

LITHUANIAN
**POLITICAL
SCIENCE**
YEARBOOK
2008



INSTITUTE OF INTERNATIONAL RELATIONS AND POLITICAL SCIENCE
VILNIUS UNIVERSITY

Published by

*INSTITUTE OF INTERNATIONAL
RELATIONS AND POLITICAL SCIENCE
VILNIUS UNIVERSITY*

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The *Lithuanian Political Science Yearbook* aims to provide a wide picture of the main fields of Political Science in Lithuania – Political Theory, Institutional Design, Electoral Process, Public Policy and Public Administration, International Relations and related disciplines. However, it is by no means limited to publications on Lithuania or by Lithuanian authors. Contributions are welcome both from Lithuania and abroad.

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PREFACE

We are happy to present the tenth volume of the *Lithuanian Political Science Yearbook*. The main topic of this volume is the 2008 Parliamentary Election in Lithuania. Elections are a key moment in the life of all democratic countries when many political processes can be observed and assessed. The *Yearbook* focuses on the level of partisan loyalty in Lithuania. During the parliamentary election 2008, a considerable share of votes was captured by political newcomers, i.e. political parties created several months before the election. According to Ainė Ramonaitė and Rūta Žiliukaitė, in Lithuania more than a half of the electorate are “floating voters” while in the old democracies more than two thirds of the electorate are loyal.

In addition, the reader of this year’s *Yearbook* is invited to get more knowledge about the role of new information and communication technologies in the politicization of existing off-line social networks. Inga Vinogradnaitė discusses whether and how new technologies generate access to political conversation and whether such access creates a new experiences of political discussion. William Payne from the perspective of political philosophy analyses the liberal and democratic discourse of constitutional civil disobedience and argues that both share a common failure to adequately address religiosity which still affects the theory and practice of modern civil disobedience.

The *Yearbook* continues analysis of the public policy and public administration issues. This time, Žilvinas Martinaitis and Vitalis Nakrošis seek to assess the main factors that explaining innovations in public sector organizations. The results indicate that the structural capacity is the most important reason behind organizational innovations.

In addition, the reader of this year’s *Yearbook* is invited to find three interesting contributions on Lithuania’s five-year membership in the internal market of the EU, EU–Russia relations, and patterns and conflicts in the Baltic Sea region. Darius Žeruolis and Saulius Kolyta argue that membership in the internal market of the EU brought an important additional stimulus for growth

to the relatively small and open economy of Lithuania. Laurynas Kasčiūnas deals with the question why, despite mutual interdependence, the EU–Russia relations remain based on the principle of “barter” exchange. Analysis suggests that the EU–Russia relations are heavily affected by the vacuum of the EU internal integration model in the energy sector. Such vacuum impedes the possibilities to apply the principle of legal reciprocity in relation to Russia. Mindaugas Jurkynas discusses the cooperation prospects of the Baltic Sea region, evaluates the EU’s Baltic Sea Strategy from the Lithuanian perspective. The author concludes that the incompatible modern and post-modern visions in the Baltic Sea region and challenges to the Baltic Sea Strategy do not promise easy regional cooperation in the nearest future.

**PARLAMENTARY ELECTIONS
IN LITHUANIA**

EXPLAINING PARTISAN LOYALTIES IN LITHUANIA

Ainė Ramonaitė, Rūta Žiliukaitė

Abstract. This article aims at determining the level of partisan loyalty in Lithuania and exploring the differences between loyal and ‘floating’ voters. Three competing explanations of the formation of party loyalties are examined in the paper: a social cleavages theory, a social learning model and a political trust model. In the first part of the paper, the theoretical framework of the analysis is introduced: the concepts of partisan loyalty, party identification and partisan attachment are discussed and the main hypotheses are presented. In the second part, partisan loyalties of the Lithuanian electorate are analyzed and problems of voting stability measurement are discussed. Finally, in the third part of the paper, the hypotheses explaining the stability of electorate, based on three theoretical models, are verified using the post-electoral survey data. The data analysis presented in the paper reveals that the Lithuanian “electoral market” is much more open than that of old democracies of Western Europe: the proportion of loyal voters is half as low as that of ‘floating voters’. The data confirm the hypothesis of a relation between political trust and partisan loyalty of Lithuanian electorate. However, the hypothesis of social learning emphasizing the importance of the experience of participation in democratic processes for the development of the partisan loyalty, and the hypothesis of social cleavage highlighting the impact of communist–anticommunist division are only partially confirmed by the results of analysis.

Introduction

One of the most apparent characteristics of the political process of the recent decade in Lithuania is emergence of new political parties and a high instability of the party system. During the parliamentary elections of 2000, 2004 and 2008, a considerable share of votes was captured by political newcomers, i.e. political parties created several months before elections. Moreover, the share of votes received by ‘traditional’ parties sometimes decrease drastically from one election to another, causing a dropout of some parties from the political game.

Party system stabilisation is usually regarded as one of the main criteria of the quality of democracy. Several reasons why party system stability is important

for the performance of democracy can be mentioned. According to Tavits (2005), “constant fluctuations in party support do not allow parties to make long-term policy commitments, which are necessary for the stable development of a polity.” Mainwaring and Zoco (2007) argue that programmatic representation is possible only in stable party systems where party labels provide programmatic cues for the voters. In the systems of high electoral volatility, voters are less likely to identify what the parties and their policy positions are. Moreover, in the systems of high instability, personalistic anti-system politicians and populist parties come to power more easily.

Even though electoral volatility in Western Europe tends to increase during the last decades together with diminishing partisan identification (Dalton, 1996; Dalton, Wattenberg, 2000), a considerable majority of voters in old democracies are loyal to their parties while ‘floating voters’ comprise only a small percentage of electorate. The average electoral volatility in post-communist democracies, however, is much higher (Tavits, 2005; Toka, 1998; Jungstam-Mulders, 2006). On the one hand, it can be explained by the fluid nature of the parties themselves (e.g. frequent splits and merges of parties); on the other hand, it is related to the unpredictable and disloyal electorate (Mair, 1993). ‘Floating’ voters without a partisan allegiance are the main target of new populist parties which destabilize party systems in many young post-communist democracies.

How large is the share of ‘floating’ voters among Lithuanian electorate? How open is the “electoral market” for new parties? What accounts for the differences between loyal and floating voters, how can partisan loyalties be developed in a post-communist democracy? Answers to these questions are important if we want to understand and predict the trends of the development of party system in Lithuania.

While the electoral behaviour was one of the favourite topics of many political scientists in Lithuania since mid-1990s (see Krupavičius, 1998; Žerušis, 1998a, 1998b; Degutis, 2001, 2002; Gaidys, 2004; Ramonaitė, 2007, 2008; Mačiūnas, 2009), **comprehensive electoral studies are almost non-existent**. Partisan attachment is only explored in papers of Gaidys (2004), Degutis (2001) and Ramonaitė (2007, 2008), the problems of party system stabilisation in post-communist democracies are analyzed by Žerušis (1996). The development of partisan loyalties in Lithuania so far has not been explored.

The purpose of the paper is to determine the level of partisan loyalty in Lithuania and to explore the differences between loyal and ‘floating’ voters. Three competing explanations of the formation of party loyalties are examined in the paper: a social cleavages theory, a social learning model and a political trust model. The data used for the analysis come from the post-electoral survey 2008 carried out by the Market and Public Opinion Research Centre ‘Vilmorus’.

In the first part of the paper, the theoretical framework of the analysis is introduced: the concepts of partisan loyalty, party identification and partisan attachment are discussed and the main hypotheses are presented. In the second part, partisan loyalties of the Lithuanian electorate are analyzed and measurement problems of voting stability are discussed. Finally, in the third part of the paper, the hypotheses explaining the stability of electorate based on three theoretical models are verified using the post-electoral survey data.

Theoretical framework

Defining the concepts

Electoral change is usually analyzed by measuring aggregate or net volatility which is defined as cumulated gains of all winning parties or cumulated losses of all losing parties in the party system (Petersen, 1979). In this article, voting stability is analyzed on the individual level, using survey data and measuring the percentage of voters changing their partisan preferences from one election to another (gross volatility).

Voting stability is closely related to the concept of party identification, which is defined as a psychological attachment to a party. Party identification, however, should not be measured as a consistent voting for the same party (Campbel et al., 1960), as short-term voting deviations from long-term partisan attachment are consistent with the Michigan theory of party identification. Partisan attachment, instead, should be regarded as a reason for a low electoral volatility since those who have high party identification tend to vote for the same party (see Figure 1).

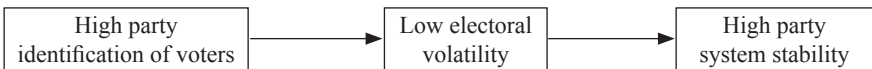


Figure 1. Relations among the concepts of party identification, electoral volatility and party system stability

In the paper, partisan loyalty of an individual is defined in terms of individuals' past voting record (actual behaviour) rather than partisan attachment (attitudes towards a party). Our measurement will rest on self-reported inter-election stability of voting in 2004 and 2008 parliamentary elections. In addition, the timing of electoral decision of an individual is taken into account as our goal is to detect the amount of loyal voters who are determined before elections to vote for the same party.

Partisan loyalties and social cleavages

Party system stability in Western Europe is generally explained referring to the famous Lipset's and Rokkan's (1967) theory of social cleavages. According to Lipset and Rokkan, party systems in Western Europe stabilized (became "frozen") because they were structured along social cleavages, i.e. deep social divisions incorporating sociostructural, normative and organizational/behavioural elements (Bartolini, Mair, 1990). Political parties encapsulated their voters "narrowing the support market", and voters developed attachments to political parties on the basis of their social locations (Mainwaring, Zoco, 2007).

