



Lithuanian Free Market Institute

Debate about the Future of Europe: A view from Lithuania

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Introduction

1. Debates about the European integration, common values of the European peoples, common goals and means of their implementation have been taking place for a long time. These debates are part of broader discussions concerning the organization of political action, the place of individuals and nation states and the meaning of sovereignty in the contemporary world. It should be noted, though, that discussions about the European Union (EU), which today is often identified with the whole of Europe, have usually been limited to a narrow circle of scholars and political elite. Only on several occasions has the EU been an object of broader debates, for example, during the ratification of the Maastricht Treaty in some member states or during the introduction of a common currency euro.
2. The most debated issues during the recent decades in the West European countries include health care, taxation, education and pension reforms. These are the fields where the competence and the role of the EU has been very limited. Moreover, general interest in traditional political issues has declined in the West European societies, therefore a rather low level of knowledge of the EU is not an exceptional phenomenon. It is quite likely that this lack of interest and low awareness of EU specifics could partly be attributed to the stable democratic regime and a high level of economic development in these countries.
3. One might be tempted to claim that, with the start of accession negotiations with the EU, public debates about joining this organization and the impact of EU membership in Central and Eastern European countries have become somewhat more intense than in its current member states. To be sure, the quality of debates here reflects the level of familiarity with the EU, which has been low due to the historical reasons. However, the ongoing reforms, membership negotiations and the approaching date of accession mobilizes increasingly more people to look for information on the EU, its institutions and its impact on different aspects of life. The forthcoming EU enlargement motivates increasingly more people to become better informed about the activities of the EU, increasing economic and political integration of Central and Eastern European countries with the EU reinforces social integration and increasing demand for information about the EU.
4. The forthcoming EU enlargement is one of the main causes of the start of the so-called debate about the future of Europe. The need to discuss issues of the future of reuniting Europe is usually linked with several reasons. First, it is said that citizens of the EU are disappointed by the activities and outcomes of the EU, over-extensive interference into their lives, a lack of connection between people and EU institutions, and a lack of “democratic legitimacy and transparency” in the Unions institutional system. Second, it is said that the EU is not effective enough in some areas, e.g., foreign policy. Third, it is thought that the EU should be reformed taking into account the forthcoming enlargement and responding to popular expectations.
5. In December 2000, the EU summit adopted a Treaty of Nice which encouraged wider and deeper debates about the future of Europe. Although this invitation was first of all addressed to the government and societies of the member states, it was also decided to involve candidate countries which were progressing quite fast in their accession negotiations.
6. The Treaty of Nice listed the issues on which an agreement had to be found and solutions reached at the intergovernmental conference to be convened in 2004 (in other words, using the same traditional method of intergovernmental decision making). The Declaration which was adopted with the Treaty of Nice listed the following issues:

- How to better divide the competences of the EU and its member states and to better monitor their division, while respecting the principle of subsidiarity (so that citizens of the EU would understand better who is responsible for what in the EU);
 - What should be the status of the EU Charter of the Fundamental rights which was declared in Nice (so that by including the Charter into the Treaty of the EU, the democratic legitimacy of the EU would be strengthened);
 - How to simplify the treaties, by making them more understandable and accessible but without changing their meaning (so that citizens of the EU would understand better and support the decisions made by the EU);
 - What should be the role of the national parliaments in the European institutional architecture (so that the citizens would be closer involved into the activities of the EU institutions and the whole process of European integration).
7. It was also at the Nice Summit that the decisions concerning the representation of the Central and Eastern European countries in the EU institutions were reached. It is not surprising that this important precondition for the EU enlargement coincided with the decision to initiate broader debates about the organization of the EU and its relations with citizens. Although the list of these four issues provided by the Nice Declaration might seem strange and too restrictive, it should be remembered that these are the issues which the member states could not agree on by using the traditional method of intergovernmental bargaining (therefore this list is also called “Nice leftovers”).
8. This seems to imply that a need for broader debates about the future of Europe results as much from the increased popular interest in the EU (and disappointment with its activities) as from the inability to reach decisions by using the tradition intergovernmental method of decision making in the EU. However, it still remains unclear how and to what extent the opinions expressed by different participants of these debates on the future of Europe will be reflected in the final agreement to be reached in 2004, in particular if the positions expressed are not in line with the official positions of the key member states.
9. A number of discussions and speeches on the future of Europe were organized in 2001 (usually identifying Europe with the European Union and its future reforms). The unofficial start of debates on the future of Europe took place before the Nice Summit and dates back to the famous speech of the German Minister of Foreign Affairs J. Fischer at the Humboldt University, which attracted much political and scholarly attention¹. It was this speech of J. Fischer which revived the debate about the future institutional model and finality of European integration. The main issues raised in this speech concerned the potential creation of a federal EU, the role of the member states and Union institutions in this federal structure, the constitution of the federal EU. The enlargement of the EU and strengthening of the EU capacity to act were presented in this speech as two main objectives of the Union today.
10. The crucial decision for formalizing these debates on the future of the EU was taken in December 2001 Laeken Summit of the EU. The Laeken declaration announced the creation of the Convention on the Future of Europe. The members of the Convention, which started its activities in March 2002, include members of the governments and parliaments from both current and future member states, representatives of the European Commission and the European Parliament. The main objective of the Convention is to debate the issues listed by the Treaty of Nice and to suggest solutions to them. In the Laeken Declaration these issues are

¹ The speech “From confederation to federation – thoughts on the finality of European integration” given by J. Fischer in May 12, 2000, at the Humboldt university and extensive academic comments of this speech could be found on the web site of the symposium jointly organized by the Harvard University Jean Monnet Chair and the European University Institute Robert Schuman Center (<http://www.jeanmonnetprogram.org/papers/00/sypm.html>). The official positions of the EU member states and candidate countries could be found on the official web page of the Convention on the Future of Europe http://www.europa.eu.int/futurum/congov_en.htm.

framed as follows: (1) how to bring EU institutions closer to people, (2) how to organize politics and European policies in the enlarged Europe, (3) how to make the Union a stabilizing factor and an example to be followed in a new rapidly changing world. These subjects have been specified by presenting a list of about 50 concrete questions which are expected to be answered during the debates on the future of Europe.

