



RIGA  
GRADUATE  
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LAW

# **Parliamentary Scrutiny- an Effective Tool in Reducing the Perception of Legitimacy and Democratic Deficit in the European Union**

## **MASTER'S THESIS**

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## **DECLARATION OF HONOUR:**

I declare that this thesis is my own work, and that all references to, or quotations from, the work of others are fully and correctly cited.

(Signed) .....

RIGA, 2018

## SUMMARY

The European Union has democracy as one of its fundamental values but is often accused of having constant democratic deficit. The aim of this research is to identify the range of influence of national parliaments in a democratic European Union. Therefore, the research questions are:

1. Is parliamentary scrutiny by European Affairs Committees over governments an effective tool in reducing the perception of legitimate and democratic deficit in the EU?
2. In relation to the Latvian accession to the European Union, has the development of the Saeima European Affairs Committee made it into an influential parliamentary scrutinizer in comparison to other MS?

In order to answer the said research question the investigation will focus mostly on a national case study of the European Affairs Committee of the Latvian Parliament for which primarily a European context is needed. The European Union angle will be developed basing the research on the principles enshrined in the treaties, their protocols and interpretations. Additionally scholarly research is to be critically consulted with the aim of reviewing the development of the concept of parliamentary scrutiny.

Moreover, the research intends to provide a comparison between the models applied by different Member States to ensure a similar outcome of parliamentary scrutiny. The format and competence of some Member State European Affairs Committees are to be compared to illustrate the differences in models leading up to the research done on the Latvian committee solely for which an empirical legal study methodology is to be used.

The conclusions of the research were that the Saeima European Affairs Committee remains highly influential as discussion mandates and national positions heading in the direction of Brussels must previously be confirmed at the Parliament.

Additionally it was concluded that parliamentary scrutiny through European Affairs Committees is a tool that can be used to a significant level of influence over government policies.

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## INTRODUCTION AND METHODOLOGY

After regaining independence, Latvian officials had to make specific decisions on the next direction for the country. For many diplomats and politicians, this choice seemed obvious - integration into the European Union (EU) was necessary for Latvia's growth. All that was needed was to promote and popularise the idea. Foreign policy goals had to be legitimised. In Latvia's renewed democratic system, the Parliament of the Republic of Latvia (Saeima) had the highest legitimate power, therefore the formation of the Saeima European Affairs Committee (SEAC) became the basis and main mechanism which ensured the democracy of Latvia's progress towards, and later, participation in, the European Union.

The main function of the SEAC is to exercise supervision over the government and their European policies on the basis of democratic values. Accession to the European Union came with its own burden of legislation as well as a partial transfer of national competences to a superior entity. In this new entity decisions are taken in a different way than they would be if it were solely an internal matter as there are more players at the table and each have an equal say. Therefore the supervision over the policies brought to the table is crucial. This phenomenon is entitled parliamentary scrutiny.

The acceptance of Parliament is necessary "for all or most measures if they are to have binding applicability within the State"<sup>1</sup> if one believes in democracy. Therefore, the Member States (MS) have their own measures in place to ensure that national parliaments look after the policies that their governments would present on behalf of the country. The EU on the other hand is also inviting national parliaments to be actively involved in current affairs by observing compliance with the principle of subsidiarity.

The European Union has democracy as one of its fundamental values but is often accused of having constant democratic deficit. The aim of this research is to identify the range of influence of national parliaments in a democratic European Union. Therefore, the research questions are:

1. Is parliamentary scrutiny by European Affairs Committees over governments an effective tool in reducing the perception of legitimate and democratic deficit in the EU?
2. In relation to the Latvian accession to the European Union, has the development of the Saeima European Affairs Committee made it into an influential parliamentary scrutinizer in comparison to other MS?

In order to answer the research questions, the research is structured to first establish the context for this study on parliamentary scrutiny by examining what its purpose is. The purpose as well as its foundation is to be identified within EU legislative acts whether it is the Treaties of the European Union, their protocols or interpretations. The Treaties set the frame for the concept of subsidiarity to be directly bound with the supervisory role of national parliaments as it is the responsibility of national parliaments to conduct subsidiarity scrutiny. As a close to the first chapter, certain limitations to parliamentary scrutiny are touched upon.

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<sup>1</sup> Philip Norton, ed., *National Parliaments and the European Union*, 1 edition (London: Routledge, 1996).

The parliamentary scrutiny context within the EU would have been established in the first part of the thesis. Therefore, the second part intends to provide a comparison between the models applied by France, the United Kingdom, Germany and Denmark to conduct scrutiny over European policy. The selected countries demonstrate both, two chamber systems parliaments as well as unitary parliamentary systems for contrast. The format and competence of the European Affairs Committees or their equivalent are the central reference for the comparison leading up to the original research on the Latvian committee solely.

The third part is a detailed national case study of the development of the Saeima European Affairs Committee during the Latvian accession process to the European Union. This has been part of unexplored territory within the academic milieu for which little literature is available, thus an empirical legal study methodology is used.

Legal research studies traditionally consist of analysis of legislation, case law and legal doctrine. It could be seen as an inward looking sort of method which works for certain fields of research which are closely tied to the practice of law.<sup>2</sup> However, the spectrum of materials to be used for legal research is expanding. It would fall into a modern approach to legal research if new interdisciplinary methods were to be introduced. A number of scholars have argued that this type of approach to legal research is better fitted and, thus such an approach to legal research has been practiced in certain specific countries, but mostly bloomed from the work of American scholars such as Thomas J. Miles and Cass R. Sunstein.<sup>3</sup> The authors identify that law scholars have recently become more interested in the empirical data that would traditionally be presented by researchers of political science and entitled it “empirical legal studies”.<sup>4</sup>

The benefits of an empirical research approach to an investigation provides a varied form of input by investigating a certain aspect directly through empirical data.<sup>5</sup> This type of legal research remains strongly influenced by social science methodology, which provides it with a righteous boost of originality. Similarly, such new methods of research are increasingly accepting of references to non-binding sources in legal argumentation. Interviewing as a method of study for legal scholars is increasing annually and has been used to a great extent to study aspects linked to judicial function and practice.<sup>6</sup>

Interviews are to be a crucial form of intelligence for the conduct of this research. An identifiable lack of binding and peer-reviewed resources is lacking on the specifics of the Saeima European Affairs Committee. Therefore, the use of interviews as empirical resources are conducted with former Members of Parliament, diplomats and legal consultants to ensure that a primary source is available and the research is accurate.

The final part of the research will examine the role of the SEAC in the accession process and its functions as they are at present. The role of the chairperson of the committee, its format as well as collaboration with other local institutions is similarly to be examined.

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<sup>2</sup> Urszula Jaremba and Elaine Dr Mak, “Interviewing Judges in the Transnational Context,” *Law and Method*, no. 05 (2014).

<sup>3</sup> Ibid

<sup>4</sup> Thomas J. Miles and Cass R. Sunstein, “The New Legal Realism,” *University of Chicago Law School Chicago Unbound*, 2008

<sup>5</sup> Pierre Larouche, “A Vision of Global Legal Scholarship,” SSRN Scholarly Paper (Rochester, NY: Social Science Research Network, October 8, 2012)

<sup>6</sup> Jaremba and Mak, “Interviewing Judges in the Transnational Context.”

## 1. PARLIAMENTARY SCRUTINY CONTEXT

In the 21<sup>st</sup> century more than ever before, euroscepticism is at an all-time high within many European countries. One of the strongest arguments used by eurosceptics and to be countered by the argumentation in this thesis is the lack of democratic oversight on EU affairs. In order to ensure a democratic order in a country one or more national institutions are directly elected by its citizens. In most democratic countries at least the national parliament is directly elected. The parliament's main function is to represent the interests of its electorate, thus ensuring a form of public justice. Upon the cast of a vote, the voter agrees that a group of other persons will represent their interests further in the making of decisions for their state and society at large.<sup>7</sup> If one chooses not to vote, they do not participate in the shaping of the countries new laws, decisions and policies, thus are passing their democratic rights to the persons who do vote.

However, when the country joins a larger entity, such as the EU, which itself has a parliament, the issue becomes more sophisticated.<sup>8</sup> National parliaments must still provide for the interests of their direct electorate by holding the government accountable for decisions that would be made at the EU level. There, new legislation is approved through the ordinary legislative procedure which includes a divided responsibility over the legislation for the Council and the European Parliament.

The debate on the democratic deficit in the European Union has been around since the late 1970s. Most discussions are dominated by the argument that only the European Parliament is a directly elected institution representing the point of view of the European citizens. Whereas the other legislative body is the Council where member states send their sector Ministers. However, it is rarely noted that the Council's democratic legitimacy is based on the fact that the Ministers who represent the States are accountable to their respective Parliaments, which themselves represent the various peoples. Given the importance of the Council's place among the Union's institutions, the scrutiny of governments' European action by national Parliaments is one of the main aspects of democratic legitimization of the Union.<sup>9</sup>

Therefore this is what is understood as parliamentary scrutiny- the supervision of governments and their actions at the EU level by national parliaments.

### 1.1 Parliamentary Scrutiny and the Treaties

The Treaties have previously stressed the importance of democratic representation as one of the main values of the Union remains democracy. The involvement of national parliaments in EU decision making has evolved continuously throughout its deepening integration. Before the Maastricht Treaty came to be, the national parliaments were able to intervene in two ways:

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<sup>7</sup> Davor Jančić, *National Parliaments and European Constitutionalism: Accountability Beyond Borders* (Utrecht, 2011).p. 1

<sup>8</sup> Ibid

<sup>9</sup> Hubert Haenel, *National Parliaments, a Bulwark for Europe*, 2006.

1. Through the political accountability of governments to the parliament, depending on the national system of governance.
2. The Treaties provided for parliamentary intervention:
  - a. where parliamentary approvals were necessary in certain parts-Treaty amendments, the conclusion of association and trade agreements between the Community and third countries, enlargement, decisions on direct elections to the European Parliament and on the Community's own resources, etc.
  - b. implementation of Community Directives.

Later, during the time of the Maastricht treaty, the low attendance of elections for the European Parliament were another nudge in the direction to involve the different national parliaments in other EU processes as the democratic deficit seemed to be growing,<sup>10</sup> A decline in participation could be observed in protest to reasons such as a larger electorate than usual, growth of bureaucracy, need for quick decisions in a time of crises, media portrayal of heads of government as well as the general complexity of modern military, economic or political problems.<sup>11</sup> A solution was sought to refrain democratic deficit from increasing even further- provide national parliaments with a responsibility to scrutinize their governments EU policies. The principle of subsidiarity was introduced by the Treaty of Maastricht. It is to be identified in the following sections as being a crucial element for parliamentary scrutiny in the EU.

The Treaty of Amsterdam, created a formal basis for evaluating the principles of subsidiarity and proportionality by national parliaments in the adoption of acts on police and judicial cooperation in criminal matters.<sup>12</sup> This was the start of further parliamentary involvement of EU Member State parliaments in the making of new legislations for the whole Union. As the pillar structure of the EU limited the reach of the principle, upon its abolition the scope of the principle expanded to almost all other matters in the Union. The Common Foreign and Security Policy remains still at the time of writing the one policy which does not issue legislative acts and thus they are not subject to subsidiarity scrutiny by national parliaments.