The strength of the cleavage structure is directly related to voting stability and the level of partisan attachment of voters. Bartolini and Mair (1990: 212) claim that "the stronger and more pervasive is the strength of the cleavage system of a given country, the lower will be elasticity of the vote and, therefore, the lower will be the level of electoral instability". Analyzing partisan ties among British, Dutch and German voters, Richardson concludes that "(...) partisan schemata and stable voting tendencies are best developed among followers of old cleavage parties. Supporters of non-cleavage parties tend to be less stable partisans and lack fully developed partisan attachments." (Richardson, 1991, 751).

There is a long-standing debate on the applicability of the Lipset and Rokkan schema in Central and Eastern Europe (see Berglund et al., 1998). Attempts to apply directly the Lipset–Rokkan cleavage schema (urban–rural, centre–periphery, church–state, and labour–capital) to explain the development of party systems and/or electoral behaviour in post-communist democracies usually are not very successful. Therefore, some scholars analysing party systems of post-communist countries claim that party systems of new

democracies in CEE are not anchored in social structure; therefore, parties do not have loyal voters (see Mair, 1993).

Some other scholars, however, claim that application of the Lipset–Rokkan schema in post-communist countries is feasible and useful, but only if the different historic and social context of the development of party systems in these countries is taken into account. For example, using multiple sources of evidence Ramonaitė claims that the party system in Lithuania was shaped by the communist–anticommunist political division. This division has the main features of a social cleavage (see Ramonaitė, 2004, 2007, 2008).

The communist–anti-communist cleavage is best captured by tapping the attitudes of individuals towards the Soviet past. Winners of post-communist reforms tend to have negative attitudes towards the soviet regime, while losers of the reforms feel nostalgic about the Soviet past. These attitudinal differences explain well the voting pattern and the identification of Lithuanian voters on the left–right axis. Some citizens, however, lack strong attitudes towards the Soviet past because of young age (i.e. the lack of experience of living in the soviet regime) or because of an ambiguous social status during the soviet times and/or now (Ramonaitė, 2007). Applying the theory of social cleavages to Lithuania, the following hypothesis can be formulated:

H1: the more intense are the attitudes (positive or negative) of an individual towards the Soviet past, the more likely he/she is to be a loyal voter.

Social learning model

The theory of party identification implies that partisan loyalty is formed in childhood and tends to increase with age. Children learn partisan attitudes of their parents and take them as their own. Later on, partisan ties strengthen with continued electoral support for one's preferred party (Converse, 1969). Therefore, party identification is usually stronger among older age groups (Dalton, 1996; Dalton, Weldon, 2007).

Despite the fact that citizens in new democracies could not have acquired partisan attachment in their childhood, partisanship of voters in new democracies might be expected to grow over time as citizens become accustomed to democratic political process. As Converse argues, “when democratic systems are newly launched, or when their traditional party structures have been

shattered by war, some time must elapse before stabilizing loyalties are developed or redeveloped” (Converse, 1962, 591). Partisan loyalties, therefore, might be expected to increase with age in post-communist democracies and in Western countries.

We should not, however, expect a direct relationship between the strength of partisanship and age in new democracies, because older voters in these countries have not had a lifetime to develop their partisan ties. For instance, data on the development of party identification in post-war Germany demonstrate that partisan attachments of older voters were only slightly stronger than those of young voters (Dalton, 1996). The following hypothesis follows from the theory:

H2: the longer the democratic electoral experience of an individual, the more likely he/she is to be a loyal voter.

In Lithuania, the electoral experience of most voters began with the first multiparty elections of 1990 and 1992. Therefore, the total number of years of democratic experience during the parliamentary election of 2008 was not higher than 18 in all age groups. It implies that the level of partisan loyalty should increase with age until the age of 36-40 and remain stable in age groups above 40.

Partisan loyalties and political trust

The social cleavage theory and the model of ‘social learning’ are based on the experience of Western societies. The party systems of post-communist democracies, however, developed in a completely different social and cultural setting. One of the distinctive features of the post-communist societies is the prevalent distrust in political institutions and politicians in general. As Mishler and Rose (2001) claim, “the overall pattern in post-communist countries is one of severe skepticism bordering on outright distrust of current institutions. Positive trust in any institution is extremely limited; even skepticism is in short supply.”

There are grounds to assume that the “culture of distrust” might account for the voting instability in Lithuania. One could hardly expect the growth of the number of loyal voters in a society characterized by prevailing distrust in politicians, as the voting act is always an implicit act of placing trust in a

politician or a political party. A generalized trust in politicians (political trust is defined in this article as a belief that there are politicians in society that can be trusted) might be regarded as one of the preconditions of the formation of partisan loyalty.

Political trust is not given a proper attention in theories aimed at explaining party identification, electoral volatility or partisan loyalty. However, the relation between trust in politicians and the partisan attachment is, at least implicitly, stated by some authors in the analysis of political support in democratic societies. For example, Dalton (1999) in his analysis on dynamics of political support in advanced democratic societies writes: "Dissatisfaction with politicians and parties is a normal part of the democratic process, but the question is how far these sentiments have spread to higher levels of political support. It is important to determine whether apparent dissatisfaction with specific politicians has generalized to broader, affective orientations toward political institutions – such as feelings of party identification". In his study, the author finds that dissatisfaction with politicians and political parties parallels the decline of the partisan attachment in Western democratic societies.

Some empirical evidence suggests that political distrust might serve as an explanation of the increasing electoral volatility in Central and Eastern as well as in Western Europe. For instance, Carsten Zelle (1995), when analyzing the floating voters in Germany, concludes that an increase in vote switching in Germany can be best explained by the notion of "frustrating floating voter" for whom vote switching is caused by political dissatisfaction. He reports that a floating voter on average is less satisfied with the political system, less trusting in parties and less happy about his own preferred party. He explains the mechanism of vote switching of distrusting voters as follows: "The 'frustrated floating voter' does not primarily perform a positive change to the new party, but turns his back to his old party in a mood of protest. The 'frustrated floating voter' shares his motives with frustrated nonvoters, but by switching parties chooses a different kind of behavioural reaction."

The following hypothesis can be formulated as regards the relationship between the trust in politicians and voting loyalty:

H3: the more positive is an attitude of an individual to the trustworthiness of politicians, the more likely he/she is to be a loyal voter.

Partisan loyalties of the Lithuanian electorate

As already mentioned in the introduction, the analysis presented in this paper is based on the data of the post-electoral representative survey of Lithuanian population conducted in November 2008 by the Market and Public Opinion Research Centre “Vilmorus” at the request of the Institute of Political Science and International Relations of Vilnius University. The survey data contain indicators necessary for verification of three hypotheses defined above in this article. The size of the survey sample was 1001 respondents aged 18 and over. However, since the main variable of our analysis was the partisan loyalty presupposing participation of an individual in at least two elections to the Parliament, for the analysis there were selected only those respondents who were aged 22 and more and could vote not only in elections of 2008, but also in elections 2004. Accordingly, in the analysis the sample size was reduced to 921 valid cases.

One of the most difficult tasks of the analysis was identification of loyal voters. The variable of partisan loyalty was constructed on the basis of data on self-reported partisan preferences of respondents in 2004 and 2008 elections to the Parliament. The data on the voting stability have showed that in Lithuanian society there are 30 percent of voters with stable and 46 percent of voters with changing partisan preferences. It was assumed that when measuring the partisan loyalty it is not enough to take into account the stability of the partisan preferences of an individual over elections. The timing of his/her decision on the vote has to be controlled: only those voters with stable partisan preferences in 2004 and 2008 parliamentary elections who made their decision on the voting before the electoral campaign of the 2008 election are to be classified as loyal voters. As data presented in Table 1 show, the majority of respondents (83 %) with stable partisan preferences had made their electoral decision in the 2008 elections before the start of the electoral campaign; however, 15 percent arrived at the decision only during the electoral campaign or on the day of elections. The latter were ascribed to the category of ‘floating’ voters.

Consequently, we arrived at the following classification of the electorate:

- 1) loyal voters: those who voted for the same party in both elections and in the 2008 election had made a decision on their vote prior to the election campaign;

Table 1. Stability of partisan preferences and timing of the electoral decision (%)

Stability of partisan preferences in 2004 and 2008 parliamentary elections	When did you made a decision on your vote in the elections to the Parliament in 2008?			
	Before electoral campaign	During electoral campaign	On the elections' day	No answer
Stable partisan preferences	83	12	3	2
Changed partisan preferences	49	37	12	2

- 2) 'floating' voters: those who voted for different parties in two elections or took part only in one of the elections or voted for the same party in both elections but in the 2008 election made their decision only during the election campaign or on the election day;
- 3) non-participating: those who did not take part in the last two elections.

Before proceeding to the discussion of the results of our research, several factors that increase the error of the classification of voters according to the partisan loyalty should be mentioned. One of the problems of classification is related to memory abilities of the voters: it could be questioned how well people remember what they did in the 2004 election, taking into consideration the relatively high instability of the party system of Lithuania. Another potential source of measurement inaccuracy of the partisan loyalty is the changing field of political parties and coalitions of the parties that participate in the Parliamentary elections. Constructing the variable of partisan loyalty, a series of decisions had to be taken that could cause a misclassification of some of the voters:

- a) the coalition of the Lithuanian Social Democratic Party and the New Union (Social Liberals) in the elections 2004 fell down during the inter-election period; therefore, the respondents who voted for the coalition were ascribed to the loyal voters of the Lithuanian Social Democratic party or the New Union (Social Liberals) according to their preference in the elections 2008, although it is possible that those who voted for the New Union in elections 2008, in previous 2004 elections had chosen the coalition not because of the membership of this party in the coalition, but due to the preference of the ally party (the Lithuanian Social Democratic Party) and vice versa;

- b) as a consequence of the conflict among leaders of the Liberal and Centre Union, part of the members of the party split up and registered a new party of the Liberals Movement of the Republic of Lithuania. The respondents that had voted for the Liberal and Centre Union in elections 2004 were classified as loyal voters of the Liberal and Centre Union or the Liberals Movement of the Republic of Lithuania according to their preference of the party in the elections 2008, although it is impossible to trace back whether there was a change in voters' preferences of the party leaders over the period;
- c) between 2004 and 2008 parliamentary elections, the Homeland Union and the Lithuanian Christian Democrats underwent unification. Those respondents that had voted for the Homeland Union or the Lithuanian Christian Democrats in 2004 elections were classified as loyal voters of the Homeland Union – Lithuanian Christian Democrats. Again, it is impossible to answer the question whether there were voters who changed their preferences between two parties and their leaders in the inter-election period.