11. It is expected that the intergovernmental conference that is to will take place in 2004 will take into account the suggestions provided by the Convention. It should be noted that the suggestions to be provided in the final conclusions of the Convention to be drafted by the beginning of the spring 2003 will not have to be included into the decisions of the intergovernmental conference but should rather serve as the “starting point” for them. However, even taking into account the uncertainty concerning the input of the Convention into the decision making, the establishment of the Convention and encouraging civic society to participate in this debate (independently or through the Forum created for that purpose) shows a certain change in the way the EU works. This shows the intention to supplement the established diplomatic intergovernmental method of decision making with a more directly democratic way of debates and decision making. It is still too early to judge the success of this innovation. Moreover, there is no agreement on whether the established methods of decision making of the EU fail to meet the expectations, and therefore should be changed. It is important, though, that this initiative provides an opportunity for those concerned about the European affairs and the future of Europe to present their opinion on the essential issues of organizing the EU.
12. By presenting this study, we hope to contribute constructively to the debate on the future of Europe and the interests of Lithuania in the changing EU. Most of contributions on this subject are usually not grounded in a set of clear and explicit principles and values. This makes the underlying assumptions of many suggestions unclear and often contradictory, complicating the possibilities for dialogue. This study therefore starts with a presentation of a clear set of principles which later serve as a basis for the analysis and recommendations regarding the reform of the EU.
13. It should be noted at the outset that the feasibility of practical implementation of the recommendations provided here is an important but not the only criteria for their selection. Sometimes ideas that seem difficult to implement and might not reflect the prevailing opinion could provoke valuable and constructive discussions. Moreover, this type of debates is particularly favourable to presenting clear principles and assumptions about organization of political and economic life and suggestions which are consistent with those principles. In addition to these principles, however, the study also provides a set of very concrete suggestions regarding some of the main issues of the future of Europe.
14. When talking about the future of the EU we need to link several important issues. *First*, the general principles of justice and efficiency, effectiveness, which could be taken as the basic principles for the recommendations. *Second*, the current EU structure, its goals and principles, which create very concrete constraints for the future reforms and at the same time provide opportunities for the implementation of the general principles. *Third*, Lithuania’s interests, which go beyond economic affairs (which often have a positive sum character for all parties involved) and include the questions of power and political influence.
15. This study does not provide answers to all questions that are being debated in the discussion on the future of Europe, although the thematic presentation is rather similar to the phrasing of these issues by the Laeken Declaration. The attention here is focused on these areas where the authors have most expertise and therefore are able to provide consistent recommendations. These are the areas of division of competence, organization of the public policies in the EU, the increase of effectiveness and transparency, and institutional reforms of the Union. Although

most of these issues are often phrased in too a bureaucratic or academic manner, they all are closely related with more general questions that most of us think about – what should be the institutional order in the future of reunited Europe that could create and reinforce the foundations for freedom, justice and growth of our welfare.

The starting points for debating the future of Europe

Fundamental principles

16. Any discussions and proposals concerning the forms and methods of European integration, organizing the activities of the EU and other instruments of resource allocation and redistribution are more meaningful when they are based on general principles of human activities. Most contributions to the debate on the future of Europe do not explicitly present their underlying assumptions, although they could be found behind all the proposals and conclusions. However, the explicit presentation of such general underlying principles helps to evaluate the proposals and engage into a more constructive debate concerning the forms of organizing economic and political activities in Europe.
17. Several fundamental principles which are further taken as a basis for the analysis and proposals of this study could be singled out:
 - The main goal of the reforms taking place in Lithuania and other European countries is to create conditions for citizens to be able to make decisions about their lives and economic activities freely and on the basis of legal norms equally applied to everyone;
 - The principles of freedom, responsibility and personal initiative create appropriate conditions for the achievement of ideals of justice, solidarity based on mutual agreement and understanding, welfare, and respect for human rights and rights of minorities;
 - Lithuania's integration into the EU and the future reforms of the Union should be directed towards further implementation of these principles.
18. Those principles are common to countries with democratic governance systems and market economies, although concrete institutional frameworks of these systems vary depending on a country. Essentially, they could be treated as ideals or points of departure. These principles will be used as an instrument to evaluate how much certain proposals concerning the future of Europe could contribute to their better implementation.

The objectives and principles of the EU

19. The objectives and principles of the EU are set out in its legal documents, first of all, the founding Treaties and their subsequent amendments and its secondary legal norms – regulations, directives, decisions of the European Commission and the European Court of Justice.
20. The EU could be seen as both the community of people united by the same values (emphasising the normative element uniting the different societies of the Union), and as the community of countries, using the common instruments to pursue jointly the same goals (emphasising the instrumentality of the EU in coordinating and monitoring the implementation of the objectives of its member states):
 - The main objectives of the EU – to create conditions for peaceful coexistence, growth of welfare, economic and social progress, and ever closer union by linking together the economies of the participating member states, in particular creating “internal area without barriers”, conducting common policies (for example, monetary policy) and coordinating

policies of its member states (for example, foreign and security policies) to strengthen the identity of the Union in international arena;

- The main principles of EU's activities – the rule of law (the EU relies on explicit rules regulating its activities more than most other polities), freedom, protection and respect for human rights, solidarity and non-discrimination, protection of citizens rights and interests, respect for the history, culture and traditions of EU nations;
- The functioning of the EU is based on the following legal - administrative principles: subsidiarity (undertaken decisions as close to problems to be solved as possible, as close to citizens as possible), proportionality (the correspondence of measures to their objectives and costs, the choice of the least restrictive measures), transparency, flexible integration (the possibilities for a group of willing member states to proceed further with policy integration than the rest of the Union).

Although the term the European Union is used mostly throughout the text, currently both the European Union and the European Community are still functioning. Usually the term European Communities is used when referring to the European Coal and Steel Community (established in 1951), Euro-Atom (established in 1957) and European Economic Community (established in 1957). While the first two integrated concrete sectors of the economy, the EEC foresaw the creation of the common market between six founding members (Germany, France, Italy, Belgium, Netherlands and Luxembourg). In 1992, with the signing of the Maastricht Treaty (Treaty of the European Union), the EEC was renamed the EC. The same treaty established the EU. The Treaty of the EU supplemented and amended the treaty of the EC by introducing foreign and security policy and justice and home affairs issues into the scope of cooperation and creating a three pillar structure. However, often the terms “European Union” and “European Community” are used as synonyms. Currently there are 15 member states of the EU (EC) – in addition to six original founders of the organization Great Britain, Ireland and Denmark joined in 1973, Greece in 1981, Spain and Portugal in 1986, Sweden, Finland and Austria in 1995. Currently twelve countries are negotiating the terms of accession – Estonia, Latvia, Lithuania, Poland, Czech Republic, Hungary, Slovakia, Slovenia, Bulgaria, Rumania, Cyprus and Malta.