The role of national parliaments was also high on the agenda of the European Convention<sup>13</sup> which was set up to develop the reforms needed in the Union pre-Lisbon<sup>14</sup>. This led to the Lisbon Treaty being the first to mention national parliaments in the main text of a treaty in comparison to being in the Protocol or Declarations in the previous Treaties.<sup>15</sup>

Additionally, Lisbon also introduced what is called the 'early warning system', where national legislatures are assigned the right to monitor initiatives leading to decisions on the basis of subsidiarity.<sup>16</sup> Article 12 of the Lisbon Treaty outlines the contribution of national

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<sup>10</sup> Davor Jančić, *National Parliaments and European Constitutionalism: Accountability Beyond Borders* (Utrecht, 2011), p. 5

<sup>11</sup> Ibid

<sup>12</sup> "Treaty Establishing the European Community (consolidated Version) D. Protocols Annexed to the Treaty Establishing the European Community Protocol (No 30) on the Application of the Principles of Subsidiarity and Proportionality (1997)," *Official Journal*, December 29, 2006, 308–11.

<sup>13</sup> Tapio Raunio, "National Parliaments and European Integration: What We Know and Agenda for Future Research," *The Journal of Legislative Studies* 15, no. 4 (December 1, 2009): 317–34,

<sup>14</sup> See part on the development of the Latvian European Affairs Committee- European Convention

<sup>15</sup> Raunio, "National Parliaments and European Integration." p.318

<sup>16</sup> Raunio. p.318

parliaments to the good functioning of the Union and stresses that the national parliament contributes “by seeing to it that the principle of subsidiarity is respected in accordance with the procedures provided for in the Protocol on the application of the principles of subsidiarity and proportionality,”<sup>17</sup> thus identifying the importance of the principle for the work of national parliaments.

The European Treaties themselves provide another way through which national parliaments can supervise their government actions at the EU level- through the supervision of the principle of subsidiarity. This is considered part of parliamentary scrutiny, but more specifically to be referred to as subsidiarity scrutiny by national parliaments.

## **1.2 Principle of Subsidiarity and Subsidiarity Scrutiny by National Parliaments**

The subsidiarity principle was introduced by the Treaty of Maastricht and is currently considered as one of the core principles of the EU. The principle of subsidiarity finds its legal basis in Article 5(3) of the Treaty on European Union (TEU) and Protocol (No 2) on the application of the principles of subsidiarity and proportionality.

Article 5 (3) of the TEU states that:

“Under the principle of subsidiarity, in areas which do not fall within its exclusive competence, the Union shall act only if and in so far as the objectives of the proposed action cannot be sufficiently achieved by the Member States, either at central level or at regional and local level, but can rather, by reason of the scale or effects of the proposed action, be better achieved at Union level.”

This should be read as- in areas in which the EU does not have exclusive competence, the objective of the principle seeks to protect the ability of Member States to take action, decisions and authorise the intervention of the EU as a whole if it is seen that the state cannot sufficiently reach the aimed for goal, but could if it was sought by the Union level.

Protocol No.2 on the Application of the Principles of Subsidiarity and Proportionality details the system through which national parliaments of Member States are to conduct parliamentary scrutiny. Under the *ex-ante* ‘early warning system’ any national parliament, its chambers or committees has eight weeks from the moment of forwarding draft legislative acts to send to the Presidents of the European Parliament, the Commission and the Council a reasoned opinion explaining why it is believed that the draft in question does not comply with the principle of subsidiarity.<sup>18</sup>

For the purpose of this research and as stated in Protocol No.2 a ‘draft legislative act’ is defined as proposals from the Commission, initiatives from a group of Member States, initiatives from the European Parliament, requests from the Court of Justice, recommendations from the European Central Bank and requests from the European

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<sup>17</sup> Article 12 (b) “Consolidated Version of the Treaty on European Union,” *Official Journal*, 2012, 13–390.

<sup>18</sup> “The Principle of Subsidiarity | EU Fact Sheets | European Parliament,” accessed May 30, 2018, [http://www.europarl.europa.eu/atyourservice/en/displayFtu.html?ftuId=FTU\\_1.2.2.html](http://www.europarl.europa.eu/atyourservice/en/displayFtu.html?ftuId=FTU_1.2.2.html).

Investment Bank for the adoption of a legislative act.<sup>19</sup> These drafts are to be received directly from EU institutions, instead of sending them through the government of a MS, as was done under the Treaty of Amsterdam. It is not stressed in the definition, however it is required that the parties initiating the legislative process for an act send the draft legislation and all of its already amended draft acts.<sup>20</sup> The legislating institutions involved, EP and Council, are also required to send their resolutions and positions, accordingly.

The Treaty of Lisbon introduced the early-warning mechanism (EWM) as a tool allowing direct interference in EU legislative processes by national parliaments. The system applies a yellow and orange card system according to Articles 6 and 7 of Protocol 2.<sup>21</sup> The draft is to be reviewed if opinions have been received from at least one-third of the votes for national parliaments. This means that a ‘yellow card’ is issued. If the issue is related to a field of competence that is governed by the ordinary legislative procedure and at least half of the votes of national parliaments are concerned with non-compliance with the principle of subsidiarity and the Commission decides to keep with the proposal the matter may be referred to the legislators (council and EP) to take a decision in the first hearing. In this case, if the legislator decides that it is not compatible, it may be rejected by a 55% majority in the Council or a simple majority of the votes cast in the EP. This is the issuance of an ‘orange card.’

Furthermore, if the legislative act is adopted, the principle of subsidiarity also works in retrospective through a legal action before the Court of Justice of the EU according to Article 8 of Protocol No.2. The action to the Court of Justice must be brought forward by the Member State or ‘notified by them in accordance with their legal order on behalf of their national parliament or a chamber thereof.’<sup>22</sup>

### **1.3 Limitations to Parliamentary scrutiny**

It seems that the Treaties giving subsidiarity scrutiny possibilities to national parliaments and parliaments themselves scrutinizing their governments are effective ways of ensuring the interests of the electorate at the EU level. However, it is not always so and some limitations are to be encountered.

No national parliament is able to block a draft legislation act unless they are supported by other Member State national parliaments. In case a radical parliament is elected in a Member State, their possibility of influencing the continuity of the Unions legislative process is contained. This however means that the system is biased towards majority concerns in an union, which in itself is not a positive democratic know-how. For the process to be fair without further limitations, it should be a responsibility to look through the reasoned opinions of all the parliaments before considering each of them only after a one third majority bench mark has been reached.

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<sup>19</sup> Protocol No.2 Article 3, “Consolidated Version of the Treaty on the Functioning of the European Union - PROTOCOLS - Protocol (No 2) on the Application of the Principles of Subsidiarity and Proportionality,” *Official Journal*, May 9, 2008, 206–9.

<sup>20</sup> *Ibid*

<sup>21</sup> “The Principle of Subsidiarity and National Parliaments in the Lisbon Treaty” (OIDE, n.d.), accessed May 30, 2018.

<sup>22</sup> Article 8 of Protocol No.2 “Consolidated Version of the Treaty on the Functioning of the European Union - PROTOCOLS - Protocol (No 2) on the Application of the Principles of Subsidiarity and Proportionality.”

It should also be added that a number of critics stress that the method of control by parliamentary scrutiny is clearly deficient. EU decision making is dominated by qualified majority voting, which means that even after the minister heading for a Council meeting defends his position according to the standpoint of his or her parliament, there is a the risk that they may be outvoted by other member state ministers.<sup>23</sup> In this case, the national parliament cannot hold the respective minister accountable for the unfavourable result in Council negotiations.

According to Article 10 (2) ‘Citizens are directly represented at Union level in the European Parliament’. Member States are represented in the European Council by their Heads of State or Government and in the Council by their governments, themselves democratically accountable either to their national Parliaments, or to their citizens.’ In the case of an unfavourable result in the negotiations the accountability of the governments is to the national parliament and the general public. This is a backwards looking method of accountability and does not provide the national parliament with specific influence on the results unless they have developed such a format themselves.

The next chapter will focus on precisely the formats that different MS parliaments have and whether they have methods of scrutiny which are not limited to *post factum* accountability.

## 2. NATIONAL PARLIAMENT EUROPEAN AFFAIRS COMMITTEES AND THE EUROPEAN UNION

Many parliaments have reformed themselves as a consequence to further European integration. Most of the reforms were led by the intention to balance out some of the legislative powers that they used to have and now have been lost to being competences of the EU level. The objective of these reforms was to improve governments’ provision of information on EU affairs to parliaments, to enable parliaments to express comments on draft EU legislation and generally improve their participation in the whole EU legislative process.<sup>24</sup> Thus, “national parliaments obtained the right to receive more or less comprehensive information on European issues from their government”<sup>25</sup> to scrutinise EU policies. The responsibility to scrutinize governments and their actions at the EU level is taken seriously by most if not all MS. It is a common interest for all MS to conduct such scrutiny to ensure democratic legitimacy at the EU level in the Council as a consequence to the wide range of powers transferred to the Union.

A number of researchers have identified that a lack of quantitative data existed on the involvement of the national parliaments, while extensive research was done on the theoretical powers that the parliaments are given.<sup>26</sup> Thus a number of ways to categorise the role of each parliament have been developed. The British scholar Jančič categorises parliaments by looking at four elements: *conditions* (link to Treaties and transfer of powers), *competences*

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<sup>23</sup> Davor Jančič, *National Parliaments and European Constitutionalism: Accountability Beyond Borders* (Utrecht, 2011), p. 1

<sup>24</sup> Jančič, p. 7

<sup>25</sup> Katrin Auel, “Democratic Accountability and National Parliaments: Redefining the Impact of Parliamentary Scrutiny in EU Affairs,” *European Law Journal* 13, no. 4 (July 1, 2007): 487–504

<sup>26</sup> Jančič, *National Parliaments and European Constitutionalism: Accountability Beyond Borders*.

(collection of rights and responsibilities of national parliament for the scrutiny of secondary EU law), *claims* (application of conditions and competences in practice) and *capacities* (all parts linked to evaluate to what extent the national parliament operates as an EU organ).<sup>27</sup>

Other authors such as Philip Norton for one have pre-classified types of legislatures in terms of the influence they have on policy making. The categories that he has identified are a (1) *policy-making legislature*, which can modify or reject policy brought forward by the executive, which it can formulate and substitute at its own will; (2) *policy-influencing legislature*, which can modify or reject policy brought forward by the executive, but cannot formulate and substitute policy of its own; and (3) *legislature with little or no policy affect*, can neither modify or reject policy brought forward by the executive, nor formulate and substitute policy of its own.<sup>28</sup>

Each MS has their own way of carrying out this responsibility, but it is assumed that in most MS the scrutinizing of the government's policies and positions is done by a certain committee within the parliament, often called the European Affairs Committee. Therefore, in this section the focus is put on individual MS and how their internally established European Affairs Committees (or otherwise named) of the national parliaments go about scrutinizing their governments EU policies.

## **2.1 France**

The French system of governance has usually had a strong emphasis on the executive, leaving the Parliament as the lesser institution. In order to allow the two Chambers, the national assembly and the Senate, to vote on resolutions about draft EU legislation the French Constitution had to be revised. Each Chamber has its own delegation for the European Union which looks through proposals. If a text is selected as being important they will develop a draft resolution to serve as the basis for the adoption of a resolution by the Assembly or one of the Standing Committees, but still on behalf of the full Assembly. For "less important" texts which are cause for a bit of concern, the delegation will address their concerns to the government directly.

The United Kingdom also has a two chamber system, but is nonetheless significantly different from the French.

## **2.1 The United Kingdom**

The concept of "pending parliamentary scrutiny" is at the basis of their form of parliamentary scrutiny for the governments EU policies. This means that any Minister cannot give a decision on a text that is being discussed if one of the two Houses is still examining it domestically.<sup>29</sup> Once a proposal is set on the table the government has ten days to spread an explanatory memorandum. The memorandum must detail the influence it may have on the UK by raising the issue of subsidiarity<sup>30</sup> and outlines the government's position on the issue. The two houses then evaluate the case in as much detail as they see necessary and adopt a

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<sup>27</sup> For a detailed overview on the methodology and finding of this research please see w=the full work of Jančič.