While the mentioned factors have to be taken into account, we believe that they do not distort our classification to an extent that threatens the reliability of the results of the analysis.

Data on the partisan loyalty of Lithuanian population are presented in Figure 2. The proportion of loyal voters comprises only 25 percent of the Lithuanian electorate. A half (51 %) of the population falls into the category of 'floating' voters, 18 per cent are not participating in elections, and 6 per cent cannot be classified due to missing data on their voting.

Analysis of the voting of loyal and floating voters in the 2008 elections to the Parliament reveals several trends (see Table 2). First, only very few parties in Lithuania enjoy the number of the loyal voters sufficient to pass an electoral threshold. These are the Homeland Union–Lithuanian Christian Democrats, the Lithuanian Social Democratic Party and the Party "Order and Justice". The Homeland Union–Lithuanian Christian Democrats has almost a three times larger share of loyal voters than the Lithuanian Social Democratic Party or the Party "Order and Justice". Second, the prevailing choices of floating voters are a winning party (the Homeland Union – Lithuanian Christian Democrats) and the newcomer (the Rising Nation Party).

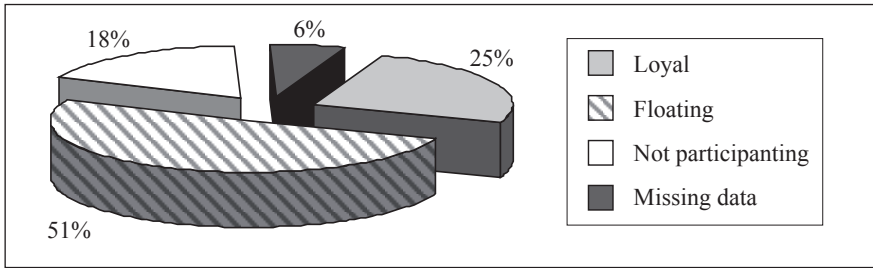


Figure 2. Classification of voters according to partisan loyalty

Table 2. Voting of loyal and floating voters in 2008 elections to the Parliament (%)

List of parties that took part in the elections 2008	Loyal voters	Floating voters
Lithuanian Social Democratic Party	14	9
Political party “Frontas“	-	2
Lithuanian Centre Party	0	0
Homeland Union–Lithuanian Christian Democrats	43	20
New Union (Social Liberals)	4	2
Party of Civic Democracy	-	0
Lithuanian Poles’ Electoral Action	1	1
Rising Nation Party	-	19
The Coalition “Labor party + Youth“	8	8
Liberals Movement of the Republic of Lithuania	2	8
Union of Lithuanian Peasants and Peoples	6	4
Party “Order and Justice”	18	6
Liberal and Centre Union	4	6
Party “Young Lithuanians”		1
Lithuanian Social Democratic Union		0
Did not vote in the Parliament elections 2008	-	12

Surprisingly, there are no statistically significant differences between loyal and ‘floating’ voters in terms of gender, education and place of residence. The only social-demographic factor that has an influence on the partisan loyalty is age. This factor will be discussed in detail later under “social learning” hypothesis.

The other factor that should be mentioned in this brief description of the loyal and ‘floating’ voters is an interest in politics. The famous Converse’s “floating voter hypothesis” states that shifting or floating voters are less

involved and less informed (Converse, 1962). Even though later studies find some evidence of the emergence of a “modern floating voter” who is more informed than stable voters, Lithuanian data are in accordance with the original Converse thesis. A half (49%) of floating voters show a low interest in politics, while the proportion of people indifferent to politics among the loyal is significantly smaller (34%). The difference in the level of interest in politics between loyal voters and floating voters remains statistically significant even after controlling for age and education.

Table 3. Partisan loyalty and interest in politics (%)

<i>Partisan loyalty</i>	<i>How much interested would you say you are in politics?</i>			
	<i>Very much interested</i>	<i>Somewhat interested</i>	<i>Not very interested</i>	<i>Not interested at all</i>
Loyal voters	10	55	32	2
Floating voters	5	46	45	4

Social cleavage and partisan loyalty hypothesis

As emphasized earlier in this article, the main and actually the only social cleavage that might have a considerable influence on the party identification of Lithuanian population is the attitude towards the Soviet past. In our research, this attitude was measured by the survey question “Would you strongly agree, agree, neither agree, nor disagree, disagree or strongly disagree with the statement that in Lithuania life was better during the Soviet period than now?”.

The analysis only partially confirms the hypothesis of the impact of pro-Soviet/anti-Soviet attitudes on the voting stability. On the one hand, the smallest proportion of loyal voters and the largest proportion of non-participants is among people who do not have an opinion or cannot express their attitude towards the Soviet regime. On the other hand, results of the analysis do not confirm the hypothesis that partisan loyalty is more widespread among people with strong attitudes to Soviet past regardless of the direction of the attitude (see Figure 3). The data show that partisan loyalty is more widespread only among people with a negative attitude to the Soviet past, while people with a positive attitude and those with a neutral position have a lower level of partisan loyalty. The proportion of the ‘floating voters’ does not significantly

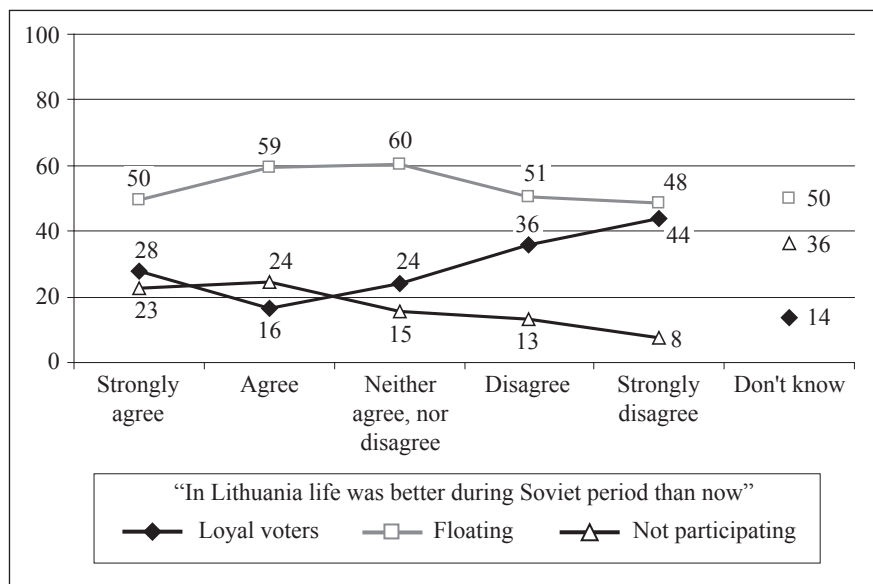


Figure 3. Partisan loyalty according to the attitude towards the Soviet period

differ across the groups with different attitudes, but the data reveal that people with a positive attitude to the Soviet period more often withdraw from the electoral participation than those with the opposite attitude.

As a matter of fact, people with a moderately positive attitude to the Soviet past are more similar to the part of Lithuanian population that have no opinion on the issue than do people with a neutral or negative evaluation of the Soviet period. It might be explained by a specific course of development of the Lithuanian party system. While ex-communist Democratic Labour Party was regarded as a representative of those feeling nostalgic about the Soviet past in 1992–2000 (Degutis, 2001), its successor, the Lithuanian Social Democratic Party, does not appeal to the “pro-Soviet” population. Instead, this electorate tends to vote for the Labour Party and the Party “Order and Justice” (Ramonaitė, 2007).

Social learning and partisan loyalty hypothesis

The ‘social learning’ theory emphasizes the importance of the experience of participation in democratic processes for the development of partisan loyalty. In other words, the longer the is the experience of an individual of participating

in the democratic elections, the more likely it is that he/she will have the partisan loyalty. In this analysis, we decided to use an ordinal age variable as an indicator of democratic experience. Age groups were defined taking into consideration the period of the existence of the democratic regime in the country and the number of elections that took place over this period.

The results of the analysis seem to confirm the hypothesis of social learning (see Figure 4). The youngest age group (22–25 years), which had the possibility to take part only in two democratic elections to the Parliament, has the lowest level of partisan loyalty; the next age group (26–35 years) has a longer experience of participation in elections and a higher level of partisan loyalty than the youngest, and the highest level of partisan loyalty is observed among generations that had a possibility to take part in the democratic processes from the very establishment of the democratic regime in 1990 in Lithuania.