21. The EU Treaty maintains that in order to achieve its objectives, the activities of the Community and its member states include economic policy closely coordinated between member states, internal market, joint definition of common aims and conducted on the basis of open market economy with free competition. Member states cannot undertake any measures which might interfere with the implementation of the EU objectives.
22. The main institutions of the EU include the European Parliament, Council of Ministers, European Commission, European Court of Justice, Court of Auditors². The Council and the Commission are assisted by the Economic and Social Affairs Committee and Committee of the Regions. The European Parliament, elected directly, participates in the political process by codeciding with the Council and assenting to the proposals of the Commission, approving the budget and the composition of the Commission. Although its role has been strengthened during the last 15 years, it is still significantly weaker than the role of national parliaments in the national policy making systems. The Commission has a right of legislative initiative and proposes draft laws needed for the achievement of EU objectives, monitors the implementation of EU norms and acts as a guardian of the Treaty. The Commission is independent of the member states and represents the interests of the whole Union. The most important role in the legislative process is played by the Council which consists of the representatives of the member

² For more on the EU institutions, their functions, competencies and political process see Nugent, N. *The Government and Politics of the European Community*, Durham, NC: Duke University Press, 1999; Wallace, H., Wallace, W. (eds.) *Policy-Making in the European Union*, Oxford: Oxford University Press, 2000.

states and makes decisions concerning the proposals from the Commission. Most of the work in negotiating the agreements is undertaken at the Committee of permanent representatives (COREPER) even before draft laws reach the Council. The strategic decisions concerning the developments in the EU are undertaken at the EU summits by the heads of governments. The summits take place two times every half a year.

23. Legal acts in the EU are adopted usually by the Commission proposing, the Council, after receiving Parliament's opinion, approving (or amending), member states implementing with the Commission monitoring. Decision making procedures vary depending on the policy area. For example, most decisions in the internal market area can be adopted by the qualified majority voting in the Council, while decisions in the field of taxation are taken by unanimous voting. The powers of the Parliament (co-decision or assent) also depend on the area under consideration. Different numbers of votes are needed in the Council to adopt or to reject a proposal of the Commission. The disputes resulting from the application of EU norms are decided by the European Court of Justice where cases can be brought by the Commission, member states and citizens or companies. The Court of Auditors controls the use of the EU budget.
24. Unlike most other international organizations, the EU has a legal system autonomous from its member states, it has a supremacy that is directly applied. Depending on a concrete legal form of legislation it can be compulsory for the member states and come into effect after its adoption by the EU (regulations), it might have to be transposed to the legal systems of its member states (directives) or it might have nonobligatory character (recommendations, resolutions).

EU – federation in making?

25. To have a better foundation for the analysis and proposals, it is worth discussing the analogy of federation which is often invoked when talking about the future (or current) EU institutional structure. Although comparisons of the EU with the federal systems existing today (USA, Switzerland or Germany) often miss important aspects of the multilevel policy process of the EU, they also provide useful basis for the analysis.
26. The EU has got a number of characteristics which are common to federal systems³. *First*, it is a multilevel political system with each of its levels (Union, member states, regions) having a direct impact on its citizens. *Second*, the powers and competences of each of this jurisdiction or level of governance are clearly defined by the treaty. *Third*, the EU legal norms have primacy in respect to the legal acts of its member states. *Fourth*, increasingly more decisions are undertaken by a qualified majority voting (though in practice even when the qualified majority voting rule applies, there is usually a search for compromise which satisfies everyone). *Fifth*, the opinion of minorities is respected in the EU, and the small member states are overrepresented in its decision making. *Sixth*, the EU Treaty is amended not only by the agreement of member states' governments, but also with the agreement of the national parliaments or voters (depending on the constitutional arrangements in member states). *Seventh*, the European Court of Justice resolves disputes between the EU institutions and member states' governments or member states' governments and their citizens. *Eighth*, the EU has a directly elected Parliament with increasingly stronger powers.
27. At the same time, it should be noted that the EU lacks certain important features common to federal systems. First, it does not have its military forces. Second, it does not have independent powers to tax and spend. Third, its member states remain the masters of the Treaty. Moreover,

³ See Boerzel, T. A., Hosli, M. O. Brussels between Bern and Berlin: Comparative Federalism meets the European Union, Constitutionalism Web-Papers, ConWEB No. 2/2002, <http://les1.man.ac.uk/conweb/>.

- the Commission is not elected by the Parliament or popular voting but appointed by the member states.
28. These analogies are useful not only in understanding better the current EU decision making system. To use further the analogy with the federal system, a number of observations can be made.
 29. The division of powers between different levels in the federal system are often based on the principle of effectiveness, on the basis of which it is claimed that some tasks could be better undertaken jointly by the central institutions, while others should be left to the regions (states), often creating conditions for territorial – jurisdictional competition. Most of the EU activities have been directed at achieving the main task of the single market by removing barriers to cross-border exchange (so called negative integration). In some areas the activities of the EU have extended further than negative integration and involved harmonization of norms and standards (for example, environment, health and safety at work). In addition, the EU aims at reaping the economies of scale by negotiating as a single actor in international trade negotiations. Economy of scale, reduction of transactions costs and benefits of collective action could be used in explaining the introduction of the single currency euro and conducting common monetary policy.
 30. The importance of territorial competition becomes more clear when we analyse the establishment of the single market by way of harmonizing standards (positive integration). Competition between jurisdictions or territorial units in a federal system is justified by several arguments. First, it reduces the potential for inefficient decisions made by the central institutions due to the limitations regarding the information of **peoples'** preferences. Second, territorial competition creates potential for more efficient regulatory and tax policies on the level of regions or states, because as a result of too expensive regulations or too high taxes factors of production might move to other jurisdictions (though the use of this potential depends on a number of conditions). This potential acts as a constraining factor for local policy makers who might want to disregard local preferences. It also creates incentives to look for more efficient methods of regulation and more efficient rules, protects local policy makers from becoming captured by narrow interest groups. Third, and equally important, it allows for tolerance of different local preferences which might result from different traditions, cultures and history. Although some might argue that territorial competition might eventually lead to the unification of standards on the basis of the lowest common denominator (or race to the bottom) this should not be necessarily the case. There is no clear agreement in the scholarly literature regarding the effects of territorial competition (and mutual recognition of different standards) on the overall trends of standard setting⁴.
 31. During the recent decades the barriers to cross-border exchange inside the internal market have been removed either by harmonising different standards or by mutual recognition with some “minimal” standards being set. The harmonization is often justified on the basis of “fair competition”, it also often gives the benefits of economy of scale to the **transnational** companies operating in the EU. However, it also sometimes disregards different preferences of populations in the member states and might act as an additional market entry barrier for small and medium business. Partly for the latter reasons there has been an increasing tendency in the EU to rely on the method of mutual recognition rather than total harmonization. Recently, it has been suggested increasing the use of the recommendations and measures of self-regulation, which might reduce the negative consequences of compulsory harmonization⁵.

⁴ See Barnard, C., Deakin, S. Market Access and Regulatory Competition, <http://www.jeanmonnetprogram.org/papers/01/012701.html>; Nicolaodis, K. Mutual Recognition of Regulatory Regimes, <http://www.jeanmonnetprogram.org/papers/97/97-07.html>.