<sup>28</sup> Norton, *National Parliaments and the European Union*.

<sup>29</sup> Hubert Haenel, *National Parliaments, a Bulwark for Europe*, 2006, p. 30

<sup>30</sup> See above section on the principle of subsidiarity

position, however, this position is not binding on the government. Instead, the government must inform the houses further on what positions it decided to adopt and elaborate on why they have done so. Therefore, parliamentary scrutiny in the UK is limited to the time it takes for each house to deliver a position, but it may not be taken into account by the government.

The United Kingdom is a unitary state and a monarchy making it quite different from a federation where the role of the European Affairs Committee differs greatly from other states. Germany is a federal country and a founding member state of the European Union.

## 2.1 Germany

Germany is a federation for which scrutinizing of European policies is slightly more complex where the two Chambers have different roles. The government must take into account their view on draft EU legislation, but it is not bound by it.

With regards to the first Chamber, the Bundestag, Article 23 of the Basic Law says:

“Before participating in legislative acts of the European Union, the Federal Government shall provide the Bundestag with an opportunity to state its position. The Federal Government shall take the position of the Bundestag into account during the negotiations”<sup>31</sup>

If the government is not bound by the position of the Bundestag there is no certainty that the opinion is taken into account and is easily overruled by political will or necessity. Whether the government is bound by the opinions represented by the national equivalent of an EAC determines its scope of influence directly.

Article 45 of the Basic Law states the establishment for the Committee of European Union:

“The Bundestag shall appoint a Committee on European Union Affairs. It may authorize the Committee to exercise the rights of the Bundestag under Article 23 vis-à-vis the Federal Government”<sup>32</sup>

In practice this means that the Committee of European Union represents the Bundestag on almost all issues and is the committee which produces the opinion of the whole Bundestag on a draft legislative act.

The other Chamber, the Bundesrat, which represents the Länder (federated states) the scrutinizing is not the same. If it seems that the Länder could be interested in a certain aspect, the government must inform the Bundesrat in an in-depth manner as soon as possible. Within the Bundesrat, an EU questions Committee prepares the Bundesrat’s deliberations based on the opinions of the Standing Select Committees when a draft European act was submitted to them.<sup>33</sup> If the draft legislative act is in a policy area where the Länder has its competence, then the Bundesrats deliberation is binding to the government, otherwise it must solely be taken into account without being bound to it.<sup>34</sup>

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<sup>31</sup> Basic Law for the Federal Republic of Germany, Deutscher Bundestag, Article 23, European Union – Protection of basic rights – Principle of subsidiarity. Available: <https://www.btg-bestellservice.de/pdf/80201000.pdf>

<sup>32</sup> Basic Law for the Federal Republic of Germany, Deutscher Bundestag, Article 45, Committee on the European Union. Available: <https://www.btg-bestellservice.de/pdf/80201000.pdf>

<sup>33</sup> Haenel, *National Parliaments, a Bulwark for Europe*. p.32

<sup>34</sup> Ibid

Having looked at a variety of three different parliaments with at least two main chambers a comparison should also be drawn with a unitary parliament system and in this case the Danish Parliament.

## **2.2 Denmark**

The Danish Accession Act from 1972 is the basis for all agreement on Danish European Policy as it outlines the scrutiny exercised by the European Affairs Committee of the Danish government prior to reaching an agreement. The EAC was established as a permanent committee in 1973 after Denmark joined the European Economic Committee. In the first report of the Committee of 29 March 1973, they laid down the negotiating mandate system, which will later be one to inspire many others to follow a similar format, including Latvia.

Denmark is often cited as the country which conducts most scrutiny over government's positions,<sup>35</sup> where the government is limited to positions that the European Affairs Committee of the Parliament (Folketing) has consented to. The ministers heading for a meeting of the Council have to first defend their position at the European Affairs Committee where a debate concludes as the governments negotiating brief to be taken to the Council meeting. Similarly, if it is a meeting of the European Council the Prime Minister must also defend his position on the topics to be discussed in a more informative format, which usually does not end in a negotiating brief<sup>36</sup>, but instead a possibility to expand on the proposal.

The government is tasked with informing the Parliament with a certain "preliminary memorandum" which would outline the consequences of any potential EU legislation draft, the proposals given by the European Commission (both "green papers" and "white papers") to Danish law. As the decision making process in the EU developed further to introduce trilogues and first reading agreements there was a need for the committee to be involved at an earlier stage. Thus, the Government must seek a mandate before establishing the Danish position as a whole which would be of significant importance.<sup>37</sup> However, if there are fundamental changes in the proposal during the negotiations, they must seek a new mandate.

The Danish model and responsibilities of its European Affairs Committee served as a key example in the establishment of the Latvian European Affairs Committee in the national parliament, Saeima. The following chapter will examine its development in further detail.

## **3. DEVELOPMENT OF THE SAEIMA EUROPEAN AFFAIRS COMMITTEE**

The Saeima European Affairs Committee (SEAC) is at the centre of this research, thus in order to examine the role of SEAC it is crucial to look at its initial development to fully understand its functioning and current structure. Generally, to examine such an institution government prepared information sheets and other documents should be consulted. However, for the SEAC there were no such sources that could be thoroughly helpful therefore this

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<sup>35</sup> Hubert Haenel, *National Parliaments, a Bulwark for Europe*, 2006, p. 28

<sup>36</sup> Hubert Haenel, *National Parliaments, a Bulwark for Europe*, 2006, p. 29

<sup>37</sup> "The European Affairs Committee," The Danish Parliament, accessed May 26, 2018, <http://www.thedanishparliament.dk/en/committees/committees/euu>.

section presents a development case study of the reason itself as to why SEAC exists. The reason for development of SEAC is the European Union and the Latvian accession to it as a full Member State.

At the time of writing, 14 years have passed since Latvia joined the European Union and over 25 years since the Saeima European Affairs Committee was formed with the aim of representing the Saeima in the integration process. Looking back at this period, there is a noticeable lack of information on the accession process and the Saeima's role therein. To eliminate this deficiency, this chronological analysis is a thorough original study.

The analysis starts with the selection of politically and judicially significant aspects of Latvia's European Union accession process. Each of the dates and events mentioned has been identified and briefly described by evaluating the role of the Saeima, specifically the European Affairs Committee (SEAC), in the event. Additionally, the other included dates are generally significant to Latvia over the course of its accession process as it is the very event for which the SEAC was formed. Other institutions to be involved in the accession process are also mentioned including the European Integration Bureau (EIB), the Ministry of Foreign Affairs (MFA), the European Information Centre (EIC), the Translation and Terminology Centre (TTC) and others.<sup>38</sup>

A large enough emphasis is placed on the growth and improvement of Latvian institutions during the integration period, based on the cooperation and recommendations of EU institutions the European Commission (EC), European Parliament (EP) and the European Council, as well as the existing EU member states. This can be linked back similarly to how the concept of parliamentary scrutiny has also been developing within other member states.

In order to complete this part of the research publicly available materials prepared by state institutions and recollections available in research and academic literature, as well as interviews conducted during the course of compiling the research were used. It would be impossible to complete this SEAC development analysis without the recollections of key persons involved. Their recollections were recorded in the book, "Return to Europe - The Essays of Latvian Presidents, Prime Ministers, Ministers and Diplomats."<sup>39</sup> The journals published by the EIB, "Latvia and the European Union,"<sup>40</sup> accurately reflect the accession process and also provided for valuable input as there is a thorough lack of information on the process and the role of different institutions during it.

This section is divided into five sub-sections outlining the most important periods during the accession process- preparation of application to join the EU, the integration of *acquis communautaire* into national law, the referendum on accession and role of the committee once Latvia is already a MS.

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<sup>38</sup> To see a full account on the integration process visit the development process analysis presented by the Latvian Ministry of Foreign Affairs. Available: <http://www.mfa.gov.lv/en/policy/european-union/history/latvia-and-the-eu-chronology-of-relations>

<sup>39</sup> Return to Europe - The Essays of Latvian Presidents, Prime Ministers, Ministers and Diplomats , 2016. Available: <http://dom.lndb.lv/data/obj/file/305363.pdf>

<sup>40</sup> The whole collection of the academic journal is available at the National Library of Latvia

### 3.1 Preparation and Submission of Application to Join the EU (1994-1995)

In June 1993 the European Council announced for the first time that Eastern European countries could become member states in the future if they fulfilled the political and economic requirements which would indicate the ability of the respective country to take on the responsibilities of membership. This information was received with great interest by Latvia's MFA who internally took it as a signal to begin work on planning the integration process. Behind the closed doors of policy makers, the European Union had been discussed as a Mecca of economic and political safety for the Republic of Latvia for some time.<sup>41</sup> The plan was slowly accepted by the government, and the first signals of the acceptance of the integration ideas, as well as the plans' successes, were crowned in practice with the forming of the European Integration Bureau institution and the creation of the document, "Latvian Foreign Policy Directions until 2005."

- 1st November 1994 - European Integration Bureau formed

The European Integration Bureau was formed under the Cabinet of Ministers' resolution no. 134 "To Ensure the Integration of the Republic of Latvia into the European Union"<sup>42</sup>. At first the EIB was formed as a department of the MFA, but its functions were not limited to responsibilities in an MFA context, and over time it collaborated with ministries of all fields.

During the accession process the EIB had an invaluable significance on the path to the EU. Looking back at the period before accession, former SEAC chairman Edvīns Inkēns remembers that the EIB proved very valuable, and the decision to create it was progressive-thinking<sup>43</sup>. As the EIB was an executive tool, rather than a decision-making institution,<sup>44</sup> its main function was to prepare a timetable for the takeover of EU legislation.

- 7th April 1995 - Saeima foreign policy debates and acceptance of Latvia's foreign policy concept, "Latvian Foreign Policy Directions until 2005."

The Ministry of Foreign Affairs developed Latvia's foreign policy concept, "Latvian Foreign Policy Directions until 2005," which was used as the basis for foreign policy debates at the Saeima. The core of the document was "strengthening Latvia's independence and ensuring its irreversibility,"<sup>45</sup> primarily being ensured through integration into the European Union and its structures.

"Latvian Foreign Policy Directions until 2005" also included the goal of joining Euro-Atlantic security structures. Although, Latvia's foreign policy goals of integrating into the EU

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<sup>41</sup> Interview with Māris Riekstiņš (former State Secretary of the Ministry of Foreign Affairs) in Riga, on 25.05.2017

<sup>42</sup> Cabinet of ministers provision Nr. 134, About the European Integration Bureau (*Par Eiropas integrācijas biroju*),

<sup>43</sup> Interview with Edvīns Inkēns (former Chairperson of the European Affairs Committee) in Riga, on 11.04.2018

<sup>44</sup> Interview with Jānis Vaivads (former Director of the European Integration Bureau) in Riga, on 27.04.2018

<sup>45</sup> Latvian Foreign Policy Directions until 2005, available in Latvian: <http://www.mfa.gov.lv/arpolitika/latvijas-arpolitikas-pamatvirzieni-lidz-2005-gadam>

and integrating into Euro-Atlantic security structures (which they only later dared to name as NATO) were mutually linked, they were separated in practice. Thus very little is to be mentioned further on integration into NATO as part of this research, but the factuality of this process happening in parallel is noteworthy.

Due to a lack of critical opposition, the 1995 foreign policy debates are not remembered as particularly exciting, therefore Valdis Birkavs admits that “a Saeima majority unequivocally supported the concept,”<sup>46</sup> thereby clearly demonstrating to the European Commission and the Western states a readiness for the next chapter in the state’s history.