However, the differences in democratic experience do not explain all variation of partisan loyalty across the age groups. If the experience of the participation in democratic elections would be the only factor, then we would expect to see the same proportion of loyal voters in all age groups older than 36 years (since 1990, all these groups have had an equal period of experience). Nevertheless, the older people (56 and over) have a higher level of partisan loyalty

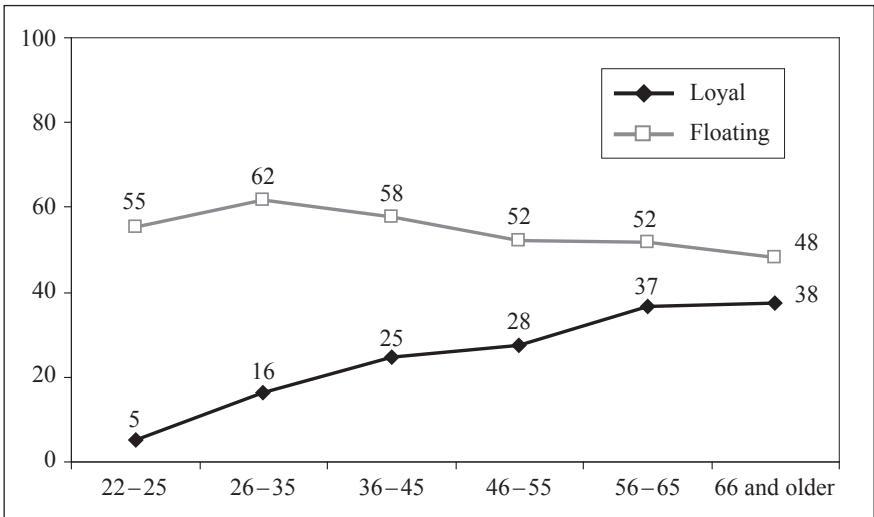


Figure 4. The partisan loyalty by age groups (%)

than middle-aged people (36–55 years old). In this regard, Ronald Inglehart’s (1997) theory of the modernization and intergenerational value shift from traditional values to secular-rational values may be useful. A previous analysis of intergenerational value differences and civic and political engagement of Lithuanian society (Žiliukaitė, 2008) revealed that generations born before World War II have stronger traditional values than younger generations: the motivation for the conventional political participation of the Soviet and post-Soviet generations is driven by utilitarian rationality, while participation of the older generations stems from such traditional values as respect to authority and the sense of the duty to vote in the elections. Thus, the larger proportion of loyal voters among old people in Lithuania can be a result of the traditional values that characterize older generations.

Political trust and partisan loyalty hypothesis

In the survey, political trust was measured on a ten-point scale with two opposite end-point statements: “there are no politicians that can be trusted in Lithuania” and “there are some political powers, politicians who can be trusted in Lithuania”. The results of the analysis confirm the hypothesis that there is

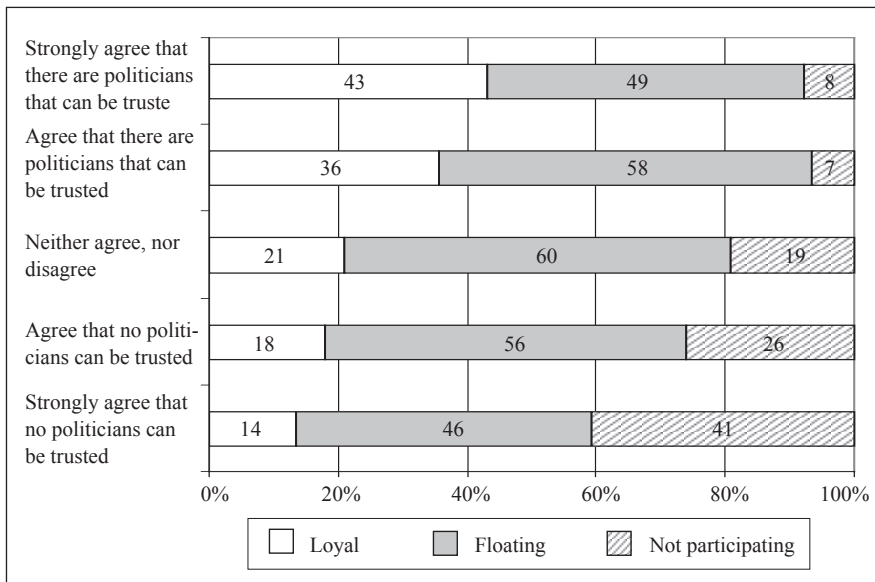


Figure 5. Trust in politicians and partisan loyalty

a relation between trust in politicians and partisan loyalty (see Figure 5). About 4 out of 10 people who believe or tend to believe that there are politicians who are worth of trust in Lithuania are loyal voters. The proportion of loyal voters among those who do not trust or tend not to trust in any politicians in Lithuania is half as low. Graphical presentation of the data also reveals that distrust in politicians leads not to instability of party preferences of voters in the elections but to withdrawal from electoral participation.

The three-factor model of partisan loyalty

In order to test the explanatory power of all three factors, a multinomial logistic regression¹ analysis was conducted. ‘Floating’ voters were chosen as a reference category with which loyal voters and non-participants are compared. Results of the analysis are presented in Table 4. The model explains 19 percent of partisan loyalty variation. The influence of each factor remains statistically significant when other factors in the model are controlled. The data show that the odds of being a loyal rather than a ‘floating’ voter is increased by being 56 years old and older or 36–55 rather than 22–25 years old, by trusting politicians rather than distrusting them and by negatively evaluating life under the communist regime rather than having a positive attitude to the Soviet past. The odds of being a non-participant rather than a ‘floating voter’ is increased by distrusting politicians and having a positive attitude to the Soviet past. It should be noted that the influence of age, trust in politicians and a negative evaluation of life under the communist regime on partisan loyalty becomes even more salient when non-participants are used as a reference category in the analysis.

¹ Multinomial logistic regression was chosen because it allows predicting a multinomial dependent variable on the basis of categorical independents and to determine the percentage of variance in the dependent variable explained by the independent ones. Since partisan loyalty is a multinomial variable and all independents were categorical variables, the conventional multivariate analysis or binary logistic regression could not be applied. In multinomial logistic regression, the impact of independent variables is commonly explained in terms of odds ratios. Exp(B) presented in Table refers to odds ratios. If Exp (B) is equal to 1, the independent variable has no effect. If Exp (B) is more than 1, the independent variable increases the odds, and if less than 1 it decreases the odds. For example, the odds of being a loyal voter compared to a ‘floating’ voter (which is a reference category in our analysis) are increased by a factor of 3.460 when the respondent is aged 56 and older compared to those aged 22–35, controlling for other variables in the model. The explanatory power in multinomial logistic regression is measured by Nagelkerke’s R².

Table 4. Results of the multinomial logistic regression analysis of partisan loyalty ('floating voters' as a reference category)

<i>Partisan loyalty</i>	<i>Factors</i>	<i>Exp(B)</i>	<i>Wald</i>
Loyal voters	Intercept		53.563
	Age (ref. 22–35 years)		
	56 and older	3.460***	24.499
	36–55	2.144***	9.326
	Trust in politicians (ref. Tend to distrust)		
	Tend to trust	2.193***	11.773
	Neither trust nor distrust	1.201	0.486
	Evaluation of the Soviet period (ref. Positive)		
	Negative	2.1661***	13.578
	Neutral	1.166	0.476
Non-participants	Intercept		
	Age (ref. 22–35 year old)		
	56 and older	0.701	1.521
	36–55 year old	1.022	0.007
	Trust in politicians (ref. Tend to distrust)		
	Tend to trust	0.220***	30.726
	Neither trust nor distrust	0.495***	8.192
	Evaluation of the Soviet period (ref. Positive)		
	Negative	0.504**	6.366
	Neutral	0.622	3.640
Valid N	774		
Model Chi-square	135.613***		
Nagelkerke's R square	0.187		
% of correct predictions	57		
Significance level	*p < 0.05, **p < 0.01, ***p < 0.001		

Conclusions

The analysis of electoral consistency of Lithuanian voters shows that the Lithuanian "electoral market" is much more open than that of old democracies of Western Europe. While in the old democracies more than two thirds of electorate are loyal voters (see Dalton, 1996: 185–186), in Lithuania more

than a half of electorate are ‘floating voters’. Loyal voters comprise only a quarter of the Lithuanian electorate. This is good news to potential newcomers into the political party system of the country. However, if we assume that the stability of the party system is a criterion of the quality of democracy, this trend is worrisome as regards the future development of democracy in Lithuania.

The openness of the electoral market does not necessarily mean an inevitable emergence of new parties and permanent instability of the party system. The analysis of voting preferences in 2008 parliamentary elections in Lithuania demonstrates that floating voters tend to vote for a winning opposition party (in this case for the Homeland Union – Lithuanian Christian Democrats) even if it is an “old” party. Constitutional engineering might be used to limit the possibilities for new parties to enter the political arena by increasing the institutional barriers for establishing a new party and/or participating in the distribution of seats. (This has recently been done in Lithuania by increasing the number of party members required to register a new party and by introducing drastic limits of political advertising.)

The parties in Lithuania as well as in other new democracies were not able to narrow the ‘electoral market’ as they did not form encompassing social networks which could create linkages between parties and their voters. It seems to be not a specific problem of Lithuanian parties, but rather a fate of new party systems. As Mainwaring and Zoco (2007) claim, “what matters for the stabilization of party competition is when democracy was born, not how old it is.” In the age of mass media, political elite has less incentives to invest in the development of the organizational structure of parties. Furthermore, the deep social cleavages and strong identities of the early twentieth century had passed away, therefore, the social basis of strong partisanship was eroded.

The analysis of the Lithuanian case demonstrated an apparent asymmetry in the distribution of loyal voters along the communist–anticommunist dimension. The ex-communist Social Democratic Party was not able to encapsulate voters characterized by the pro-Soviet attitudes, even though this party had best chances to develop the psychological attachment of this part of population. Instead, the party turned away from the electorate unsatisfied with the current regime and nostalgic about the Soviet past, by changing electoral rhetoric and adopting liberal stances on economic issues. Part of this

electorate, however, was captured by the Labour party and the Party “Order and Justice”.

The prevalent distrust of politicians in general is a specific feature of post-communist democracy, which increases vote switching of the electorate. Critical disposition towards political parties and political authorities, which very often takes the form of disappointment in general, prevent a voter from creating a lasting tie with any political party. Therefore, a vicious circle, instead of a virtuous circle comparable to that of Western countries, is created. It is commonly assumed that partisanship serves as a ‘perceptual screen’ – “through it one sees what is favourable to one’s partisan orientation and filters out dissonant information” (Dalton, 2000). This is a mechanism how partisan loyalty is strengthened over time. In post-communist democracies, however, a widespread distrust in politicians does not allow voters to form partisan allegiances that could, in turn, strengthen political trust in ones’ preferred party.