⁵ The suggestions of the European Commission on the future EU governance have been presented in its White Book on European Governance which is available on http://www.europa.eu.int/comm/governance/index_en.htm. The same

32. Similar problems would be faced if direct taxes were to be harmonized across all member states (currently only indirect taxes are harmonized by setting lower limits and also a set of measures on restraining from unfair tax competition are recommended by the EU to its member states). In the case of tax harmonization, dilemmas between joint financing and redistribution on the central level, on the one hand, and different societal preferences towards an acceptable level of taxation and financing certain publicly provided goods in different member states, on the other hand, would become particularly important. The potential problems of finding an acceptable level of tax harmonization and redistribution could be illustrated by the current debates between net contributors to the EU budget and the main beneficiaries from EU funds concerning the reform of agricultural policy, though the sums currently redistributed through the EU budget constitute just a fraction of public expenditures in the member states.
33. There is a constant tension in the EU between attempts to move towards greater harmonization and to preserve the autonomy of the member states and their regions. This tension is a result of, on the one hand, the member states aiming to preserve their autonomy in making policy which is weakened by interdependence and territorial competition, and, on the other hand, the need to take into account local preferences and attract foreign investments. The balance between centralization and territorial competition is constantly changing depending on existing coalitions between member states, interest groups and other actors pursuing their policies of preserving high standards or attracting capital. The decisions made in favour of more or less harmonization and liberalization reflect political compromises which are achieved by exchanging concessions and side payments in a process steered by the Commission, and usually do not represent any of the “ideal models” but rather are centred somewhere between total harmonization and complete mutual recognition (or between reregulation and liberalization).

Lithuania and the EU:

34. The importance of centralization (harmonization) and territorial competition (mutual recognition) is even higher in the context of the accession of CEECs into the EU. First, we can list a number of features of Lithuania (most of which are common to other candidate countries as well):
- The level of Lithuania’s economic development is significantly lower than that of the EU (according to the official data, per capita GDP in Lithuania equals about 30% of the average per capita GDP in the EU);
 - After joining the EU, Lithuania will border countries which are not members of the EU (Kaliningrad Region of the Russian Federation and Belarus);
 - Lithuania is a Baltic Sea region state, located on transit routes between Western and Eastern Europe;
 - Lithuania is a small country with a population of 3.7 million (currently about 370 million live in the EU while after the accession of candidate states this number will increase up to 480 million); it will have twelve seats in the European Parliament (out of the maximum 732), it will have seven votes in the Council of Ministers (out of 345 with 258 needed for a qualified majority) and it will have its representatives in other institutions (nine members in Economic and Social Affairs Committee and the Committee of Regional Affairs each, one seat at the Court of Auditors, etc.);
 - Lithuania like most other countries has specific traditional or cultural features (like national foods), and also certain particular characteristics of its industrial structure (the economy is still heavily dominated by agriculture in terms of employment; energy production is dominated by a single nuclear power plant regarded as unsafe by the EU).

35. Some of these features – a lower level of economic development, local traditions and consumer behaviour dependent on their purchasing power – are common to other candidate countries. Taking these specific features into account, it seems that the tolerance of local differences and conditions for territorial competition are likely to become even more important after the EU enlargement which should make the EU of 25 member states more diverse than ever before. At the same time, the diversity of interests might complicate the effectiveness of the EU in some policy areas, such as foreign policy which is going to be important for Lithuania because of its future borders with third countries.

36. Thus, in order to be able to tolerate increased differences and to create conditions for progress, the principle of mutual recognition and territorial competition seems to be quite important. On the other hand, in order to be able to reach decisions quickly and effectively in a bigger and more diverse Union, further harmonization of some rules and restrictions of sovereignty (by extending the qualified majority voting) will be necessary. These issues are discussed in more detail below.

On the division of competences

The current situation:

37. The areas and forms of EU competences are defined in the Treaty. As the Treaty says, the Community acts in pursuit of its objectives by respecting the competences set by the Treaty, and it cannot undertake any actions which are not necessary for the achievement of the goals set by the Treaty.
38. Currently a number of different forms of competences are in force in the EU: exclusive competence of the EU, shared or mixed competence (in the areas where member states can act to the extent which is not regulated by the EU and to the extent that these actions do not contradict the norms of the EU), and complementary competence (the EU can only supplement the action of its member states). Finally, there are areas which are outside the competence of the EU, or belong to the competence of its member states (areas which are not mentioned by the Treaty of the EU).
39. Some competences are assigned to the EU on the basis of the objectives which have to be achieved, while other competences are assigned on the basis of areas. It should be noted that the Treaty of the EU defines its competences and powers much more clearly than most constitutions of the federal states⁶. The role of EU institutions in the policy process of the Union and the making decisions procedures depends on the form of competence assigned to the EU.
40. The EU has an exclusive competence in the following areas: common commercial policy, marine bioresources, monetary policy (for euro zone countries), Europol and Eurojust, finally, in deciding on issues which are linked to the establishment of the internal market (though the latter category of issues is not in a strict legal sense assigned to the exclusive competence of the EU).
41. The EU shares competences with member states in a number of different areas: citizenship, agriculture, fisheries, internal market, visas, asylum policy and immigration, transport, competition, taxation, social policy, environment, consumer protection, health, trans-European networks (norms of compatibility), energy, civil protection, tourism, common foreign and security policy (except defence), cooperation between police and courts. This is currently the most widely used category of competences.
42. The EU has complementary competences in the following areas: economic policy, employment, education, professional training, culture, trans-European networks, industry, economic and social cohesion, research and development, development and cooperation, defence. These are the issues which have been brought into the attention of the EU during the last decade and where the EU usually acts as a coordinator of member states' actions.
43. According to the Treaty of the EU, in the areas which do not fall under the exclusive competence of the Union, action can be taken only by the principle of subsidiarity when the measures under consideration cannot be implemented well enough by member states or due to the scale of action Community can undertake the measure better than member states.

⁶ De Burca, G., De Witte, B. The Delimitation of Powers between the EU and its Member States, Florence: EUI, RSC Working Paper, 2002, p. 2.

The principle of subsidiarity was formally introduced only by the Maastricht Treaty. However, its origins date back not only to earlier years of the EC activities, but to the writings of the philosophy of religion dating several centuries back. According to some scholars, the concept of subsidiarity has been first introduced in the 16th century by Althusius.⁷ For several centuries this concept has been characterized by contested meanings. Subsidiarity in its negative sense refers to the limitation of competences of a larger organization in relation to a smaller entity, while its positive concept represents the possibility or obligation of interventions from the larger organization. The Christian Church has used the concept of subsidiarity in both its meanings, sometimes intending to limit increasing interference of state institutions into people's life and sometimes encouraging state to intervene to provide social support. A liberal (or negative) concept of subsidiarity is linked with such names as Lock, Montesquieu and Humboldt, who thought that the state should intervene only in cases when people were not able to solve their problems on their own. This concept also found its expression in the constitutions of the USA and Switzerland.