- 12th June 1995 - agreement establishing associations between Latvia and the EU (Europe Agreement) signed, which comes into force on the 1st February 1998

Latvia expressed its wish to associate with the EU to the European Commission with several indications, including the acceptance of Latvia’s basic directive; however, on signing the Europe Agreement on establishing an association between the European Communities and their member states, of the one part, and the Republic of Latvia, of the other part, there was a response for the first time to Latvia’s accession to the EU.<sup>47</sup>

It must be taken into account that the agreement had to be ratified not just in the Latvian Saeima, but also in the parliaments of each member state at the time and in the European Parliament<sup>48</sup>, thereby postponing the date when it came into force by three years. Ratification of such an agreement counts as an international agreement which is to be governed under the Vienna Convention on the Law of Treaties. Thus, ratification of such an international agreement means that there is formal consent on behalf of the parties to be bound by the agreement.<sup>49</sup> The ratification of an agreement has the same goal, however differ on the account of procedures from country to country.

- 26th June 1995 - “White Paper” approved for legislation integration by the Cannes European Council

In accordance with co-ordination based on the foundations of the “White Paper,” Latvian legislation was adapted to EU standards a few years later. The plan for the recommended adaptations set out a logical order in which to introduce EU legislation and basic measures to be implemented in the internal markets of all candidate countries. Its structure can be compared with building construction: “starting with the foundations and only later working on the roof,”<sup>50</sup> in order to offer precise guidelines on integration.

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<sup>46</sup> Valdis Birkavs, “First important years: departure of Russian army troops and Latvian appearance at the door of the EU (translation of ‘Pirmie izšķirošie gadi: Krievijas armijas izvešana un Latvijas nonākšana Eiropas Savienības priekštelpā’),” in *Return to Europe*, 2016, 43–84. p.65

<sup>47</sup> Solvita Harbaceviča, “Integration of EU legal acts into the Latvian legal system and law (translation of ‘Eiropas Savienības likumdošanas pārņemšana Latvijas likumdošanā un tiesībās’),” in *Return to Europe*, 2016, 199–216.p.201

<sup>48</sup> Article 218 (10), “Consolidated Version of the Treaty on European Union.”

<sup>49</sup> “Ratification of International Agreements by EU Member States,” November 2016.

<sup>50</sup> Interview with Inese Birzniece (former Member of Parliament) in Riga, on 19.04.2018

Bearing in mind the “White Paper’s” recommendations, government-approved integration programmes were also created<sup>51</sup> for which the European Integration Office were responsible in collaboration with the SEAC and ministries.

- 30th September and 1st October 1995 - 6th Saeima elections

Bearing in mind that the results of the next election were unpromising for the parties in power, having lost popularity when passing difficult reforms, the planned foreign policy aims were threatened<sup>52</sup>. It was necessary to ensure that they would be binding for the next Saeima and its government.

Therefore, the outgoing government made the decision to apply as a candidate country to the European Union before the new Saeima began operating, thereby leaving it as its inheritance.

- 10th October 1995 - European Integration Council formed

The European Integration Council regulation and its creation took place in accordance with the law, “On the Agreement Signed in Luxembourg on the 12th of June 1995.” The European Integration Council played the role of a coordinating state institution, whose goal was to create and promote a united policy for Latvia’s integration into the European Union at all levels of state governing institutions<sup>53</sup>.

Looking back at the Council members and their role during the accession process, their enormous role in the pre-accession years must be emphasised. The Chairman of the Council was the Prime Minister, while the Prime Minister’s advisor in European integration affairs, the State Chancellery deputy director of legislative affairs, and the director of the European Integration Bureau participated independently in an advisory capacity<sup>54</sup>. Equally important, depending on the topic discussed, were the respective ministers, state secretaries, advisors and industry experts.

The European Integration Council regulation was renewed by almost every succeeding Prime Minister. Its structure was taken from other EU states, and its main task was to prevent disagreements between various ministries and decide on the government’s position in specific matters.

In a later legislative coordination period, the SEAC Chairman was given a particular advisory role and the opportunity to participate in sessions along with the other members of the Council. Their presence provided a parliamentary supervision function, repeatedly pointing out the link between the government and Latvia’s democratically elected Saeima.

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<sup>51</sup> Harbaceviča, “Integration of EU legal acts into the Latvian legal system and law (translation of ‘Eiropas Savienības likumdošanas pārņemšana Latvijas likumdošanā un tiesībās’).”, p.203

<sup>52</sup> Birkavs, “First important years: departure of Russian army troops and Latvian appearance at the door of the EU (translation of ‘Pirmie izšķirošie gadi: Krievijas armijas izvešana un Latvijas nonākšana Eiropas Savienības priekšelpā’).” p.66

<sup>53</sup> Cabinet of Ministers rule nr.298, Provision on the European Integration Council. Issued in relevance to the regulation on “the Europe agreement signed in Luxembourg on 12 June 1995” in Riga on 10 October 1995

<sup>54</sup> Ibid

- 13th October 1995 - The Cabinet of Ministers' decision, also signed by President Guntis Ulmanis, on Latvia's application for accession into the European Union.

The President of Latvia was in agreement with his worried colleagues in the government about the election results regarding the sustainability of the planned foreign policy aims, therefore he called an emergency session. The decision was signed by both President of Latvia Guntis Ulmanis and Prime Minister Māris Gailis. Thus the government passed a legitimised resolution in the name of the outgoing 5th Saeima.

- 14th October 1995 – 11 parties sign the “Political Party Declaration of the 6th Saeima” on Latvia's integration into the European Union.

The President of Latvia called on the representatives of all the newly elected parties to discuss the confirmation of the “Latvian Foreign Policy Directions until 2005” made on the 7th of April, in which the goals of accession to NATO and the European Union were defined. During the discussions, all party leaders were able to agree on only one of those two goals - accession and integration into the European Union. At the end of the discussion, party leaders agreed to call this document the “Political Party Declaration of the 6th Saeima” for Latvia's integration into the European Union. “It was the only matter on which a consensus could be reached at that time,”<sup>55</sup> remembers the SEAC Chairman. A similar inter-faction declaration has been signed once more, just after the election of the 7th Saeima. On other matters, including the Declaration of Independence<sup>56</sup>, equivalent declarations have not been signed.

- 27th October 1995 - the Latvian government officially submits their application for accession to the European Union.

In the Autumn of 1995, Spain took over the Presidency of the EU, and Latvia's application to join the European Union was submitted to its Minister of Foreign Affairs Javier Solana. Latvia was the first Baltic state to take this step.<sup>57</sup>

- 2nd November 1995 – amendment to the Rules of Procedure of the Saeima

The 149th clause of the Rules of Procedure of the Saeima was amended in order to include for the first time the European Affairs Committee<sup>58</sup> which, according to the notes of the newly elected 6th Saeima, began operating on the 16th of November under the leadership of Māris Gailis. The decision to aim towards the European Union, as well as the decision to form a European Affairs Committee, was taken by the outgoing Saeima, which thus

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<sup>55</sup> Edvīns Inkēns, “Parliamentary support in preparing the country for membership in the European Union (translation of ‘Parlamenta iesaiste valsts sagatavošanā dalībai Eiropas Savienībā’),” in *Return to Europe*, 2016, 247–66. p.249

<sup>56</sup> 4 May vote on Latvian independence was aided by the victory of the Popular Front in the high Council. The political will and its proportion had shifted in favour of independence, while the opposition continued to believe that Latvia should remain part of the USSR.

<sup>57</sup> Interview with Edvīns Inkēns (former Chairperson of the European Affairs Committee) in Riga, on 11.04.2018

<sup>58</sup> Amendment to the Saeima Rules of Procedure, law passed in Saeima on 2 November 1995 and approved by the President of Latvia Guntis Ulmanis in Riga on 7 November 1995

determined some of the main jobs of the incoming Saeima Members of Parliament. Soon, Māris Gailis was appointed Prime Minister and left his chairman position in the hands of the Member of Parliament, Edvīns Inkēns. He then proceeded to conduct the work of the committee for a total of 8 years while ensuring its functioning according to the EU values supported by all the parties.

- 7th November 1995 - 6th Saeima begins operating

The new Saeima, when beginning its work, was clear on its primary foreign policy action plan - integration into the European Union.

### **3.2 EU Legislation (*acquis*) Takeover Period (1996-1999)**

- February 1996 - European Commission delegation began working in Latvia

The EC had viewed Latvia as a potential candidate with significant doubts for many years, but nevertheless sent a working delegation to be based in Latvia. One of the EC delegation's first tasks in April of that year was to submit over 2,400 questions to Latvia<sup>59</sup> in the so-called *Questionnaire*. The EIB was tasked with preparing the answers and their submission to the EC delegation on the 26th of July demonstrated the abilities and persistence of the European Integration Bureau and was a crucial turning point in how it was portrayed.

- 26th July 1996 - Latvia submits answers to over 2,400 *Questionnaire* questions

The MFA and EIB presented an annual progress report to SEAC members of parliament and agreed on opinions regarding the most recent news. A slightly different format was used for the answers to these 2400 questions which were presented to the SEAC. They could not confirm or reject the prepared answers because they were prepared for very specific questions; therefore the meeting format was informative. The questions were not only addressed to the EIB, but also to the government, therefore many ministries were involved in preparing the answers. In some cases, several ministries prepared answers together, for example, in the social sphere, where the problems of depressive regions were matters of agriculture, welfare and regional development.<sup>60</sup> EC representatives were given 24 volumes of answers to the *Questionnaire* questions.<sup>61</sup>

- 3rd September 1996 - the Translation and Terminology Centre was formed

The EIB and SEAC had formed a good relationship with the integration office in Estonia, because the basic requirements for both countries were the same, therefore one institution could learn a lot from the other. At first, EU terminology was adapted to the needs of its

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<sup>59</sup> Aleksandrs Kiršteins, "Preparing answers to the questions submitted by the European Commission (transalted from 'Atbilžu sagatavošana uz Eiropas Komisijas iesniegtajiem jautājumiem')," *Latvija un Eiropas Savienība*, August 1996.

<sup>60</sup> Interview with Edvīns Inkēns (former Chairperson of the European Affairs Committee) in Riga, on 11.04.2018

<sup>61</sup> Interview with Jānis Vaivads (former Director of the European Integration Bureau) in Riga, on 27.04.2018

Latvian colleagues by the EIB, but when they found out that neighbouring state Estonia was consulting with Canada as a bilingual country, they began to contemplate how best to assimilate the *acquis communautaire* into Latvian.

The association agreement had at this point not yet come into effect, but some expressed assumptions included the eventual creation of this type of centre. Therefore the EIB, along with the government, decided to separate the translation process from the daily work of the EIB. With the support of the MFA, a dialogue on the forming of a similar translation project in Latvia was begun with Canada.<sup>62</sup>

The government founded the Translation and Terminology Centre (TTC), which has received relatively little recognition compared with the other institutions involved in the rest of the EU integration process. The Centre was tasked with translating the whole *acquis communautaire* into Latvian. The task was especially important for the precise coordination of legislation and the creation of the necessary terminology in Latvian (a prospective EU language).

In the eyes of society and a few doubtful members of parliament, this Centre and its responsibilities ensured the security of the state language and its use. The Latvian language itself would be protected because it would be one of the official EU languages used not only in Latvia but also in EU institutions.

- 17th September 1997 - European Information Centre begins operating

For several years the Saeima and government worked on the European integration plan, but people who were not directly involved in implementing this plan lacked general information on the European Union. To solve this, the SEAC formed an internal European Information Centre which, at first, informed just Saeima MPs on SEAC updates on European affairs and EU news and issued information sheets on specific topics. The information was collected into a small booklet and given to MPs during their Thursday sessions. Later, the circulation of this information was also provided to the government, and it was concluded that it should be distributed to the wider society.