This analysis does not give a definite answer to the essential question whether partisan loyalty in Lithuania can be expected to increase. If we assume that the data allow us to confirm the hypothesis of social learning, the answer to the question would be positive. As long as partisan loyalty is increasing with age, we could expect a gradual stabilisation of electoral preferences in Lithuania. The findings, however, were not unambiguous in accordance with the “social learning” theory, since absolute age rather than years of democratic experience seems to account for differences in the interelectoral stability of voting. If these differences are to be explained by generational change rather than by life-cycle, we should expect a decline of partisan loyalty in the future. Some more sophisticated research data (e.g. panel survey) are required to verify this supposition.

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**POLITICAL PHILOSOPHY
AND THEORY**

ON-LINE POLITICAL DISCUSSIONS AND POLITICIZATION OF SOCIAL NETWORKS

Inga Vinogradnaite

Abstract. The aim of this article is to analyse the role of new information and communication technologies in the politicization of existing off-line social networks, i. e. to discuss whether and how these technologies generate access to political conversation for those who do not experience such conversations offline and whether such access creates new experiences of political discussion. To answer this question, data of a representative survey, conducted in 2008 and of in-depth interviews conducted in summer 2005 are analysed. The data show that not only those who talk politics offline but also those who do not engage in virtual political discussions are motivated by the propensity of such discussions to provide access to different opinions, although even online discussions are the place to share opinions, but not to contest and justify them.

During the last decade, a number of publications devoted to the analysis of political conversations, have been published.¹ Why political scientists became interested in such seemingly trivial and unimportant interactions as political conversations taking place in the course of daily activities? Two arguments are usually given to justify such an interest.

One of these arguments is closely linked to the ideal of deliberative democracy, which emphasizes the importance of rational, free and equal discussions among citizens, and sees political discussions as a basic institution of democratic society². The model of deliberative democracy has both its supporters and critiques. The latter claim that deliberative democracy is based on unrealistic and anti-democratic assumptions that all individuals are able to abide by elitist rules of deliberative discussions and possess the necessary communicative skills.³ As Posner had put it, “what motivates deliberative democrats is not a love of democracy or a faith in the people, but a desire to change specific political outcomes, which they believe they could do through argument, if only anyone could be persuaded to listen...I sense a power grab

by the articulate class whose comparative advantage is – deliberation.”⁴ Supporters of deliberative democracy reply that citizens may learn to deliberate only by engaging into deliberation and focus on daily political conversations as a possible realization of deliberative practices. Exploration of the deliberative potential of political discussions has led to the conclusion that it is “more productive to stop focusing on whether political discussions are ideally deliberative and, instead, start exploring more realistically what the feasible benefits of discussion might be”.⁵

Interest in possible political effects of political conversations justifies another group of researches which focus mainly on the so-called contextual effects. Citizens, it is said, do not make political judgements or form opinions in isolation. They are linked in complex ways to other individuals which provide them with information, expertise, ready opinions, support and other resources which are an important factor of political participation. Individual attitudes and opinions are influenced by the social networks to which they belong: depending on their type, social networks are said to foster social capital, civic engagement, political competence and tolerance.⁶ To have this effect, social networks must be “politicized”, in other words, they must consist of members with whom individuals may engage into discussions on the political situation.⁷ Political discussions reveal opinions of fellow citizens, introduce individual to alternative and diverging views and thereby foster tolerance and the sense of efficacy.⁸ Those who talk more are better informed⁹, and when social networks provide access to politically sophisticated discussants, exchange within network enhances the probability of participation.¹⁰ To put it otherwise, political conversation is one of the ways through which the contextual effects on political action operate.

Having in mind these mainly, though not always, positive effects of ordinary political discussions, the distribution of access to political conversations becomes a matter of concern. Not every individual’s social network consists of ties with persons with whom it were “natural” to engage into political discussions. Often political discussions are consciously avoided to preserve the existing relations and to protect them from being destroyed by disagreement.¹¹ Access to political discussions in public settings¹² where the availability of discussants with more diversified opinions cannot be fully controlled is quite limited as well. Most individuals tend to talk politics with their family mem-

bers, friends, occasionally with work fellows or neighbours, and only rarely they have possibility to engage into political conversations with complete strangers – people whom they know little or do not know at all.

The increasing popularity of the internet which has become an integral element of daily life for a number of individuals¹³ provides them with new opportunities for politicization of social networks by adding new ties which consist primarily of political conversations. Online deliberation is not necessarily inferior to the face-to-face one, as an experiment conducted by S. Min suggests that it may equally increase knowledge, efficacy and willingness to participate¹⁴. Yet, the question remains what role access to computer-mediated communication (more precisely, to the internet) plays in the politicization of existing “offline” social networks i. e. whether such access creates new experiences of daily political discussions. To answer this question, the paper begins with an analysis of the frequency, density and nature of political conversations which take place offline, and then proceeds to discuss whether engagement in online political discussions add new deliberative dimensions to enlarged social networks and with what political effects. In order to answer these questions, data of a representative survey of Lithuanian population, carried out in spring 2008, are analyzed.¹⁵ To get a deeper understanding of how political conversations are experienced and what sort of experiences may hide behind responses to survey questionnaire, material of the in-depth interviews conducted in summer 2005 is analyzed as well.¹⁶

1. Political talk in offline social networks

Social networks consist of complex ties with different types of individuals: family members, friends, work fellows, neighbours, acquaintances, etc. At least some, if not all, of these ties may be “politicized”, in other words, involve political conversation as a specific sort of interaction. To measure the level of network politicization or the density of conversational network, respondents might be asked to number the members of their social networks with whom they usually engage into political discussions.¹⁷ Yet this way of measurement assumes certain “specialization” within networks, which may not be always present. The in-depth interviews reveal a variety of experiences of social network politicization. For some, it is easy to identify particular persons who are most likely to involve them into political conversations. For example, a

55-year-old woman living in Vilnius told: *“My husband is interested in politics (...), he tells me something, but I do not participate, do not argue, have no opinion of my own”*. Yet most of respondents do not identify any particular person with whom they usually discuss politics, and refer vaguely that they talk about politics with many different people. Identification of particular political discussants usually functions as identification of the persons with whom it is better to avoid discussing politics (*“there are inflexible people. They see only black and white (...), my aunt (...) to her, conservatives are (always good) (...) I try not to argue with such people, I try better just agree with them. She has her opinion, I have mine”* (man, 47 years old, living in Vilnius)). To put it otherwise, political conversations are not necessarily a feature of only certain social ties, but might make part of the interactions with a great variety of people. Even if it might be difficult for a respondent to identify those with whom they discuss politics most often, the density of political conversational network might be estimated by adding up the number of settings where the respondent reported to discuss politics once per month or more often (family members, friends, work fellows and neighbours). The scores of density of such networks range from 0 to 4 (mean score 2.07, indicating that on average Lithuanians tend to discuss politics in two to three different social settings).

Instead of asking about the number of ties which specifically include political talk, it is also reasonable to differentiate individuals on the basis of how often they discuss politics in different social contexts: private (with family members and friends) or public (with work fellows and neighbours). Differentiation between private and public contexts allows assessment of exposure to more divergent opinions, as public contexts generally, though not necessarily, might include individuals with more diverse opinions. 54% of respondents reported that they discuss the political situation in their private contexts¹⁸ – with their family members and/or friends once per week or more often, while 9% never discuss politics with family members or friends. 37% of respondents discuss political situation often with work fellows and/or neighbours¹⁹, and 21% never discuss political situation in their public contexts. It might be said therefore that a large number of individuals seem to possess politicized social networks as only 7% of respondents said they never talked politics in their more private or more public contexts. When talking experiences in different social contexts are combined, the results show that to talk

often in private contexts is a necessary prerequisite for a talk in more public contexts (see Table 1). Lithuanians do not differ in this regard from British or Americans who exhibit the same trend of reluctance “to chance public discussions without the experience of such private rehearsals”.²⁰

Table 1. Types of discussants in offline networks (%)*

		Public contexts	
		High	Low
Private contexts	High	31%	23%
	Low	6%	33%

Source: Representative survey of Lithuanian population “Information sources”, 2008.

* Percentage of all respondents. The table does not include respondents who reported they never talked politics. High respondents are those who talk politics once per week or more often, low respondents talk politics once per month or more rarely.

These relatively high numbers of respondents engaged in political conversations are misleading if they are taken to indicate the interest and “voluntary” involvement into political discussions, especially in private settings. Political discussions may be initiated by other members of the social network, and people may participate in them with reluctance and certain distance. They tell of husbands, parents, neighbours, friends who involve them to talk politics, though they themselves do not have any peculiar interest in these questions. Quite on the contrary, especially with regard to some of their acquaintances of whom they know to possess strong opinions, respondents report efforts to evade any political discussion or at least abstain from contributing to such discussion with their own political opinion (“*she’s a good woman, but she goes there (to church), listens to these fanatics (...) how can you argue with this, I do not involve into an argument*”, “*what can I say to her, I just listen and that’s all*” (woman, 73 years old, living in Vilnius)).

In other words, the frequency of political conversations experienced by respondents may be determined by the fact that in face-to-face interactions it is not always possible to control the topics of interaction and initiate (or prevent initiation of) political topics.²¹ Though political conversations in more private contexts do not necessarily imply the similarity of opinions, more possibilities to encounter divergent views exist when political discussions take place in more public contexts. The focus on offline interactions alone does not

give a full picture of the politicization of social networks to which individuals belong. Technologies of computer-mediated communication (CMC) enable individuals to expand their social networks to include those with whom they have not met in their “real” (as opposed to “virtual”) life. The next chapter of this paper deals with such virtual ties of social networks in order to understand the nature and possible impact of such ties.