In the Treaty of the EU, the concept of subsidiarity is defined rather vaguely and left open to different interpretations. As it is often the case in the EU, its phrasing reflects political compromises between different political actors in the EU (the concern of the British government in preserving its sovereignty, Christian democratic philosophy concerning the importance of allowing lower units of authority to achieve their own objectives, and the wish of German Länder to protect their own competences)⁸. The First Article of the Treaty of the EU states that decisions should be taken "as closely as possible" to the citizen. However, Article 5 expands this and provides a slightly different definition of subsidiarity. It maintains that "The Community shall act within the limits of the powers conferred upon it by the Treaty and of the objectives assigned to it therein. In areas which do not fall within its exclusive competence, the Community shall take action, in accordance with the principle of subsidiarity, only if and in so far as the objectives of the proposed action cannot be sufficiently achieved by the Member States and can, by reason of the scale or effects of the proposed action, be better achieved by the Community. Any action by the Community shall not go beyond what is necessary to achieve the objectives of this Treaty".

According to these definitions, one could say that the citizen and citizens' rights should be taken as the point of departure when deciding the appropriate level of subsidiarity. On the other hand, one could say that it is only the member states (maybe their regions) and the Union which are to be considered when deciding for the action on the level of the Union. Due to these uncertainties surrounding the meaning of subsidiarity it has been interpreted differently to suit interests of the regions, member states and the EU.

44. In addition to subsidiarity, the principle of proportionality has been used as another important principle in deciding an appropriate degree of Community actions. This principle (which is defined in the last part of Article 5) implies that the measures suggested by the EU should not impose unnecessary costs, or that the measures suggested should not exceed what is necessary for the achievement of EU objectives. The exact meaning of this principle has become more clear (and more widely applied) after a number of decisions of the European Court of Justice (for example, concerning the restriction to the sales of land in Austria). It could be said that part of the popular criticism of the EU is linked to the insufficient use of this principle.

⁷ See Endo, K. *Subsidiarity and Its Enemies: To What Extent Is Sovereignty Contested in the Mixed Commonwealth of Europe?* Florence: EUI, RSC Working Paper No. 2001/24, 2001.

⁸ See De Burca, G. *Reappraising Subsidiarity's Significance after Amsterdam*, Cambridge, MA: Harvard Law School, Harvard Jean Monnet Working Paper 7/99, 1999.

Recommendations:

45. The review of the competences should be based on several key principles: efficiency – on which level it is best to achieve the objectives set in the least costly way, effectiveness – which level of governance provides most opportunities to achieve the objectives set, and legitimacy – which level provides best opportunities to take into account the preferences and expectations of people, i.e. which level provides best opportunities to link the implementation of objectives with people’s expectations.
46. According to these criteria, a more meaningful way to assign competences in the EU seems to be one based on the criteria of what is necessary to achieve the objectives set by the Treaty (in particular the implementation of the single market), rather than assigning the competences on the basis of concrete areas. However, taking into account that most of the shared competences are assigned on the basis of policy areas, it is hardly possible to change this. However, the key principle which should be recommended is to base the activities of the EU on what its main objectives are, taking into account the principles of subsidiarity and proportionality. This reasoning is enough to think that the catalogue of competences (Kompetenzkatalog) is not desired, because it is impossible to foresee in advance what measures might be needed to achieve the goals of the Union.
47. Sometimes a (low) degree of political controversy of certain issues is provided as a criterion when assigning the EU competences in certain areas⁹. Some scholars suggest granting the EU a role in areas which do not cause public debates. However, this criterion has certain clear shortcomings – often controversies emerge as a result of unforeseen events (like “mad cow” disease) or some issues might not be controversial simply because people lack information and do not see a link between measures on the EU level and their costs. This suggestion also ignores the principles subsidiarity and proportionality.
48. Other scholars suggest strengthening the legitimacy of the EU by assigning to it new and significant roles (competences) in the areas of social support through the redistribution on the EU level.¹⁰ This suggestion is based on the assumption that people will not become interested in the activities of the EU until its decisions are not of crucial importance for them. However, the attempts to implement these measures would not only cause strong political controversies, but they would create strong opposition from a number of EU member states (net contributors) and reconciling the differences in willingness and capacity to contribute to the central EU budget by member states of different economic development and societies with different preferences would prove too difficult to achieve. The eventual outcome would be the opposite of the intended one and would weaken the solidarity and European identity instead of strengthening it.
49. Taking into account the criteria of effectiveness and legitimacy, it could be noted that *most of the contributions to the debate on the division of competences ignore the individual and respect for individual rights and free decisions*, which are declared by the EU member states as the fundamental principle of their societies. As it was mentioned before, the EU Treaty starts with a definition of subsidiarity as making decisions “as close as possible” to the citizen. Although the concept of subsidiary could be interpreted differently, most of the discussions focus around administrative units (regions, member states or Union) rather than starting from an individual and what could first be left for the people and voluntary communities¹¹. However, *it seems meaningful and fair to start*

⁹ See the suggestions of V. Radžvilas among the contributions of Lithuanian scholars to the debate on the future of Europe, at the site of the Lithuanian Ministry of Foreign Affairs (www.urm.lt).

¹⁰ Scharpf, F. *Crisis and Choice in European Social Democracy*, Ithaca: Cornell University Press, 1999.

¹¹ There are rare exceptions. See, for example, the speech of Estonian Minister of Foreign Affairs T. H. Ilves “A New Europe” given at the Humboldt University in February 5, 2002,

www.europa.eu.int/futurum/documents/speech/sp050201.htm. According to Ilves, “it is not merely the nation state

from an individual and to delegate to the collective decision making of the regions, states or the EU only that which cannot be undertaken by people and associations themselves. Individuals and associations rather than the lowest administrative units of the member states should be the starting point for assigning the competences (and applying the principle of subsidiarity).