In order to spread information on the EU and what joining it would mean to Latvia the Centre had to be expanded. At that time it was located in internal Saeima rooms and could only be accessed by those with entrance permits. The SEAC succeeded in convincing Saeima MPs of the need for access to information, especially if the final decision on whether or not Latvia would join the EU would be made by a society which was at the time not well informed on the EU. The discussion had a positive result and the Information Centre was granted a space accessible to the public not far from the Saeima.

- 11th December 1996 - the Saeima adopts the 1997 state budget

The law adopted on the 1997 budget anticipated a non-deficit budget for the next year. In this way, the Saeima supported aims for economic growth and a low level of inflation. In practice,

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<sup>62</sup> Ivars Golsts, "Terminology and translation centre begins work (translated from 'Tulkošanas un terminoloģiju centrs sāk darbu')," *Latvija un Eiropas Savienība*, April 1997.

it demonstrated a reduction in the direction of internal saving towards the state sector, opening the door to investment from the private sector<sup>63</sup>.

- 18th June 1997 - Saeima adopts the Competition Law

The aim of the law - to provide free and honest competition conditions for business owners. The limits on certain mergers and a ban of agreements which could prevent competition were set in law.<sup>64</sup> The Competition Council of Latvia, formed later, would supervise the law, replacing the Monopoly Monitoring Committee.<sup>65</sup>

The Competition Law adopted by the Saeima was already quite modern and served as a good example to existing EU states.<sup>66</sup> A few years later, on the 13th of January 1999, in a European Parliament plenary session in Strasbourg, the law was recognised as generally adequate, with the only changeable section being the one on export subsidies.<sup>67</sup>

- 15th July 1997 - European Commission adopts “Agenda 2000: Commission Opinion on Latvia's Application for Membership of the European Union,” which ascertains that Latvia is continuing the accession process

The European Commission evaluated the documents submitted by Latvia and other countries for a year. In this so-called first wave, the EC offered to begin negotiations with only one of the Baltic States - Estonia. The “Agenda 2000: Commission Opinion on Latvia's Application for Membership of the European Union” adopted by the EC was hurtful for those who had developed Latvia’s policies; they once again had to stay behind while their direct neighbours were invited to begin accession negotiations. Latvia remained in the preparation category of the accession process due a lack of compliance with the Copenhagen criteria.<sup>68</sup>

- 26th August 1997 - The Cabinet of Ministers approves the document “Memorandum from the Latvian Government on Agenda 2000”

The Cabinet of Ministers’ memorandum emphasised Latvia’s persistence and argued its compliance with the Copenhagen Criteria.<sup>69</sup> Compliance with the criteria was divided into three sections: compliance with political criteria, compliance with economic criteria, and ability to assume the responsibilities of an EU member state.<sup>70</sup> The government also decided

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<sup>63</sup> *Latvija un Eiropas Savienība*, February 1997.

<sup>64</sup> Competition law, available in Latvian: <https://likumi.lv/doc.php?id=54890>

<sup>65</sup> *Latvija un Eiropas Savienība*, June 1997.

<sup>66</sup> Interview with Edvīns Inkēns (former Chairperson of the European Affairs Committee) in Riga, on 11.04.2018

<sup>67</sup> *Latvija un Eiropas Savienība*, February 1999.

<sup>68</sup> Copenhagen criteria- general rules which define whether a state is eligible to join the EU. Criteria are concerned with democracy, human rights, market economy and other EU values.

<sup>69</sup> “Memorandum from the Latvian Government on Agenda 2000 (translated from ‘Latvijas Republikas valdības memorands par Eiropas Komisijas dokumentu ..Agenda 2000- EK atzinums par Latvijas pieteikumu iestāties ES’),” *Latvija un Eiropas Savienība*, August 1997.

<sup>70</sup> “Memorandum from the Latvian Government on Agenda 2000- Commission Opinion on Latvia’s Application for Membership of the European Union” (Latvijas Vestnesis, n.d.), <https://www.vestnesis.lv/ta/id/30437>.

again to emphasise its planned practical action based on the Commission's opinion on Latvia's reform process.

Unfortunately, a moment of frustration similar to that of the critical EC "Agenda 2000" was the pain felt in the European Council in Luxembourg in December that year, when it was confirmed that Latvia was not one of the six states with whom accession negotiations would begin. It was concluded that Latvia's answering memorandum, which was submitted in August had not been able to change the opinion of EU partners.

In that moment, the government and the bureaucratic structure understood that they must work at full strength to demonstrate that Latvia had been unfairly excluded. The SEAC, EIB, MFA Affairs and Minister for Special Assignments in European Union Affairs Aleksandrs Kiršteins had to continue encouraging their colleagues in other ministries, the Saeima and society, emphasising that the time to give up had not yet come.

- 3rd November 1997 - meeting of the first united parliamentary committee in Riga

In that politically tense time when Latvia believed that it had fallen behind and that accession along with the first wave of countries was doubtful, the SEAC met with European Parliament representatives. The basis of the meeting was the signed association agreement which anticipated a joint parliamentary committee bringing together the Latvian and European parliamentarians. The European Parliament was much more positive regarding Latvia's accession along with the other states<sup>71</sup>, although the EC gave significantly more pessimistic signals.

To explain this phenomenon, it is crucial to understand the interests of each EU institution and its role in the accession process. The EC evaluates the ability of each country to integrate according to the Copenhagen Criteria, as well as any other risks associated with a country's accession, for example, whether it would need extra political or economic support. Meanwhile, the EP has a political plan which supports the growth of EU values and democratisation in all potential candidate states. Therefore, the EP is almost always more positive while the EC is more critical, with the final say belonging to the European Council.

After this meeting, the SEAC concluded that, notwithstanding the EC's refusal to begin negotiations with Latvia, the next decision maker was the EP. The Saeima then maintained a very active dialogue with the European Parliament to avoid any misunderstanding on Latvia's position.<sup>72</sup>

- 1st February 1998 - association agreement comes into force

The coming into force of the association agreement was little felt in practice in the SEAC's operations, but all previous adaptation now had to be done officially, as set out in the agreement. The most important changes determined that Latvia had the responsibility of coordinating its legislation with the EU, as well as establishing various operational bodies for

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<sup>71</sup> Interview with Ilmārs Solims (former consultant of the Saeima European Affairs Committee) in Rīga, on 20.04.2018

<sup>72</sup> "The vote of the European Parliament is going to be positive for Latvia (translated from 'Eiropas Parlamenta balsojums būs pozitīvs Latvijai')," *Latvija un Eiropas Savienība*, November 1997.

integration. The EC requested progress reports from the government which were supervised by the SEAC, evaluating the information given and determining the need for separately-stated additions.

- 3rd October 1998 - referendum on amendments to the Citizenship Law which would give the children of non-citizens and stateless persons born in Latvia after 1991 the opportunity to naturalise more easily.

A significant aspect of the accession process, and a chance to show the European Commission that Latvian society was developing and becoming more modern, was the referendum on amendments to the Citizenship Law which would give the children of non-citizens and stateless persons born in Latvia after 1991 the opportunity to naturalise more easily. Officially, the EC remained silent on this matter, but they were watching the situation closely<sup>73</sup>.

If the results of the referendum were to be unfavourable, it would be a significant hurdle in the eyes of the EC towards Latvia's readiness to take on EU values of human rights. Therefore the Saeima paid a lot of attention on how they would express this matter to citizens. Additionally, it was united with the 7th Saeima elections to encourage voting for both matters rather than just for this issue, which was predicted to have more support than the usual turnout for Saeima elections.

Andris Piebalgs believes that it was a crucial decision and confirmed that, in decisive matters, people are forward-looking. "The Latvian people have always, in decisive votes, very clearly taken the position which leads to greater security and greater prosperity."<sup>74</sup>

A negative referendum result would not only have disrupted the integration process, but also would have delayed joining the EU, because the non-citizen issue was referred to as nearly the only argument against Latvia's ability to take on EU values. The symbolic vote can be looked back on as the first time that society deliberately voted in favour of the integration process.

- 3rd October 1998 - 7th Saeima elections

This election date was chosen in order to attract as many voters as possible both to the elections and to the referendum happening on the same day.

The newly-elected Saeima continued what the 6th Saeima started regarding the integration process and updated its parties' declaration on Latvia's aim to integrate into the European Union.

- 13th October 1998 - Chairman of the Saeima European Affairs Committee submits Report on Latvia's Progress to the European Parliament

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<sup>73</sup> Interview with Inese Birzniece (former Member of Parliament) in Riga, on 19.04.2018

<sup>74</sup> Interview with Andris Piebalgs (former Ambassador of Latvia to the EU) in Riga, on 02.08.2017.

The report demonstrated that Latvia had been able to react consistently, constructively and methodically to the opinion published by the EC, and that it had achieved significant progress in fulfilling the Copenhagen Criteria since then.<sup>75</sup> The structure of the report was formed based on the EC's opinion, and it reviewed the time period from the start of 1997 including planned development by the end of 1998.

- 11th December 1999 - European Commission recommends beginning accession negotiations with Latvia

The Helsinki European Council decided to begin accession negotiations with Latvia<sup>76</sup> and five other enlargement process countries based on the significant progress of the past year. Latvia was represented in the Helsinki European Council by Prime Minister Andris Šķēle and Minister of Foreign Affairs Indulis Bērziņš.

### **3.3 Accession Negotiation Process and Final Changes (2000-2003)**

On beginning accession negotiations, roles and responsibilities were divided to convince the EC of Latvia's readiness on many fronts, including political, diplomatic and parliamentary.

The SEAC found a way to show that Latvia was already looking ahead to the future by planning to support the integration of other potential candidate states into the EU. Minister of Foreign Affairs Indulis Bērziņš and Chairman of the SEAC Edvīns Inkēns travelled to various countries of the Caucasus to tell them about the basics of the EU. This showed Latvia to be a country which had picked up significant speed during the accession negotiations and was forward-thinking enough to share its newly-gained experience with other countries interested in European affairs. When arguing why Latvia did this, the basis was simple - Latvians understood the mentality of these countries better than specialists from the old EU countries and could understand their fears more easily. The Caucasian countries linked with the EC—Georgia, Moldova and Ukraine—understood this as a promise to help them after Latvia had joined the EU.

The SEAC was also involved in political and diplomatic work, undertaking parliamentary supervision, evaluating the state's position on the negotiations and allocating them "negotiation mandates". Therefore the delegations who went to Brussels under Andris Kēsteris often came to the SEAC before and after visits to plan their actions or report what had occurred. The SEAC Chairman was repeatedly part of the negotiator delegations.

- 9th February 2000 - Saeima accepts Latvia's strategy for EU integration

The accepted strategy on EU integration united state institutions' and society's understanding of EU matters to ensure that accession to the EU is to happen quickly and successfully. The debates reflected that all parties elected to the Saeima expressed their support for Latvia's

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<sup>75</sup> *Latvija un Eiropas Savienība*, August 1998.