2. The nature of social ties online

2.1. Distribution of access

CMC technologies enabled new forms of social interactions which were not possible before their invention. A number of researches have been devoted to understand the nature of the ties that link individuals to their virtual acquaintances, with a particular focus on the impact such ties have on social capital.²² The focus on social capital led researchers to conceptualize virtual networks in terms of presence or absence of “virtual community”. It is claimed that individuals, linked together virtually, are still able to form communities defined by shared norms and the sense of belonging.²³ A necessary prerequisite for such a sense of community to develop is a sufficiently frequent and continuous interaction.

Still, for many internet users, their virtual acquaintances exist only as an undefined, imagined public; anonymous individuals who came together to the same space to share opinions and information. Discussants are not recognizable social actors, but only messages on the screen, which hardly reveal those who wrote them. As the focus of this paper lies on the political dimensions of social networks, the question of when and under what conditions virtual interactions may lead to creation of virtual communities is irrelevant. Occasional or not, on-line political discussions expand the number of ties which consist of political conversations in particular: the main question is what experiences such virtual political discussions involve and how these experiences are distributed.

Depending on the type of involvement into virtual discussions, four types of respondents can be identified: those who regularly (at least once per month) post comments or participate in internet forums in discussions on political questions (they are labelled as “regular contributors”), those who regularly

read discussions or comments posted by others, but do not contribute to the content themselves (“regular lurkers”), those who read virtual discussions occasionally (“occasional”) and those who do nothing of these sorts of activities (“absentees”). 20% of internet users belong to the group of regular contributors, 47% can be identified as regular lurkers, 11% of internet users are occasional participants, and 22% comprise the group of absentees. As data in Table 2 illustrate, those with denser offline networks tend to more frequently engage in virtual discussions. On the other hand, availability of virtual discussions provide new opportunities for a more public and frequent political talk both for those who already possess a rich experience of offline political conversations and for those who rarely discuss politics with members of their real social networks (for example, 7% of respondents who discuss politics rarely both in private and public contexts belong to the group of regular contributors, and 19% belong to the group of regular lurkers).

Table 2. Density of conversation networks

<i>Types of online users</i>	<i>Mean</i>	<i>N</i>	<i>Standard deviation</i>
Absentees	1.77	90	1.522
Occasional	1.91	47	1.176
Regular lurkers	2.35	194	1.243
Regular contributors	2.36	83	1.235
Total	2.18	414	1.320

Source: Representative survey of Lithuanian population “Information sources”, 2008.

The internet enables developing the ties that consist mainly of political discussions (i. e. ties with those anonymous people met in internet discussion forums or spaces to post comments) and thereby provide access to more public contexts of political conversations for those who are not situated in the networks that would ensure access to and encourage political conversation. The access to places where such new ties might be developed is not equally distributed; however, there still exists a gap between different social groups in terms of their propensity to become participants of political conversations. 28% of male internet users and only 14% of female internet users belong to the group of regular contributors (44% and 49% respectively are regular lurkers). Though around one half of all internet users, notwithstanding the level of

their income, are regular lurkers, those with a higher income are more prone to become regular contributors. Not surprisingly, however, most of the regular contributors are younger users (29 years old or younger) – 33% of internet users belonging to this age group contribute regularly to virtual political discussions, while only 12–14% of users from other age groups tend to become regular contributors to virtual discussions.

To sum up, even if CMC technologies politicize existing social networks to a certain extent, complementing them with new ties which enable more public political conversations, the distribution of these politicization effects varies depending on the socio-demographic characteristics. The question yet remains whether access to online political discussions add new dimensions to the experiences of political conversations.

2.2. Political conversations online: replication of offline experiences?

Contrary to real social networks, virtual social networks and the types of interactions within them can be controlled by individuals to a significant extent. These possibilities of control (what information will be allowed, what sort of opinions will be listened to) became a source of worries for those who believe in the importance of the diversity of opinions and uncontrolled encounters with different opinions²⁴. Because of the extent of control which can be exercised over virtual communication, the understanding of the nature of online social ties requires to focus on the motivations that lead individuals to engage into virtual interactions. These motivations reveal what are the needs which individuals expect to satisfy by expanding their social networks in virtual space.

J. Bishop proposed a three-level framework for understanding why individuals participate in online activities: the first level is made of an actor's desires, the second level of an actor's cognitions and the third one of an actor's "means to interpret and to interact with their environment".²⁵ Different desires may lead to different types of online activities, though they alone are not sufficient to explain why individuals participate or do not participate.²⁶ Social networks provide different forms of resources: information, leisure, emotional support, financial support, etc. The nature of resources provided by a social network depends on the type of ties within the network: "strong ties tend to provide social support, emotional aid and companionship, whereas weak ties are more likely to provide access to diverse information and resources".²⁷

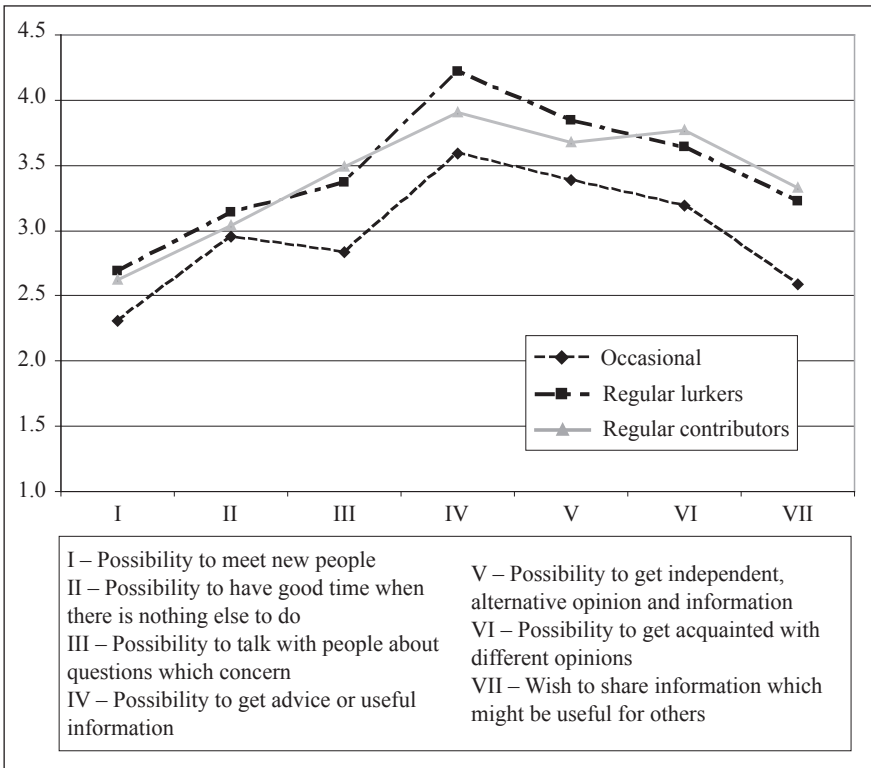
The internet may become an efficient substitute in the case when weak ties are lacking. A student aged 19 years told she wanted to find a job, so she searched in the internet and found it. To the questions of the interviewer: “so you did not need to have acquaintances” the respondent replied: “I tried once through acquaintances, but... There are not so much of these acquaintances...”

Information and advice on a broad variety of topics may not be always available within the existing offline social network. The motives that lead politically interested internet users to engage into various activities available on the Web are generally related with the information seeking and may be subdivided into four groups: search for guidance, entertainment, easy access to political information and search for specific political information.²⁸ Searching for useful information and advice was reported to be the most important motive for all types of online participants of virtual political discussions (see Figure 1). However, what differentiated contributors, lurkers and absentees was the importance of motivation to get a specific type of information: alternative, independent, presenting more diversified opinions. Offline social networks may provide with homogeneous opinions, while a specific feature of online interactions is a broader range of opinions available. When asked to evaluate the importance of the “possibility to get acquainted with different opinions” and the “possibility to find alternative, independent information”, respondents gave the answers that differed statistically significantly among the groups. Such possibilities to encounter diversified opinions and information were a less important motivation for occasional participants than for regular contributors or lurkers.

These findings might lead to the conclusion that online forums impel individuals to practice such forms of political discussions which are not available in their real social networks. Individuals report the importance of opinion divergence as a factor which motivates them to regularly engage in virtual political discussions. But such conclusion is not supported by the analysis of the importance of other possible motives to engage in political discussions (see Figure 2).

