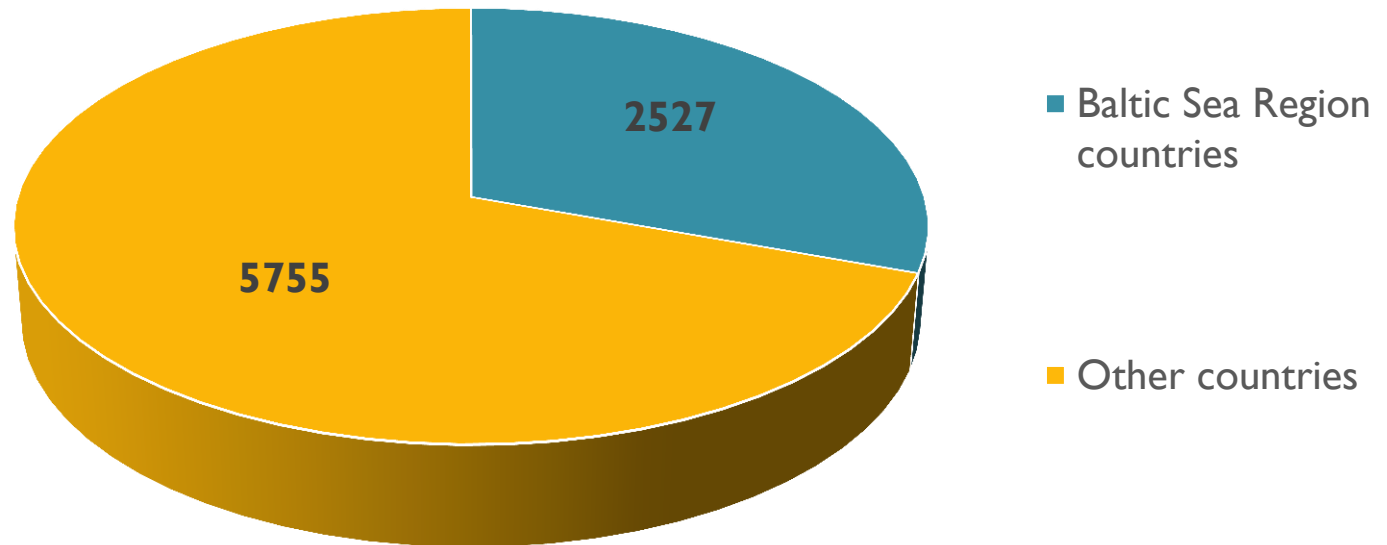
Riga, Latvia

June 11, 2015

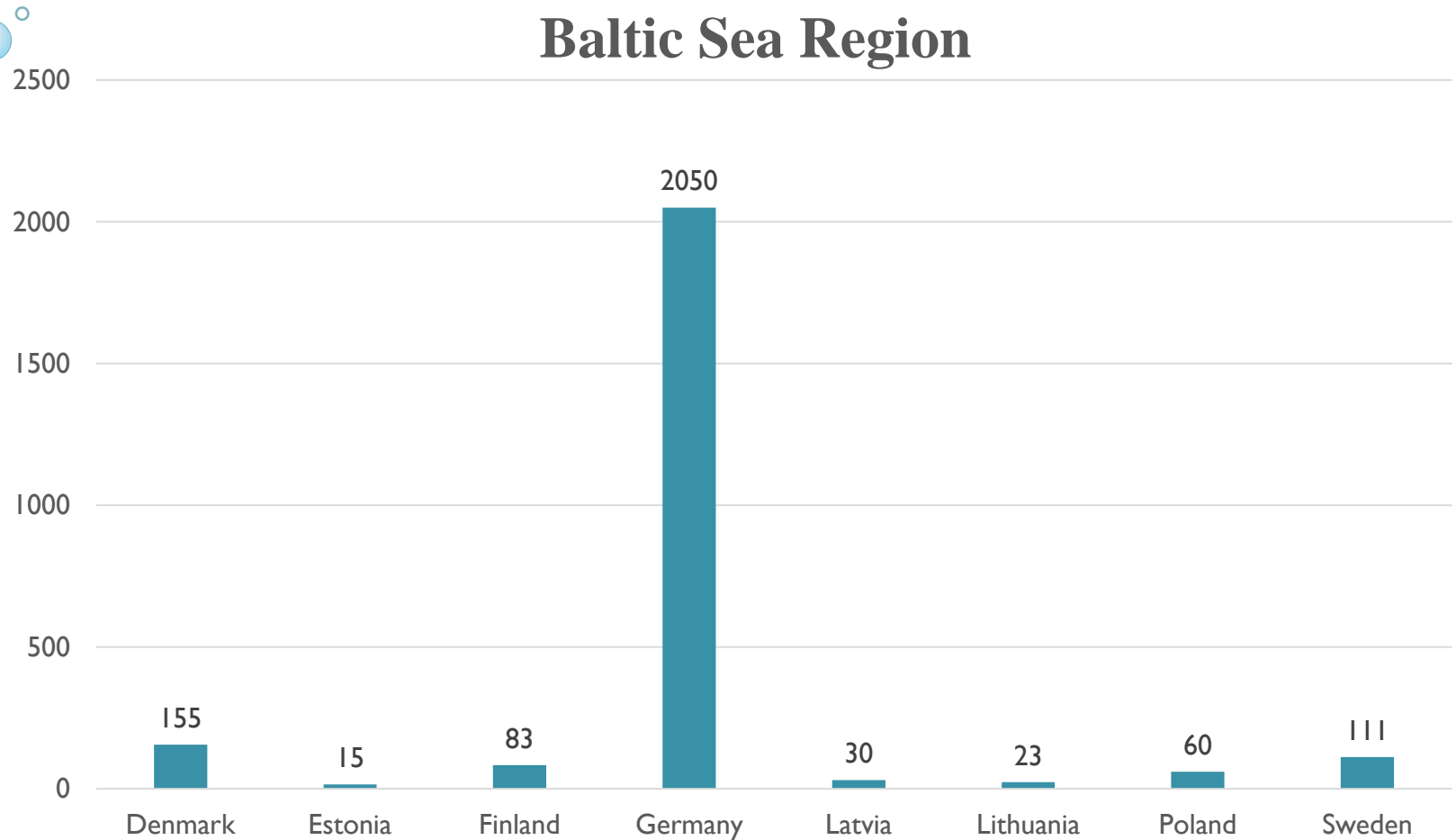
Structure of the presentation

- 1) some facts regarding Baltic Sea Region countries and references for a preliminary ruling;
- 2) review of the failure to request a preliminary reference under the Treaty of the European Coal and Steel Community

References for a preliminary ruling from 1952 to 2013 (in total, 8282)



References for a preliminary ruling from 1952 to 2013 Baltic Sea Region



Legal ground for the preliminary reference procedure

- Article 41 of the ECSC Treaty:

“The Court shall have sole jurisdiction to give preliminary rulings on the validity of acts of the High Authority and of the Council where such validity is in issue in proceedings brought before a national court or tribunal.”

Obligation of the High Authority (i.e. predecessor of the Commission)

Article 88 of the ECSC Treaty states:

“If the High Authority considers that a State has failed to fulfil an obligation under this Treaty [e.g. Article 41], it shall record this failure in a reasoned decision after giving the State concerned the opportunity to submit its comments. (..).”

The right of undertakings

Article 35 of the ECSC Treaty states:

“Wherever the High Authority is required by this Treaty (..) to take a decision (..) [Article 88] and fails to fulfil this obligation, it shall be for (..) undertakings or associations, as the case may be, to raise the matter with the High Authority. (..)

If at the end of two months the High Authority has not taken any decision or made any recommendation, proceedings may be instituted before the Court within one month against the implied decision of refusal which is to be inferred from the silence of the High Authority on the matter.”

Jurisdiction of the Court of Justice