50. In practical terms, *it requires the EU to focus on its main objectives and common problems, in particular the completion of implementing the “four freedoms” of the single market rather than undertaking new initiatives which are not essential for its main goals.* The clear setting of priorities in implementing EU’s main objectives (single market, coordination of justice and home affairs, reaction to the international threats) and the consistent application of the principles of subsidiarity and proportionality (and monitoring of it) should *restrict and concentrate the activities of the EU.*
51. The principles of subsidiarity and proportionality should be applied not only by the Commission when it makes decisions on new legislative proposals, but *also by the Council of Ministers and during the process of implementation by the member states.* It is often forgotten that it is the Council of Ministers, representing all member states, which plays a crucial role in adopting the new legal acts, while the EU ends up being blamed for a too detailed and restrictive character of these legal acts. Moreover, it is often during the process of transposition of EU directives into the national legal systems when the norms of disproportionate effects to their objectives are adopted. Therefore, *the main challenge for the EU and in particular its member states is to apply in practice these principles during the processes of negotiating new legal norms in the Council and later transposing them into the national laws.* The EU should be blamed for the political failures which are the outcome of the politics between or inside the member states.
52. This logic provides a yet another argument against a fixed catalogue of competences, in particular against a list of competences belonging to the exclusive sphere of member states. In addition to limiting the flexibility in the future in implementing EU objectives, the attempts to make a catalogue of competences would create a tendency to create artificially public policy in the areas where there is no functional or democratic need for collective actions.
53. This does not mean that the current system of competences should not be changed at all. The areas of exclusive EU competences should include areas where collective action in achieving the objectives of the EU would undoubtedly increase the collective welfare. This could be the following areas: (1) completing the removal of barriers to exchange in the internal market (“four freedoms”), (2) justice and home affairs (Europol, cooperation between justice and law enforcement institutions on the matters of cross-border character), (3) monetary policy (European Central Bank activities, common currency), (4) external policies which could be gradually extended to include not only trade policy but also some aspects of foreign and security policies.
54. This type of extension of exclusive EU competences would also imply some changes to the existing three pillar structure of the EU, because the second and the third pillar policies (foreign and security policies, justice and home affairs) would be moved closer to the first pillar in terms of the decision making procedures. In such a way, the role of the Commission would also be strengthened, which might be beneficial to small countries like Lithuania.
55. It is obvious that integration of some external policies might not be acceptable to some of the key EU member states. However, this type of development could be beneficial to Lithuania and contribute to strengthening its role both outside and inside the EU after joining it. Although there is no clear agreement on the issue of the EU institutions strengthening the role of small countries, more evidence points to the positive side. The outcomes of the current discussions

that some decision making to the Union, it is really the citizen who accedes to the nation state and from there on upward to the Union”.

- on the issue of Kaliningrad region of Russian Federation after the EU enlargement might prove to be an interesting test of how useful elevating bilateral issues to the EU level could be for Lithuania.
56. After the entry into the EU, Lithuania should preserve or even strengthen its role in developing economic relations with outside neighbours, in particular by creating better conditions for trade and transit. The strengthening of the EU dimension in the protection of the external EU borders seems also to be beneficial for Lithuania, since the effectiveness of external border controls is likely to be an essential precondition for removing internal barriers with other EU member states (Poland and Latvia) and creating the conditions for Lithuanian citizens to take full advantage of the free movement of persons.
 57. It is more difficult to define the areas of the shared and complimentary competences of the EU. The main principles in assigning these types of competences to the EU should remain that (1) that which is not in the competence of the EU should be left to its member states, (2) the EU can make decisions only to the extent necessary for the implementation of its objectives and by respecting the principles of subsidiarity and proportionality. The monitoring of the strict application of those principles should be done by the Commission. It might be useful to consider the application of additional procedures to ensure the application of these principles. The procedure might be targeted at ensuring (or creating incentives) to apply subsidiarity and in particular proportionality principles in the member states as well.
 58. The issues of EU budgetary policy and its main redistributive policies – common agricultural policy and regional policy – deserve a separate mentioning when talking about the division of competences. Currently the common agricultural policy has a number of functions – supporting certain levels of farmers' income, ensuring their support for European integration, providing social support, protecting the environment, landscape, etc. Regional policy also has more to it than just economic objectives and it has been used to ensure support of some member states for the creation of the single market and some other projects of deepening integration. Moreover, there is not general agreement regarding the contribution of the regional policy towards the economic growth of the regions.
 59. There are some doubts if the same policies under the current rules could still be applied after EU enlargement. *Due to big differences in the levels of income, the choice might be between discriminating farmers in the current and future member states (which is not acceptable for the candidate countries), or a high price for the unification of Europe (the price of support or the solidarity expressed by the contributions of member states to the EU budget might become too high for some member states).* The attempts to increase the EU budget and the levels of redistribution (to show solidarity between richer and poorer member states) could actually have an opposite effect on the sense of solidarity and might cause political conflicts and postpone the actual enlargement or extend some transition periods. The discrimination of the accession countries might have equally negative impact.
 60. These reasons provide a strong case for the reform of the common agricultural policy. Of course, any more radical attempts to reform it throughout the history of the EC have failed, despite strong arguments concerning the negative economic effects of this policy (high prices, surplus production, concentration of support for the richest farmers, distortions of the world trade). As the current discussions on the extension of the CAP benefits to the candidate countries illustrate, its main beneficiaries in the EU are opposed to any change of status quo. This creates a *difficult dilemma between attempting not to link the (slow) reform of the CAP with the conclusion of accession negotiations and not to postpone its reform for the next financial period, when it will be more difficult to find agreement on its reform within an enlarged Union with potential or actual beneficiaries of the CAP protecting their short term interests.*

61. The financing of the EU should be based on its functional needs, *the resources being allocated to the administrative tasks and implementation of its functions*, rather than the conduct of redistributive policies. It is likely that the tradition of side payments to the most disadvantaged by some integration measures inside the single market will continue. However, the wider pursuit of social policy aims on the level of the EU is hard to imagine and probably undesirable.
62. More attention will have to be paid to avoiding the abuse of the argument of “fair competition” during the process of removing barriers to trade after EU enlargement. This concept is highly contested, especially in the context of member states with more diverse levels of economic development, when the tendency towards higher norms might actually conflict with the principle of proportionality. Moreover, the argument of “fair competition” might also be used by narrow interest groups to protect them from increased competition. Since this concept plays a crucial role in defining the limits of EU competences and implementation of EU objectives, more attention should be given to its proper application when choosing between harmonization and mutual recognition (and tolerance of differences).
63. The EU should preserve the same basic model of decision making where its institutions would have to make decisions respecting the principles of subsidiarity and proportionality, the member states would be responsible for their implementation, preserving their autonomy in the fields of taxation and spending policies, their territorial sovereignty and defence policy. This means that member states would remain responsible for their domestic social policies, health and education policies which would be a matter of member states or private decisions with EU only supplementing them in some cases. When new competences are delegated to the EU the principle of tax neutrality should be preserved, i.e. it should not augment taxation. The EU law would remain superior to the laws of member states.
64. Disagreements concerning the division of competences can be resolved in two ways. One of them is a legal method of delegating decision making to the European Court of Justice. However, it is unclear if political matters should be based only on legal methods of resolution. The eventual decision making power regarding the division of competences might be delegated to a political institution at the highest level of the EU (a special political committee representing member states). The national parliaments could have more role in monitoring the application of the principles of subsidiarity and proportionality, linking this procedure with the mechanism for the assessment of the impact of new EU legal norms in the member states.