Two important conclusions can be drawn from the data. First, possibilities to criticize, to contest opinions are assigned much lower importance and do not differentiate regular contributors or lurkers. Lower social costs of contestation online (lower in comparison to the costs that must be borne for the contestation in face-to-face interactions, such as broken ties with friends

Figure 1. Importance of different motives to engage into virtual discussions

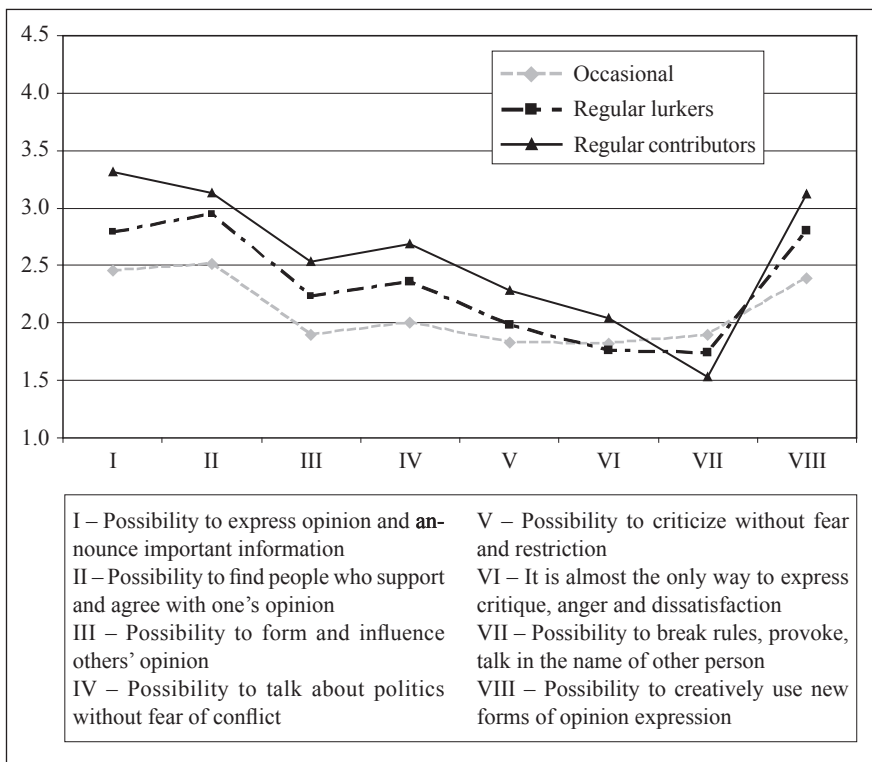


Source: Representative survey of Lithuanian population “Information sources”, 2008. Respondents evaluated the importance of listed motives on a 5-point scale where 1 meant “not important at all” and 5 “very important”. The figure represents means of responses for separate groups.

or relatives) do not motivate individuals to participate in virtual discussions. Second, individuals are more motivated by the possibility to express their own opinions and to find supporters of their opinions. Support and approval, and not contestation, are sought in virtual discussions just as much as in offline political conversations. Though interested and willing to hear different perspectives, individuals prefer “weakly-contested discussions”²⁹, and the same expectations apply to online interactions.

These preferences for a certain type of discussions when diverse opinions are shared without a strong contestation are further supported by the beliefs held by individuals with regard to the participants in virtual discussions.

Figure 2. Importance of different motives to engage in virtual discussions



Source: Representative survey of Lithuanian population “Information sources”, 2008. Respondents evaluated the importance of listed motives on a 5-point scale where 1 meant “not important at all” and 5 “very important”. The figure represents means of responses for separate groups.

The motives to engage in virtual political discussions, which are related with information and diversity seeking, are supported by the belief of the internet users that people online generally are sincere and write what they really think³⁰, even though they talk differently in virtual spaces if compared to the ways they speak when their identities cannot be hidden³¹. Without such belief in sincerity, virtual discussions as a place to find different perspectives could hardly endure for a long time. On the other hand, individuals do not think that virtual discussants are ready to listen to others or to be persuaded³²; consequently, they do not find possibility to influence others’ opinions as an important motivation to engage in online discussions.

To summarize, participants of virtual discussions seem to apply the same modes of political conversation that are practised in offline interactions – political opinions are shared but not contested. Despite the lack of contest and requirement to find “serious” arguments to defend one’s opinions, online political discussions might still exert some contextual effects on the attitudes and actions of those who participate in these discussions. The last chapter of this article analyzes what effects, if any, online political conversations may have on individuals.

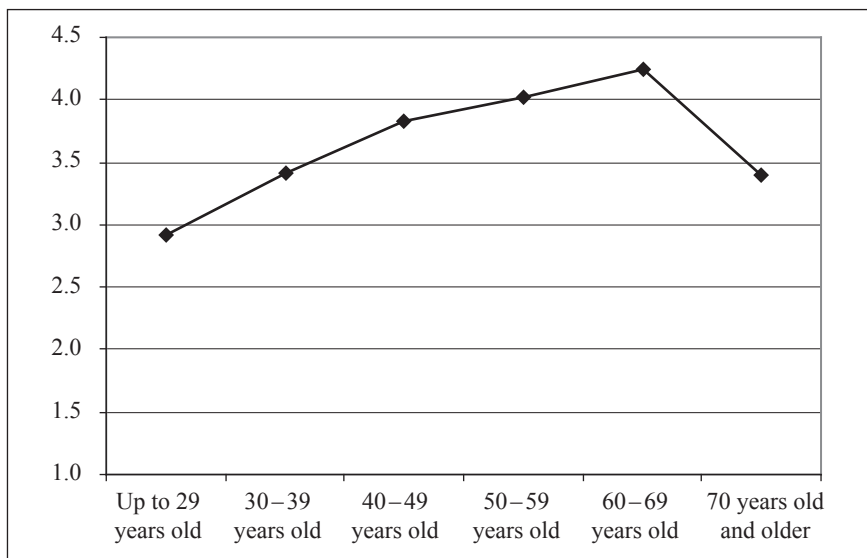
3. Online political discussions: do they make any difference?

One of the important effects politicized social networks may have on individuals is that they provide them with information shortcuts and expertise. Those who converse more on political matters, are usually better informed³³. There is a correlation (Kendall’s tau to 0.191 statistically significant at 0.01 level) between the frequency of offline political discussions and the level of political knowledge. The level of political knowledge was measured by the number of correct answers to six questions which were aimed at assessing the level of a respondent’s knowledge of political leaders and constitutional regulations³⁴. However, regular contributions to virtual discussions do not lead to higher levels of knowledge compared to the level of political knowledge possessed by regular lurkers or occasional participants. On the contrary, regular contributors scored lower than regular lurkers.

Such an unexpected trend can be explained if one takes into account that the group of regular contributors is mainly composed of younger participants. The mean of correct answers to questions about political leaders and constitutional principles is 2.9 among those 29 years old and younger (regular lurkers in this group scored 3.35 and regular contributors 3.2), which is lower than in any other age group (see Figure 3). Even when the age is controlled, the effects of regular participation in virtual discussions are the same and do not depend on its type (active or passive).

Politicization of social networks by virtual discussions does not always improve the levels of political knowledge. What is even more important, those who talk more themselves are not necessarily better informed. The information that circulates in virtual networks and discussions is disseminated by those who seem to be less informed; consequently, virtual networks cannot be

Figure 3. Level of political knowledge among different age groups



Source: Representative survey of Lithuanian population “Information sources”, 2008. Mean scores of correct answers are provided.

treated as providing political expertise. What they do is to expose participants to a diversity of opinions and not to a better quality of political information.

Even if online networks do not ensure better knowledge of political matters, they may educate individuals to participate in political discussions. Practicing political conversation in public settings develop dispositions and confidence to express opinions on different matters. Respondents were asked whether they would devote part of their free time to participate in the deliberation and decision-making on different questions³⁵, if they knew that their opinion would be taken into account. The mean score of disposition towards deliberation was higher for those who experienced more frequent discussions and tended to increase with age. Participation in virtual discussions exhibited similar effects: the mean score indicating readiness to take part in deliberation was higher among regular contributors (2.43) than for regular lurkers (1.84) or occasional participants (1.4). To summarize, involvement in virtual political discussions develop dispositions to take part in decision making. Those who have no access to political conversations in their offline social networks may learn to express political opinions in virtual environments.

Conclusions

Ordinary political conversations, be it a brief exchange of opinions or a serious argument about political matters, became the object of political research because of their effects on political attitudes and activities. Individuals do not live in isolation – the ties that link them to surrounding people have an impact on who they are, what they think and what they do. Social networks, which create possibilities for political conversations, tend to produce more active and better informed individuals. Yet, politicized social networks are not equally distributed. While some individuals do have relations, which allow them talking politics often, others engage in political conversations only occasionally. The increasing accessibility of the internet opens new opportunities to get into contact with potential partners of political discussions.

The data shows, however, that those new politicized ties do not necessarily add new dimensions to the experience of political conversation. People join virtual political discussions because they are eager to encounter more divergent opinions, and not because they want to engage into contested discussions. The same mechanisms of avoidance contestations, which work in offline discussions, take place also in virtual discussions. Opinions are shared not in order to be contested and justified publicly. Political opinion became a private matter revealed under the condition that everyone will respect it, meaning that none will contest it.

As places to practice political conversations, the internet discussion forums or other tools to create content exhibit certain features which have an impact on the effects they may have upon political attitudes and dispositions. Anonymity of virtual discussions allow any individual, no matter how well he is informed, to express opinions, to share rumours, to disseminate information. In real social networks, it is much easier to assess the political expertise of those with whom politics are discussed. In virtual networks, there are no clues to judge in advance, without additional verification, about the quality of political information provided. Consequently, virtual social ties do not function as a resource of political information.

But this does not mean that online political conversations are not relevant. They develop dispositions to political discussions just as well as offline social networks do. We might expect in the future even more intensive (and more diversified in terms of modes of expression) virtual political communication,

as younger people, who are more interested in creative application of new technologies, acquire experiences and dispositions to political discussions. But this leaves us with the question how to ensure the proper quality of such political communication. Proper quality of political discussions is not associated here with the particular rules of rational justification as required by deliberative democrats. Instead, it is associated with the readiness to justify an opinion, if asked, and to ask for justification. However, such orientations towards political discussions seem to be developed in neither offline nor online political conversations.