<sup>76</sup> "Helsinki European Council 10 and 11 December 1999 Presidency Conclusions", I.10. available: [http://www.europarl.europa.eu/summits/hell1\\_en.htm](http://www.europarl.europa.eu/summits/hell1_en.htm)

integration into the European Union. Meanwhile all factions making up the government, as well as several non-government forming factions, were involved in developing the document. In addition to approving the document, the Saeima asked the MFA to inform them twice a year on the progress of implementing the national strategy.<sup>77</sup>

- 15th February 2000 - Latvia officially becomes an EU candidate country and begins accession negotiations, as an inter-governmental conference on Latvia's accession to the EU begins work

Five years after submitting its application, Latvia begins accession negotiations as a well-prepared candidate country<sup>78</sup> and “leaves the post-Soviet arena behind it forever, having become a democratic and open country,” believed President of Latvia Vaira Vīķe-Freiberga. The Latvian government declared the 1st of January 2003 as a reference point for when Latvia would be ready to take on the responsibilities of an EU member state, thus asserting that, by then, EU rights and responsibilities would have been fully adopted. Candidate countries giving themselves this type of deadline reflected very well in the eyes of the EC, because it showed extra motivation in accession negotiations and in preparing the country.<sup>79</sup>

When legislative compliance was to begin, opening up the respective chapters of the negotiations, extensive committees were created to evaluate the contents of the chapter. A tradition was introduced that, in the case of a conflict of interest—for example, in agriculture, which could apply to many spheres—joint meetings with the country's top experts were held. Thus differences of opinion between Saeima committees were avoided, similarly to the European Integration Council which worked at the ministerial level.

On beginning negotiations, it became clear to the government that very intense changes to Latvian legislation were approaching. It was hoped to change over fifty laws over the course of a year as part of legislative compliance with EU legal provisions<sup>80</sup>. The most significant were highlighted in an EIB and MFA progress report<sup>81</sup> as:

- law “On Regulators of Public Utilities”;
- amendment to the “Competition Law”;
- law “On Compensation Measures”;
- law “on state support for export and investment insurance, export and import guarantees and loans”;
- amendments to the “Security Law”;

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<sup>77</sup> “Saeima Accepts Latvian Integration Strategy (translated from „Saeima Pieņem Latvijas Stratēģiju Integrācijai ES”),” *DELFI*, February 10, 2000.

<sup>78</sup> Speech of the Minister of Foreign Affairs of the Republic of Latvia Indulis Bērziņš at the conference in honour of the debut of negotiation talks with the European Union in Brussels, 15 February 2000

<sup>79</sup> “Latvia is well prepared to begin negotiations- interview with the Director of the European Commission representation in Latvia (translated from ‘Latvija ir labi sagatavojusies saunu uzsākšanai- Intervija ar Eiropas Komisijas Delegācijas Latvijā vadītāju Gunteru Veisu’),” *Latvija un Eiropas Savienība*, March 2000.

<sup>80</sup> Gunta Mišāne, “Newest laws into our daily lives (translated from ‘Jaunākie likumi mūsu ikdienā’),” *Latvija un Eiropas Savienība*, March 2000.

<sup>81</sup> Latvian national progress report, 2000. Available in the archives of the Ministry of Foreign Affairs

- law “On the Regulated Professions and the Recognition of Professional Qualifications”;
- Copyright Law;
- Telecommunications Law;
- Carriage of Passengers Law;
- Personal Data Protection Law;
- Law on Forests.

At the end of that year, almost a third of all negotiation chapters had been concluded, nine out of thirty-one.<sup>82</sup> Negotiations were even and smooth, as the Latvian government dedicated a lot of attention and care to the process. The main principle in the accession negotiations was quality. Therefore, the most care was taken “preparing quality negotiating positions and detailed technical consultations with European Commission and member state experts on the trickiest aspects of the negotiations.”<sup>83</sup>

- 18th January 2001 - amendment on the SEAC in the Saeima Rules of Procedure

Significantly before the accession negotiations begin, the Saeima Rules of Procedure were changed to include a section on “the participation of the Saeima in European Union matters”.<sup>84</sup> A system of reports to the Saeima on EU matters was intended, for which the SEAC was to be responsible, as well as a clarification of official state positions before being announced to EU institutions,<sup>85</sup> promoting parliamentary supervision from a democratic point of view.

The structure and staff of the SEAC was also changed, determining that “there is at least one MP from each of the Saeima’s factions. The makeup of the Committee is proportional to the Saeima’s factions.” Traditionally, the SEAC Chairman had been from the coalition, and although the option of filling the position with someone in the opposition had been discussed, it was decided against<sup>86</sup>. During the integration process, a potential opposition representative as the SEAC Chairman could delay or even stop the integration process.

The amendment came into force on the 16th of February 2001, when the SEAC began representing the Saeima in all European Union matters.

- November 2001 - Saeima attaché begins work at the European Parliament

The SEAC waited for a year for confirmation and permission for a Saeima representative to follow developments in the European Parliament (EP) on location. At first, both the idea and

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<sup>82</sup> Lelde Līce-Līcīte, “Latvian negotiation talks (translated from ‘Latvijas iestāšanās sarunas’),” *Latvija un Eiropas Savienība*, December 2001.

<sup>83</sup> Eduards Stiprais, “Belgian presidency and negotiation talks (translated from ‘Beļģijas prezidentūra un iestāšanās sarunas’),” *Latvija un Eiropas Savienība*, November 2001.

<sup>84</sup> Saeima Rules of Procedure, Chapter on “Participation of the Saeima in European Union matters” (translated from Latvian “Saeimas līdzdalība Eiropas Savienības jautājumos”

<sup>85</sup> *Ibid*, Article 185

<sup>86</sup> Interview with Ilmārs Solims (former consultant of the Saeima European Affairs Committee) in Rīga, on 20.04.2018

the representative themselves were perceived with some scepticism, because there was no similar precedent. There was no understanding of why, in addition to the embassy in Brussels, which coordinated Latvia's progress and supported accession negotiations, a Latvian representative was needed in the European.

The SEAC was up to date on all EU legislative news and its progress in the accession negotiations, cooperating with the embassy directly from Brussels. Thus, thanks to the attaché's updates, the SEAC was informed ahead of almost any other Latvian institution. The pace of the exchange of information convinced not only the European Parliament, but also other candidate countries of the usefulness of the attaché position, and other countries began using this format.

- 28th February 2002 - the Convention on the Future of Europe begins operating

The biggest expansion in EU history, from 15 to 25 countries, was drawing near. This was also the time for internal EU reforms, and talks on the future of the EU and the necessity of a new EU treaty were begun. The aims of the Convention were to create a document which, along with the results of national debates on the future of the EU, would serve as a starting point for various discussions in the intergovernmental conference where the final decisions would take place. Thus began discussions on a Treaty establishing a Constitution for Europe.

All current and potential EU member states went to the Convention. The initial shortcoming in integrating the new member states into the Convention was that the event had not budgeted for translations into the languages of the new member states, including Latvian. Eurosceptics from Latvia and other candidate countries were ready to use this discriminating policy in the time leading up to the referendum as a convincing counter-argument against Latvia joining the EU.

Latvia was represented in the Convention sessions by two Saeima (SEAC) representatives and one representative from the government. The Latvian representatives joined with the Slovenian representatives in an action during which it was requested in the name of the candidate countries to have the opportunity to speak in their state language, as well as to have the opportunity for a candidate country representative to take part in the Convention Presidium.<sup>87</sup> An intense enough exchange of thoughts on the political signal that this would send to the candidate countries managed to succeed in providing the respective translations and candidate countries had no need to argue discrimination any further.

With the support of the European movement in Latvia, the National Convention on the EU was founded to discuss potential EU reforms, and later the European Constitution.

- 9th May 2002 - the Latvian National Convention on the Future of Europe called for the first time

The goal of the National Convention was to inform society about the European Convention and to join the discussion in Latvian society on the preferred future of the European Union after expansion. The National Convention was called by Prime Minister Andris Bērziņš and the president of the European Movement - Latvia, Ainārs Dimants. In several Convention

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<sup>87</sup> Interview with Inese Birzniece (former Member of Parliament) in Riga, on 19.04.2018

sessions, important EU topics were discussed: for example, Latvia's sovereignty, identity and role in the future Europe; as well as dividing authority between the EU and member states; the EU Charter of Fundamental Rights; the role of national parliaments, economic leadership; external policy and defence; and preparation for the referendum in Latvia.<sup>88</sup>

The working group "The Role of National Parliaments" discussed the idea of dividing the EP into two chambers, one of which would be the national parliament. In theory, the second chamber would not have a legislative function, but rather a subsidiarity principle control function as well as a general supervisory function. The group's counter-argument to this format was that it would divide EU institutions too much, which are already difficult enough to understand in the eyes of society. The concluding suggestion was to implement supervision of national parliaments reviewing the government's mandates.<sup>89</sup>

- 13th December 2002 - Latvia finishes accession negotiations for joining the EU

Closing the negotiations was a long and challenging part of the accession process. Negotiation topics touched on many different areas in detail for which Latvia could find compatible opinions, but there were also areas for which Latvia did not originally have an opinion and creating one from scratch was a challenge in itself.<sup>90</sup> Denmark was the presiding country during the finishing stages of the negotiations, and up to the final day it tried to come to various compromises so that the candidate country negotiations would truly come to an end. It was also highly complicated because agreement on all sections depended both on the agreement of EU member states and candidate states. This kind of compromise is not easy to achieve, therefore the heads of Denmark's presidency made the risky decision of approaching some areas slightly differently and possibly less formally, by only involving the presidency, EC and candidate countries. The risk was that the alternatives found in this smaller group would nonetheless not be acceptable to the remaining countries and talks went on until the evening of the 13th of December, which was originally planned as a celebratory event.<sup>91</sup>

On finishing the negotiations, Latvia was one of the countries with the highest number of transition periods, which very precisely shows the negotiators' competence in leading the discussion for the benefit of Latvia. As a result of the accession negotiations, Latvia achieved transition periods in 35 areas,<sup>92</sup> including regarding the topical issue of a transition period for the conditions for purchase of forest and land for agricultural use by persons who were not

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<sup>88</sup> Jānis Vaivads, "Insight into work of the national convention for the EU future (translated from 'Ieskats Nacionālā Konventa par Eiropas Savienības nākotni līdzšinējā darbā')," *Latvija un Eiropas Savienība*, December 2002.

<sup>89</sup> Ibid

<sup>90</sup> Eduards Stiprais, "Results of the accession negotiations and their conclusions (translated from 'Iestāšanās Eiropas Savienībā sarunu noslēgums un to rezultāti')," *Latvija un Eiropas Savienība*, June 2003.

<sup>91</sup> Ibid

<sup>92</sup> "What Is Expected for Latvia by the Transition Periods (translated from 'Ko Latvijai Paredz Pārejas Noteikumi?')," *Providus.lv*, September 2, 2003, <http://providus.lv/article/ko-latvijai-paredz-parejas-noteikumi>.

citizens of the Republic of Latvia.<sup>93</sup> In this particular area the transition period was confirmed at seven years.<sup>94</sup>

The interest of society began to grow in the last year of negotiations, because amendments were being made in fields where almost everyone had an opinion and possibly some knowledge: for example, in agriculture, taxes, finance and budget. In the first years more technical changes were made, attracting limited public interest.<sup>95</sup> Based on the growing interest of society, several informative campaigns were launched.

- 16<sup>th</sup> April 2003 – Latvia and the EU member states sign Accession Treaty

President of Latvia Vaira Vīķe-Freiberga, Prime Minister Einars Repše, Minister of Foreign Affairs Sandra Kalniete and Head of the accession negotiations Andris Kēsteris signed Treaty of Accession to the European Union in Athens. The entire size of the treaty is 5,800 pages and was signed between Latvia and all the separate EU member states as well as the candidate states. The Treaty was supplemented by 18 attachments, 10 protocols and several declarations<sup>96</sup>.

- 1st May 2003 - Latvia given observer status in EU institutions

The Saeima attaché in the European Parliament was still there and could welcome nine Saeima deputies who went to observe the work of the parliament. At the same time, the observers also went to the other EU institutions to prepare for beginning their work as a full EU member state.