On the simplification of EU norms and adoption of constitution

The current situation:

65. At the moment, in addition to the Treaty of the EU and its amendments, there is a number of different categories of secondary legal acts applied in the Union. Depending on the concrete area, the Commission might draft regulations and directives that can have a different degree of detail, it might suggest recommendations, other EU institutions might also take different forms of legal decisions (resolutions, recommendations, action plans, guidelines, etc.)
66. Currently there is a three pillar structure established by the Maastricht Treaty. There are about twelve forms of legal norms applied in the fields of the first pillar (single market) – guidelines, coordination measures, action programs, action plans, agreements, directives, regulations, etc.¹² In this area, the Commission usually has a power to initiate new legal acts, which are adopted on the basis of a qualified majority voting at the Council after receiving the decision of the Parliament.
67. There are five different forms of policy action used in the matters of the second pillar (foreign and security policy) – principles and joint guidelines, decisions, common strategies, joint actions and joint positions. The role of the Commission and the Parliament is rather limited in this field where the main role is played by member states.
68. There are four forms of common actions applied in the matters of the third pillar (justice and home affairs) – common positions, framework decisions, decisions and conventions. The power of decision making in this field (except for visa, asylum and immigration issues) is located in the Council of Ministers.
69. It is often argued that the multiplicity of the different form of legal acts and actions reduces the transparency and effectiveness of the EU, complicates the implementation of its decisions and reduces the legitimacy of the Union in the eyes of its citizens.

Recommendations:

70. *The EU should concentrate more attention on the achievement of its main objectives and solving the most important common problems rather than undertaking new initiatives.* Establishing clear priorities for the implementation of the Union's objectives (completion of the single market, internal affairs, dealing with international threats) and strict application of subsidiarity and proportionality principles should restrict and concentrate EU's activities as well as make them more clear and structured.
71. As it was said before, the same principles of subsidiarity and proportionality should be respected in the work of the Council of Ministers and during the implementation of EU norms in member states. The essential role of member states could be illustrated by the fact that in recent years about 80% of all new legal acts drafted by the Commission have been initiated in response to the Council or member states.¹³ *The main challenge is to observe the principles of subsidiarity and proportionality in practice and in all stages of the EU policy process.*

¹² See Bruton, J. Report on The Future of European Union, Dublin: Parliament of Ireland, February 2002, www.europa.eu.int/futurum/congov_en.htm.

¹³ Grevi, G. Beyond the delimitation of competences: implementing subsidiarity, The European Policy Centre, The Europe We Need working paper, 25 September 2001, p. 13.

72. The EU should use more often *framework directives* which would set objectives to be achieved and leave the methods of achieving them for the member states (instead of detailed directives and regulations). It should also employ more often recommendations and other similar measures of non-obligatory character. This would both reduce the dissatisfaction with over-regulation of different spheres of peoples' lives and would make it possible to better reflect local interests and preferences. This is not a new idea. For example, the Protocol to the Amsterdam Treaty maintains that the form of the Community action should be as simple as possible, that "the use of directives should be preferred to the regulations, and the use of framework directives rather than detailed measures should be given priority." The main challenge here is again to implement in practice this rule from the stage of initiating a EU norm to the final stage of its transposition and implementation in member states.
73. This would also reduce the difficulties that are the Commission inevitably faces when it drafts new legal norms – availability of information regarding the preferences of consumers and businesses, which is particularly complicated by the changing technological and economic environment. This difficulty will be further aggravated by the enlargement of the EU to include almost 500 million of population. The central decision making on the EU will inevitably have to confront the issue of scarce information under fast regional and global changes.
74. The same logic suggests that the rules of *mutual recognition and open coordination* should be more often applied. More use should be made of self-regulation in the EU, which would make it possible to better meet local preferences and ensure better implementation of the policies (thereby strengthening legitimacy and effectiveness of the Union). This would also help to increase tolerance of local, regional or nation differences in the Union.
75. *The European Commission should regularly review existing EU norms with a view to their adequacy to the main objectives of the Union, its principles and changing environment (enlargement, global changes).* This would also contribute to the simplification of the legal environment of the Union and would help to take into account the preferences of population better. This is particularly important for the accession countries which sometimes have to adopt old EU norms while they are being replaced by new ones in the Union (like the new framework of telecom regulation) thereby creating political and legal uncertainty and reducing the effectiveness of EU measures.
76. When suggesting new legal norms, the Commission should prepare *the assessment of their fiscal, economic and social impact*. This would also help to evaluate how the new proposals meet the subsidiarity and proportionality principles and society preferences. The Commission is planning to have such a system in place by 2003. It should be noted, though, that even by relying on the advice of experts the Commission will not be able to have a full picture due to the lack of information, and the impact assessment is but one factor in making decisions. However, these limitations do not reduce the significance of this instrument which is important in strengthening the legitimacy and effectiveness of the EU actions. The same system should be systematically applied in the member states as well. *In Lithuania, a mechanism for the assessment of the draft norms of the EU should be put in place with the systems of reporting to the government and the Parliament.* This should provide the basis for the representation of Lithuania's interests in the EU.
77. In order to introduce more clarity, it might be useful to have a constitutional treaty laying down the objectives, principles, institutions and decision making procedures of the EU. In many respects, the current Treaty of the EU plays a role of a de facto constitutional treaty (or a constitution)¹⁴. It already fulfils the main functions of a constitution by creating and restricting the sources of political power (it creates institutions, limits their competences, sets the objectives and defines the rules of changing it).

¹⁴ See Follesdal, A. Drafting a European Constitution – Challenges and Opportunities, Constitutionalism Web-Papers, ConWEB No. 3/2002, <http://les1.man.ac.uk/conweb>.

78. Therefore the preparation of the constitutional treaty should be aimed mainly at strengthening the existing situation, with some changes like the introduction of the Charter of the Fundamental Rights and with the separation of the main principles from non-essential procedural rules. However, any attempts to redraft the Treaty must take into account the fact that political compromises and the need to take into account different interests of member states are the main reasons for the current EU rules being so complicated. There is an inevitable trade-off between simplification and having everyone's interests satisfied. In other words, complications reflect compromises, and therefore any attempts to simplify the current rules and structures of the EU are likely to cause political resistance and therefore are likely to be rather insignificant

On democracy, transparency and effectiveness in the EU

The current position:

79. Currently the respect for the values common to all member states (human rights, rule of law, etc.), the participation in the decision making process of institutions directly (European Parliament) or indirectly (Council of Ministers) representing the interests of member states' population forms the democratic foundation of the EU.
80. Despite this democratic foundation (which is enforced by procedural checks and balances), it is often said that the EU has a democratic deficit, that it lacks transparency and that it is not effective enough in achieving its objectives. It is advisable to review the rules of institutional relations between the institutions of the Union, to change the rules of representation, to change the structure of the EU and to make it more effective and legitimate.
81. The most widely spread critique of the EU is based on the role of the Commission as a non-elected body and therefore undemocratic technocrat institution, and on the Parliament having too limited powers to counteract it. It is also often suggested that the EU is not legitimate enough because it is not well understood by its citizens.