Article 33 of the ECSC Treaty:

“The Court shall have jurisdiction in actions brought by a Member State (..) to have decisions (..) of the High Authority declared void on grounds of (..) infringement of this Treaty [e.g. Article 41] (..).

Undertakings or the associations (..) may, under the same conditions, institute proceedings against decisions (..) concerning them which are individual in character (..).”

Review of the failure to request a preliminary reference

1. Undertakings could plead the High Authority to initiate the infringement proceedings against the member state's failure to fulfil the obligation under Article 41 of the ECSC Treaty;
2. The High Authority's refusal to initiate the infringement proceedings in these circumstances was appealable before the Court of Justice;
3. The Court of Justice may declare the High Authority's refusal to initiate the infringement proceedings void.

Prerequisites to the admissibility

1. An applicant must show it is the undertaking within the meaning given to the word “undertaking” by Article 80 of the ECSC Treaty.
2. An applicant must be regarded as having an interest in the proceedings with the High Authority’s action.
3. An undertaking must specify the action which the undertaking believes the High Authority is legally bound to take.

Conclusions

Undertakings under the ECSC Treaty could appeal to the Court of Justice the decision of the High Authority not to initiate an infringement proceedings against the member state for its eventual infringement of the duty to request a preliminary reference.

Although never applied in the practise, such historically existing legal remedy merits attention as subsequent EU treaties lack a legal remedy for the failure to request a preliminary reference.



Thank you for your attention!