- 8th May 2003 - amendments to the Constitution of the Republic of Latvia

During the accession negotiations, the Ministry of Justice formed a working group with the aim of researching together the necessity of amending the Latvian Constitution to join the EU. The working group's conclusion was that the Constitution had to be amended, as it believed that a part of Latvian independence would be delegated to the EU without threatening Latvian security. The issue of independence is reflected is taken as the reason for the amendment, because independence includes the right to delegate some of one's competence if the delegator can take it back.<sup>97</sup> The working group agreed that this had to be a matter for a vote by the people, and that the Constitution of the Republic of Latvia had to be amended. The working group drafted proposals for the Saeima to debate during one of their plenary sessions while also explaining the reasoning of certain specific wordings.

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<sup>93</sup> Interview with Edvīns Inkēns (former Chairperson of the European Affairs Committee) in Riga, on 11.04.2018

<sup>94</sup> A detailed outline of the negotiations process is available in Latvian here:

<http://www.mfa.gov.lv/arpolitika/eiropas-savieniba-arpolitika/arhivs/integracija-es/iestanas-es-sarunas/sarunu-rezultati>

<sup>95</sup> Interview with Jānis Vaivads (former Director of the European Integration Bureau) in Riga, on 27.04.2018

<sup>96</sup> "Latvia Signs the Accessions Treaty in Athens (translated from 'Latvija Atēnās Paraksta Iestāšanās ES Līgumu')," *DELFI*, April 16, 2003.

<sup>97</sup> Harbaceviča, "Integration of EU legal acts into the Latvian legal system and law (translation of 'Eiropas Savienības likumdošanas pārņemšana Latvijas likumdošanā un tiesībās')." p.212

The Saeima supported the working group's suggested wording of the amendment in Article 68:

“(..)Membership of Latvia in the European Union shall be decided by a national referendum, which is proposed by the Saeima. Substantial changes in the terms regarding the membership of Latvia in the European Union shall be decided by a national referendum if such referendum is requested by at least one-half of the members of the Saeima.”<sup>98</sup>

This illustrates the role of Saeima and its importance in the hypothetical scenario where Latvia may want to reconsider its membership or any other obligations it may have in the EU. This ensures that Latvia keeps its independence while being within the EU and is responsible for changing their commitments towards it.

Saeima also supported the wording suggested for Article 79:

“ (..) An amendment to the Constitution submitted for national referendum [*decision regarding membership of Latvia in the European Union or substantial changes in the terms regarding such membership*] shall be deemed adopted if the number of voters is at least half of the number of electors as participated in the previous Saeima election and if the majority has voted in favour of the draft law [*membership of Latvia in the European Union or substantial changes in the terms regarding such membership.*]”<sup>99</sup>

The difficulty with the wording of this specific Article was to ensure the validity of the referendum result. The trend in voter turnout was that less voters showed up to each upcoming election, thus it was not an option to put a specific number of voters. The working group settled on the number being half of the previous electorate assuming that the drop in voter turnout is not going to be decreasing at such a speed.

A number of other Central and Eastern European country constitutions had also to be altered for accession referendums to be held and further accession to take place. Anneli Albi has researched this trend and entitles it ‘opening up’ of constitutions to engage in a process of constitutional revision<sup>100</sup> enabling integration in a highly integrated supranational organisation.

The amendments to the Latvian Constitution were valid from the 5th of June 2003.

### **3.4 The Referendum, Its Legal Significance and Official Accession (2003-2004)**

Before the referendum, it was time for the Saeima parties and its MPs to show that they truly supported integration into the EU. Alongside the campaigns of the European Information Centre, MPs also went on various trips to discuss the EU with voters. In general, parties chose not to spend much of their campaign funds, because they generally believed that

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<sup>98</sup> Amendments to the Constitution of the Republic of Latvia made on 22 May 2003. Available in Latvian: <https://likumi.lv/ta/id/75141-grozijumi-latvi-jas-republikas-satversme>

<sup>99</sup> Amendments to the Constitution of the Republic of Latvia made on 22 May 2003. Available in Latvian: <https://likumi.lv/ta/id/75141-grozijumi-latvi-jas-republikas-satversme>

<sup>100</sup> Anneli Albi, *EU Enlargement and the Constitutions of Central and Eastern Europe* (Cambridge: Cambridge University Press, 2005).

joining the EU was self-evident and more so no politically significant person was in opposition to turn the citizens against.<sup>101</sup>

- 20th September 2003 - Latvia holds a referendum on joining the European Union

According to SEAC, government and MFA strategy, as well as agreement with their Estonian and Lithuania colleagues, Latvia was the last country to hold its referendum on joining the EU.<sup>102</sup> The strategic move was made because, in word, society was against joining the European Union, while in its actions it was in favour of voting to join<sup>103</sup>.

The result: in Latvia 67% voted “for” and 32% voted “against”. It cannot be proven whether the results of the referendum in Lithuania and Estonia influenced voter opinion, but policy creators felt that it may have, as Latvian voters would not want to be the only Baltic state to vote against.

- 1st December 2003 - liquidation of the European Integration Office

The main reason for liquidating the EIB was the fact that accession negotiations had finished and Latvia had integrated into the EU, thus the EIB no longer had a function to fulfil. The Prime Minister transferred the EIB’s functions to the State Chancellery Office of European Affairs, but later, at the start of 2005, the coordination of EU policy returned to the management of the MFA.

- 1st May 2004 - Latvia becomes a European Union Member State

Latvia’s Treaty of Accession to the European Union comes into force, and Latvia, along with nine more countries, becomes a full member state of the EU.

### **3.5 The Role of the SEAC with Latvia as a Member State (2004-)**

- 29th October 2004 - heads of EU states and governments sign the Treaty establishing a Constitution for Europe (Constitutional Treaty) in Rome

The Convention on the Future of Europe led to a Constitutional Treaty, which established the implementation of the reforms discussed in the Convention. Each member state had its own system to go through in order for this Treaty to be valid and become ratified. Generally, the decision on ratifying the Treaty was given to the people. Voters from France and the Netherlands voted against the text of the Treaty, thereby delaying the process of ratifying it in

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<sup>101</sup> Interview with Edvīns Inkēns (former Chairperson of the European Affairs Committee) in Riga, on 11.04.2018

<sup>102</sup> Anneli Albi, *EU Enlargement and the Constitutions of Central and Eastern Europe* (Cambridge: Cambridge University Press, 2005).

<sup>103</sup> Interview with Edvīns Inkēns (former Chairperson of the European Affairs Committee) in Riga, on 11.04.2018

the whole EU. Therefore, based on the main documents of the Treaty, EU leaders had to find an alternative or a way to amend the Constitutional Treaty.

- 2nd June 2005 - the Saeima ratifies the Constitutional Treaty

The Saeima ratified the Treaty unhurriedly. The SEAC began discussing the Treaty on the 19th of January, where MFA representatives presented the essence of the Treaty for the first time, including exhaustively answering MPs' questions.<sup>104</sup> SEAC Chairman Oskars Kastēns visited the leaders of each faction to inform them in more detail on what was included in the Constitutional Treaty.

In other EU member states, the signing of the Treaty was decided by the people in the form of a referendum.<sup>105</sup> The President of Latvia, Vaira Vīķe-Freiberga, believed that, having just voted for the EU, voting for the Treaty would be like another accession referendum.<sup>106</sup> Furthermore, the deputies of the SEAC believed that the points stipulated in the Treaty were much easier to explain to 100 democratically elected people than to all the inhabitants of the country.

Notwithstanding the negative referendum results in France and the Netherlands, Latvia became the first country to ratify the EU Constitutional Treaty. A total of 18 out of 27 member states ratified the Treaty, and the European Council decided to keep searching for a solution - evaluating the interests of EU citizens, announcing a "period of reflection" during which member states had to discuss the future of Europe, involving society and social partners.

- 13th December 2007 - the leaders of EU countries and governments sign the Treaty of Lisbon

On the 25th of March, after the "period of reflection", the EU state leaders made a declaration which set Europe's joint goals and values, including a commitment to fulfil them.<sup>107</sup> This list of commitments also included the wish to complete a final solution to reforming the EU based on a Treaty by the 2009 EP elections. Therefore work was begun on the new treaty, which was soon named the Reform Treaty.

The Reform Treaty was accepted on the 18th of October in Lisbon during an informal European Council, where it was decided to call it the Treaty of Lisbon. The Translation and Terminology Centre had a significant role in the creation and formulation of the treaty to include it in Latvian legislation. This centre submitted several requests for a clarification of the text in Latvian to the General Secretariat of the Council. After the lawyers linguists

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<sup>104</sup> "Saeima is to ratify the Constitutional Treaty without a hurry (translated from 'Līgumu par konstitūciju Eiropai Saeima ratificēs bez steigas')," Latvijas Vestnesis, January 20, 2005, <https://www.vestnesis.lv/ta/id/99843>.

<sup>105</sup> See above on treaty ratification.

<sup>106</sup> Anneli Albi, EU Enlargement and the Constitutions of Central and Eastern Europe, Studies in European Law and Policy, Cambridge, 2005, p.195

<sup>107</sup> Berlin Declaration, Berlin, 25 March 2007. Available: [https://www.cvce.eu/en/obj/berlin\\_declaration\\_25\\_march\\_2007-en-e50a51f2-bb73-4d7c-873f-adc6d93adc71.html](https://www.cvce.eu/en/obj/berlin_declaration_25_march_2007-en-e50a51f2-bb73-4d7c-873f-adc6d93adc71.html)

work—translating the Treaty into every EU language—it was signed by the EU heads of states and governments in Lisbon.

- 8th May 2008 - The Saeima ratifies the Treaty of Lisbon

In its second and final reading, the Saeima approved the draft law “On the Treaty of Lisbon amending the Treaty on European Union and the Treaty establishing the European Community”. 70 deputies voted in favour of the draft law, 3 voted against, and 1 abstained<sup>108</sup>. The Treaty of Lisbon amended two EU Treaties - the Treaty on the European Union and the Treaty establishing the European Community. The Treaty of Lisbon states that the name of the Treaty on European Union remains the same, but the name of the Treaty establishing the European Community is changed to the Treaty on the Functioning of the European Union.

Some form of opposition to the Treaty of Lisbon was present in Latvia, where several natural persons submitted applications to the Constitutional Court that its coming into force threatens the sovereignty principles of the Latvian people and their rights to vote. The Constitutional Court looked at this issue but confirmed that the law “On the Treaty of Lisbon amending the Treaty on European Union and the Treaty establishing the European Community” complied with article 101 of the Latvian Constitution.

- 1st December 2009 - the Treaty of Lisbon comes into force

All EU Treaties must be ratified in all EU member states. Like with the Constitutional Treaty, the Treaty of Lisbon also had its stumbling blocks - it needed a second referendum in Ireland.

The Treaty of Lisbon affords national parliaments wider opportunities to be involved in developing EU legislative acts. The parliaments of member states ensure that new EU legislative initiatives comply with the principles of subsidiarity and proportionality.<sup>109</sup> The Saeima Rules of Procedure already state that the Saeima participates in EU matters through the European Affairs Committee if the Saeima has not decided otherwise.<sup>110</sup> The EU legislative act evaluation process stipulated in the Treaty of Lisbon also gives other Saeima committees a greater chance to be involved in decision making on EU matters. In collaboration with the SEAC they can take part in triggering the early warning system on draft legislations.