The recommendations:

82. It is rather unlikely that the suggestions for radical reforms of the EU would create incentives for people to become more interested in the activities of the Union (directly or through their elected representatives). There are several powerful arguments against such types of measures as creating new institutions to involve more the national parliaments into the EU decision making process. First, in terms of procedures, the EU is equally or even more democratic than most Western democracies. As some scholars have noted, the system of check and balances, the requirements for the voting and the spread of information regarding any new initiative make the EU meet the criteria of legitimacy and transparency better than most democratic nation states do¹⁵. The activities of the European Commission are more transparent than those of most of EU member states' government. Even when the qualified majority voting rule is applied, the majority required to make a decision exceeds the majority required in most democracies to change their constitutions.
83. To be sure, the observation that people are simply misinformed and do not understand how the EU really works does not solve the problem of legitimacy. The spread of wrong images of the EU is an important political factor in itself that has to be taken seriously (and often finds its expression during referendum). Hopefully, one of the most substantial results of this debate on the future of Europe will be a better level of popular awareness regarding the EU.
84. The issues of democracy and legitimacy are also raised when talking about the results of EU activities. However, it is rather unlikely that closer involvement of national parliaments would have a positive impact on solving this issue. Most national parliaments in Europe do not have good reputation among their citizens. According to some surveys, *people in both current and prospective member states do not trust parties and their parliaments* (these are actually the institutions which have the lowest trust of population in most candidate countries)¹⁶. It is likely that this is a

¹⁵ Moravcsik, A. In Defence of the Democratic Deficit: Reassessing Legitimacy in the European Union, *Journal of the Common Market Studies*, 40:4, December 2002, p. 603-624.

¹⁶ As a rule people in the member states trust their legislative institutions more, while people in the candidate countries trust their executive institutions more with trust in the parliaments and parties often being the lowest among the public institutions (see Eurobarometer surveys at http://europa.eu.int/comm/public_opinion).

- reflection of a low trust in collective decision making structures in general and a low interest in political issues.
85. It is also unlikely that changes to the EU structures might significantly alter the level of people's interest in the EU, since *a rather low degree of interest might be a reflection of a rather negligible impact that the EU has on peoples' lives or a low salience of the areas where EU has the main role to play*. Moreover, due to the objective reasons the information about the EU and its institutions (like about most other political issues) will always remain incomplete. For all these reasons most attempts to "create" the civic activity and make people interested in the EU are likely to fail. The creation of new institutions would have an opposite effects, as it would reduce the transparency of EU activities.
 86. Taking into account these constraints, the democratic legitimacy of the EU and its effectiveness could be best improved by restricting and concentrating its activities to the achievement of its main objectives and by consistently respecting the principles of subsidiarity and proportionality. Most other ways to strengthen the democracy and legitimacy of the EU by involving people into its activities (directly or indirectly) would not guarantee the increase of legitimacy, but at the same time would significantly reduce the effectiveness of the EU. The latter can only be reinforced by concentrating on the priority matters of the Union. The opposite also holds – if there are any attempts to simplify the decision making process, they are likely to reduce the legitimacy of the EU.
 87. It is unlikely that involving representatives of national parliaments into the activities of the Council of Ministers would improve the legitimacy and transparency of the EU. Most of the decisions taken in the Council are agreed upon before they reach the Council. This also illustrates the limits to the attempts to change the institutional system of the Union. It also shows that currently there is a balance reached in the EU between diplomatic and democratic procedures, which could most probably be kept in place after the enlargement by concentrating the activities of the EU on priorities goals and leaving more flexibility in other areas to individuals, associations, regions or member states.
 88. The role of the national parliaments could be usefully strengthened if they took part in the process of assessing the potential economic and social impact of proposed EU draft legal acts and during the process of their transposition into the national legal systems. This would be particularly important if the Commission employed more often framework directives and recommendations.
 89. The limits to the activities of the Commission should also be recognised, in particular the asymmetries of information it will face in the enlarged EU. Therefore it should also concentrate its activities in the areas where fulfilling its functions contributes to the achievement of EU objectives most (completion of the single market, external representation of the EU, monitoring of implementation of EU norms).
 90. Certain change to the formation of the Commission might be useful. For example, the *election of the President of the Commission directly or indirectly by national parliaments* could contribute more to its legitimacy and strengthening of its role in the second and third pillar issues¹⁷. This might in the long term increase the awareness of the EU and its activities among the voters.
 91. This change in the rules of appointing the Commission could also be useful for small member states, in particular if the President of the Commission was elected by the national parliaments. However, any more radical changes to the institutional structure of the EU should be treated

¹⁷ About different aspects of electing the President of the Commission see Hix, S. Linking National Politics to Europe, The Foreign Policy Centre, 2002, www.europa.eu.int/futurum.

with caution since they would inevitably change the current balance between accountability and effectiveness, between the need to take everyone's interests into account and the implementation of the EU objectives.

The Conclusions

92. The main conclusion of this study is that the EU currently operates under the rules which allow for a good balance between legitimacy and effectiveness. The main challenge for the EU and in particular its member states is to observe in its daily activities the main principles which are set forth in its Treaty and to take the current rules of decision making seriously. Several issues should be particularly emphasized.
93. The most important challenge is to actually and consistently apply the principles of subsidiarity and proportionality from the very first step of initiating the legislation by the Commission, to its adoption in the Council and implementation in the member states. When applying the principle of subsidiarity, the importance of individual and voluntary associations should be taken as a starting point.
94. The EU is often blamed for the policy failures which actually result from the political interactions between or inside the member states. This is linked with strategic manipulation when it serves domestic interests of the member states or over-intensive regulatory measures, which contradict the subsidiarity and proportionality rules.
95. This implies that the source of many problems for which the EU is blamed actually resides in the politics of its member states and their activism rather than the institutional structures of the EU. The main further priority for the EU is to concentrate its activities on the key objectives of the Union, which can be successfully implemented only when the member states restrain their tendency to externalize their domestic problems. The latter issue, however, falls beyond the limits of the mandate of the convention.
96. Taking into account the increase in diversity of the levels of economic development and the preferences of different society in the EU of 25 or more member states, it would be meaningful to practice the legal norms which provide more room for implementing authorities (framework directives, recommendations, open coordination), adopting the regulations only in cases when it is necessary for the functioning of the internal market. This shift in the use of legal norms should take place in parallel to the wider use of the regulatory impact assessment system in both the EU and its member states. Those principles and trends are already set in the EU norms, so the main challenge is their practical and consistent implementation.
97. To sum up, the main challenge for the EU now and after its enlargement is a consistent implementation of the legal and administrative principles that are already set forth in the Treaty and other legal norms and concentration of its activities on the priority objectives. Radical reform of the EU is undesirable and probably unlikely. Increasing the level of awareness about the EU and reducing the gap between political rhetoric and practical actions could be the main and sufficient achievement of the convention.