- 30th September 2014 - “The procedure in which mandates are developed, integrated and updated, and in which they are implemented during the Latvian Presidency of the Council of the European Union” published

During the Latvian Presidency of the Council of the European Union, presidency mandates were developed which were “a strategic document determining the framework of the

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<sup>108</sup> Transcript of Saeima debate of 8 May 2009. Available in Latvian:

<http://saeima.lv/steno/Saeima9/080508/st080508.htm>

<sup>109</sup> Saeima of the Republic of Latvia, Fact sheets, No.28. Available in Latvian:

[http://www.saeima.lv/faktulapas/2804\\_Lisabonas\\_ligumsLV\\_DRUKA.pdf](http://www.saeima.lv/faktulapas/2804_Lisabonas_ligumsLV_DRUKA.pdf)

<sup>110</sup> Saeima Rules of Procedure, Chapter on “Participation of the Saeima in European Union matters” (translated from Latvian “Saeimas līdzdalība Eiropas Savienības jautājumos”)

operations of the presidency in matters whose process is fully or partly implemented by Latvia as the presiding country of the Council of the European Union.”<sup>111</sup>

Each ministry was responsible for developing their own mandate as long as they corresponded with the list of mandates initially accepted by the MFA. The SEAC was informed of all the mandates of the presidency after they were accepted: “After accepting the mandate the establishment responsible sends it to the Saeima European Affairs Committee, requesting that they inform the ministry responsible on which mandates the committee plans on inspecting.”<sup>112</sup>

#### **4. ROLE OF THE SAEIMA EUROPEAN AFFAIRS COMMITTEE**

The Saeima European Affairs Committee was formed after the election of the 6th Saeima by changing the Rules of Procedure of the Saeima. On founding the Committee, “neither its duties nor rights had been clearly formulated.”<sup>113</sup> It was believed that this would not be a legislative committee, namely, that it would not write or propose draft laws on its own initiative. According to the usual hierarchy this meant that it would be less significant than legislative committees, but this swiftly changed. For integration to be productive and for Latvia to reach its goals, it needed a supervisor, and from its founding the SEAC fulfilled this function. At first it was done unofficially until a further change in the Rules of Procedure of the Saeima to include section VII on the Saeima’s participation in European Union affairs.<sup>114</sup> The SEAC was given a specific say on the draft, amendments or additions to laws, making sure that they complied with EU legislation as they were adopted and through that avoiding the need to change a newly accepted law post factum by preventing this necessity at all.

Before changes were made to the Rules of Procedure, in order to specify SEAC credentials, consultations with the parliaments of Denmark, Finland and Sweden were undertaken to find the best model in accordance with which to form Latvia’s SEAC. Edvīns Inkēns (then Head of the Committee) made the decision to develop the committee following the Danish model, which seemed the most comprehensive and most suitable to Latvia, because Denmark also had a coalition government in power.<sup>115</sup> The Swedish and Finnish examples did not have such a high capacity for supervising or suspending the path of a draft law going forward, thus not being the automatic choice of roadmap for the Latvian ones either.<sup>116</sup> Sweden was a new member state (having joined on the 1st of January 1995) which still had fresh memories of the accession talks and introduction of EU legislation. Although the Swedish model was not

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<sup>111</sup> Instructions from the Cabinet of Ministers, The procedure in which mandates are developed, integrated and updated, and in which they are implemented during the Latvian Presidency of the Council of the European Union (translated from “Kārtība, kādā izstrādā, saskaņo un aktualizē mandātus un nodrošina to izpildi Latvijas prezidentūras Eiropas Savienības Padomē laikā”), Riga, 30 September. Available in Latvian: <https://likumi.lv/doc.php?id=269235>

<sup>112</sup> Ibid, Article 8

<sup>113</sup> Interview with Edvīns Inkēns (former Chairperson of the European Affairs Committee) in Riga, on 11.04.2018

<sup>114</sup> Saeima Rules of Procedure, Chapter on “Participation of the Saeima in European Union matters” (translated from Latvian “Saeimas līdzdalība Eiropas Savienības jautājumos”)

<sup>115</sup> Interview with Inese Birzniece (former Member of Parliament) in Riga, on 19.04.2018

<sup>116</sup> Interview with Edvīns Inkēns (former Chairperson of the European Affairs Committee) in Riga, on 11.04.2018

suitable for the Latvian European Affairs Committee they were consulted on numerous occasions for their recent experience.

The SEAC was not merely a parliamentary supervisor of the government. The more political reforms were made, and the closer talks came with Latvia as a potential candidate state, the more irreplaceable the SEAC became. Party lines differed significantly on almost all of the most important matters; therefore, to avoid straying from the chosen EU path, the SEAC was given direct and indirect rights of veto.<sup>117</sup> A few years prior to accession, it provided supervision of the parliament and government so that, before joining, there would be a habit of bringing draft laws and their amendments in line with EU requirements.

#### **4.1 The Role of the Chairman and Committee Format**

The Chairman of the SEAC was the basis for all its operations, although their responsibilities were not defined by regulations on how the leadership of this Committee should look like structurally. Bearing in mind the lack of specificity, the Chairman of the Committee was able to position the SEAC as one of the most important entities in the Saeima. The responsibilities of the Chairman were multi-faceted and important both in Latvia and abroad, as well as in comprehensive discussions of law. For example, it had to engage in both complicated legislative drafting on competition as well as money-laundering prevention.<sup>118</sup>

Another crucial factor demonstrating the SEAC's significance during the accession process, as well as the general power of this committee, is its human resources. At least one SEAC deputy was in each of the Saeima's main committees, notifying the SEAC and its Chairman about norms which went against EU directives. If any such norms were found, there was a choice between three solutions. The first - an explanation to representatives of the Committee based on EU documents, as well as discussions with the government. The second - if an argument based on EU documents was deemed as insufficient, international experts were brought in to educate the committee representatives in seminars in Latvia and pass on their relevant knowledge. The third solution was to send the representatives of the conflicting committee to Brussels to attend similar seminars with the European Commission. The Free Port Law was one of the most complicated cases where both, MPs and industry representatives, had to be sent to Brussels to take part in high-level discussions with EU representatives. The discussions met the concerns of the industry specialists about a loss of economic benefit by convincing them of the general benefits that would come through an open market approach.

The timeline identified clearly that throughout the accession process and the development of the SEAC other institutions played a crucial role.

#### **4.2 The SEAC and other institutions in Latvia**

As previously mentioned the SEAC did no work alone during the accession process. This section aims to briefly touch upon some of SEACs' institutional partners.

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<sup>117</sup> Inkēns, "Parliamentary support in preparing the country for membership in the European Union (translation of 'Parlamenta iesaiste valsts sagatavošanā dalībai Eiropas Savienībā')." p.251

<sup>118</sup> Harbaceviča, "Integration of EU legal acts into the Latvian legal system and law (translation of 'Eiropas Savienības likumdošanas pārņemšana Latvijas likumdošanā un tiesībās')." p.212

A great number of institutions were involved in the accession process on behalf of Latvia. Each institution had a certain linkage to the SEAC itself. To illustrate best each link and partnership is analysed during the accession process and post accession.

#### 4.2.1 During Accession Process

European Integration Bureau	The two institutions interacted on a weekly basis during the <i>acquis</i> takeover period to ensure a smooth transition. The EIB was considered as SEAC's best ally, as they often informed each other about important developments and coordinated their work to ensure no overlaps. <sup>119</sup>
Ministry of Foreign Affairs	The Ministry were the conductors of the accession negotiations on behalf of Latvia and had to confirm their negotiation mandates with SEAC.
European Integration Council	Ministerial level cooperation for which parliamentary consultations were needed on a recurring basis. The chairman of SEAC had the observatory and consultant role within their meetings.
European Information Centre	Initially an institution directly under the supervision of the SEAC for their internal purposes of providing information sheets and other documents. Further separated as their competence grew to being needed by not only the parliament but also the executive.
Translation and Terminology Centre	The link with the TTC was substantial as the terminology developed had to be approved by the parliament during the required ratification of the treaty, its annexes and protocols.

#### 4.2.2 Post Accession

European Integration Bureau	No longer exists
Ministry of Foreign Affairs	The Ministry is responsible for the diplomatic representation of Latvia in the EU, including representation of the Parliament. The Ministry also has an internal coordinator function for official discussions of intergovernmental nature on behalf of Latvia and their mandates are also to be approved by the SEAC.
European Integration Council	No longer exists
European Information Centre	Reorganised into the information centre of the Saeima and the Europe House information centre.
Translation and Terminology Centre	Not a crucial role of cooperation with SEAC any longer.

<sup>119</sup> Interview with Edvīns Inkēns (former Chairperson of the European Affairs Committee) in Riga, on 11.04.2018

Post accession, the cooperation with the EU is thoroughly integrated in Latvian institutions. All ministries have their own EU departments which deal directly with Brussels and other MS, that the links of the network are almost untraceable. The collaboration with SEAC has been maintained through the mandate system and thus has not disconnected them from other state institutions, notably all ministries.

## CONCLUSION

The Treaties have been the basis for an ever integrated European Union as they have evolved. Their perception on the role of national parliaments and the extent of their involvement in EU decision making has also increased. If initially parliamentary say was limited to the last moment went parliamentary approval was keeping legislation from becoming law, presently the parliaments have substantially more options.

The introduction of the principle of subsidiarity was a large leap towards providing national parliaments with a say on EU legislative acts. The subsidiarity scrutiny being the responsibility of national parliaments since the Treaty of Lisbon is the right to intervene provided directly from the Treaty.

The concept of parliamentary scrutiny is viewed differently by all MS, even if the illustrated example showed only a selection. There are no MS with the same parliamentary structure, thus they automatically cannot have the same model of functioning. This however also leaves space for national decisions on how much a parliament is allowed to scrutinise its government. The research showed that in all of the examples, the government had a certain duty to listen to the opinion of the parliament, but it was not automatically bound to its opinion. In all cases, a certain internal European Affairs Committee was delegated to supervise governmental positions on draft legislative acts.

The model which demonstrated most influence was the Danish European Affairs Committee structure with discussion mandates. The other examples to be examined were often limited to postponing a certain act of moving forward by the means of 'pending parliamentary scrutiny,' consequently delaying the process, but not halting it.

The influence and development of the Saeima European Affairs Committee throughout the accession process to the European Union was progressive. The impact of the parliament grew significantly as accession came closer. The decision to structure the committee based on the Danish model made the committee one of the most influential committees in the Saeima. The Saeima European Affairs Committee remains highly influential as discussion mandates and national positions heading in the direction of Brussels must previously be confirmed at the Parliament. This also answers the question on whether the development that the Saeima European Affairs Committee went through made it into an influential parliamentary scrutinizer in comparison to other Member States. Yes, the Saeima European Affairs Committee has significant influence over European policy. Whether it is influential in comparison to other models in the EU, the answer is also yes, as the model that Latvia and Denmark have provides for a high level of scrutiny.

The research was also able to identify certain limitations to parliamentary scrutiny. The early-warning system on presenting reasoned opinions only works if at least a third of all Member

State parliaments are concerned. If national interests are being threatened by one specific draft legislation and it is not the case for other states, there is no possibility for a national parliament to end its advancing.

An obstacle for parliamentary scrutiny over governments is the fact that most matters in the Council are decided by the Ordinary Legislative Procedure. Even if the government representative does not derail from the mandate that has been approved by its parliament, or their European Affairs Committee, the result may still be unfavourable due to the votes.

In conclusion, parliamentary scrutiny through European Affairs Committees is a tool that can be used to a significant level of influence over government policies. By providing parliaments with binding opinions on government policies the democratic and legitimate input is much higher than if the government is not bound by these opinions. Therefore in answer to the first research question, parliamentary scrutiny is an effective tool which could serve as a way to reduce the perception of a legitimate and democratic deficit in the European Union.

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