NOTES

- ¹ To name just a few: Stephen E. Bennett, Richard S. Flickinger and Staci L. Rhine, "Political talk over here, over time", *British Journal of Political Science*, 2000, 30(1), 99–119; Pamela Johnston Conover, Donald E. Searing and Ivor M. Crewe, "The deliberative potential of political discussion", *British Journal of Political Science*, 2002, 32(1): 21–62; Scott D. McClurg, "The electoral relevance of political talk: Examining disagreement and expertise effects in social networks on Political participation", *American Journal of Political Science*, 2006, 50(3): 737–54; C. J. Pattie and R.J. Johnston, "It's good to talk: talk, disagreement and tolerance", *British Journal of Political Science*, 2008, 38(4): 677–699;
- ² James S. Fishkin, *Democracy and Deliberation*, New Haven: Yale University Press, 1991; James Bohman, *Public Deliberation: Pluralism, Complexity and Democracy*, Cambridge: MIT Press, 1996; Jon Elster, ed., *Deliberative Democracy*, Cambridge: Cambridge University Press, 1998.
- ³ Lynn M. Sanders, "Against deliberation", *Political Theory*, 1997, 25(3), 354–359; Nick Crossley, "On systematically distorted communication: Bourdieu and the socio-analysis of publics", in Nick Crossley and John Michael Roberts, eds., *After Habermas: New Perspectives on the Public Sphere*, Blackwell Publishing, 2004, 88–112.
- ⁴ Richard Posner, "Smooth sailing: Democracy doesn't need deliberation day. If spending a day talking about the issues were a worthwhile activity, you wouldn't have to pay voters to do it", *Legal Affairs*, January/February 2004 (access on the internet: http://www.legalaffairs.org/issues/January-February-2004/feature_posner_janfeb04.msp).
- ⁵ Conover, Searing and Crewe, "The Deliberative Potential of Political Discussion", 61. It is interesting to note that analysis of on-line political discussions is usually concerned with the quality and deliberative nature of such discussions. See Davy Janssen and Raphael Kies, *Online Forums and Deliberative Democracy: Hypotheses, Variables and Methodologies*, e-Working Papers 2004/01, Geneva: E-Democracy Center, 2004.

- ⁶ Pattie and Johnston, “It’s good to talk”, 677-699; McClurg, “The Electoral Relevance of Political Talk”, 737–754.
- ⁷ McClurg, “The Electoral Relevance of Political Talk”, 738.
- ⁸ Pattie and Johnston, “It’s good to talk”, 677–699;
- ⁹ Bennett, Flickinger and Rhine, “Political Talk Over Here, Over Time”, 99-119.
- ¹⁰ McClurg, “The Electoral Relevance of Political Talk”, 748.
- ¹¹ Inga Vinogradnaite, “Viešosios erdvės: apie politinio mąstymo įpročių”, in Rūta Žilukaitė, Ainė Ramonaitė et al., *Neatrasta galia: Lietuvos pilietinės visuomenės žemėlapis*, Vilnius: Versus Aureus, 2006, 140–157. A similar conclusion was reached by Conover, Searing and Crewe who analyzed the factors inhibiting deliberative discussions in Great Britain and USA, see Pamela Johnston Conover, Donald E. Searing and Ivor M. Crewe, “The Deliberative Potential of Political Discussion”, *British Journal of Political Science*, 2002, 32(1): 21–62.
- ¹² For the distinction between “public settings” and “private settings”, see Conover, Searing and Crewe, “The Deliberative Potential of Political Discussion”, 29–33.
- ¹³ Survey of Lithuanian population, conducted in 2001, revealed that only 20% of respondents had ever used the internet, of whom around 59% used it once per week or more often (12% of all respondents). See Marius Povilas Šaulauskas, *Skaitmeninės Lietuvos profiliai*, Vilnius: Vilniaus universiteto leidykla, 2001, 74–75. In survey conducted in 2008, 40% of all respondents reported they used the internet once per week or more often. For the description of survey, see ft. 15.
- ¹⁴ Seong-Jae Min, “Online vs. face-to-face deliberation: Effects on civic engagement”, *Journal of Computer Mediated Communication*, 2007, 12(4): article 11.
- ¹⁵ Representative survey of Lithuanian population “Information sources” was administered in March 27–April 3, 2008 (N=1009) by the Center of Public Opinion and Market Research “Vilmorus” on bequest of Vilnius University as part of the project “Democracy in knowledge society: analysis of challenges and possibilities”. More information about the project is available at <http://www.e-demokratija.lt/>.
- ¹⁶ An in-depth interviews were conducted to study the situation of civil society in Lithuania. 54 interviews, based on a semi-structured questionnaires, were conducted: 18 with inhabitants of a small Lithuanian town, 16 with community leaders of that town, and 18 with inhabitants of Vilnius. The analysis of these materials was published in Rūta Žilukaitė, Ainė Ramonaitė et al., *Neatrasta galia: Lietuvos pilietinės visuomenės žemėlapis*, Vilnius: Versus Aureus, 2006.
- ¹⁷ On different measurements of political talk, see C.J. Pattie and R.J. Johnston, “It’s good to talk: talk, disagreement and tolerance”, *British Journal of Political Science*, 2008, 38(4): 677–699; Stephen E. Bennett, Richard S. Flickinger and Staci L. Rhine, “Political talk over here, over time”, *British Journal of Political Science*, 2000, 30(1), 99–119.
- ¹⁸ Referred further to as “high private discussants”: this group includes respondents who reported they talked once per week or more often or once per month with their family members and/or friends.

- ¹⁹ Referred further to as “high public discussants”: this group includes respondents who reported they talked once per week or more often or once per month with their work fellows and/or neighbours.
- ²⁰ Conover, Searing and Crewe, “The Deliberative Potential of Public Discussions”, 38.
- ²¹ Vinogradnaite, “Viešosios erdvės”.
- ²² See Pippa Norris, *Social Capital and ICTs: Widening or Reinforcing Social Networks?*, Presented at the “International Forum on Social Capital for Economic Revival” held by the Economic and Social Research Institute, Cabinet Office, Japan in Tokyo 24–25 March 2003; John A. Bargh and Katelyn Y.A. McKenna, “The Internet and Social Life”, *American Journal of Psychology*, 2004, 55: 573–590; Anita Blanchard and Tom Horan, “Virtual Communities and Social Capital”, *Social Science Computer Review*, 1998, 16(3): 293–307; Sonia Liff, “Local Communities: Relationships between ‘real’ and ‘virtual’ social capital”, in *Communities and Technologies 2005: Proceedings of the Second Communities and Technologies Conference*, Milano 2005, Springer Netherlands, 2005, 41–53; Sara Ferlander, *The Internet, Social Capital and Local Community*, Thesis submitted for the degree of Doctor of Philosophy at the University of Stirling, 2003.
- ²³ Sara Ferlander, *The Internet, Social Capital and Local Community*, 108.
- ²⁴ Cass R. Sunstein, *Republic.com*, Princeton: Princeton University Press, 2001.
- ²⁵ Jonathan Bishop, “Increasing participation in online communities: A framework for human–computer Interaction”, *Computers in Human Behavior*, 2007, 23: 1883–1885.
- ²⁶ Ibid.
- ²⁷ Sara Ferlander, *The Internet, Social Capital and Local Community*, Thesis submitted for the degree of Doctor of Philosophy at the University of Stirling, 2003: 81.
- ²⁸ Barbara K. Kaye and Thomas J. Johnson, “A web for all reasons: uses and gratifications of internet components for political information”, *Telematics and Informatics*, 2004, 21(3): 197–223.
- ²⁹ See Conover, Searing and Crewe, “The Deliberative Potential of Public Discussions”, 58.
- ³⁰ Respondents were asked to evaluate their attitudes towards participants of virtual discussions on a 10-point scale where 1 was for “people on the Internet tend to pretend, to defend opinion which is not their own” and 10 was for “people on the Internet usually write what they really think”. The mean of evaluations by regular contributors was 7.31, by regular lurkers 6.64, by occasional participants 6.66.
- ³¹ Respondents were asked to evaluate their attitudes towards participants of virtual discussions on a 10-point scale where 1 was for “there is a large difference between what people speak in public and what they anonymously write on the internet” and 10 was for “people on the internet write the same what they speak in public”. The mean of evaluations by regular contributors was 3.62, by regular lurkers 4.19, by occasional participants 4.15.
- ³² Respondents were asked to evaluate their attitudes towards participants of virtual discussions on a 10-point scale where 1 was for “people usually do not tend to change their opinion, it is impossible to persuade them” and 10 was for “people are ready

to listen, to seek for agreement and to change opinions”. The mean of evaluations by regular contributors was 4.59, by regular lurkers 5.14, by occasional participants 4.54.

³³ Bennett, Flickinger and Rhine, “Political Talk Over Here, Over Time”, 99–119.

³⁴ Respondents were asked to identify the name from the list of Minister of Foreign Affairs, Speaker of the Seimas, Minister of Education, President of the Supreme Court, Chairman of the Board of the Bank of Lithuania. Respondents were also asked whether the Constitution allows President to direct decisions of judges in court cases. Correct answers were coded as 1 and incorrect or don’t know answers as 0. Higher scores indicate better political knowledge.

³⁵ The following questions were listed: questions related to the distribution of the budget of local government; questions related to public transport of the town in which the respondent lives; questions related to foreign policy; questions related to domestic policies (distribution of social benefits for unemployed). Positive answers were coded as 1 and negative or don’t know answers as 0; then the answers were summed up. The respondent could score from 0 to 4.

RELIGIOSITY WITHIN MODERN DISCOURSES OF CIVIL DISOBEDIENCE

William Payne

Abstract. In Western modernity, civil disobedience has been re-conceived away from the dramatic Greek view of an individual appealing to a “higher law” which transcends obedience to the secular law. Now, within many liberal perspectives, the problem of civil disobedience is subsumed within the larger problem of political obligation in which all citizens in a democratic state are required to obey some laws which are in violation of an individual’s conscience but with a democratic twist. The liberal political addendum is that while civil disobedience is an illegal form of protest it is often guided by constitutional ideals, such as extending basic political rights to those who are unfairly denied them. Moreover, from a democratic perspective, civil disobedience is envisaged as an extra-institutional form of collective action involved with the crucial process of establishing laws that freely include the view-points of all actively engaged citizens. In this article, I will describe the strengths of both the liberal and democratic discourses of constitutional civil disobedience but I will also argue that they share a common failure to adequately address religiosity which still affects the theory and practice of modern civil disobedience.

Introduction

John Rawls stirred political philosophy from its dogmatic slumbers with the publication of “A Theory of Justice” in 1971. The decade of the 1960’s, the period during which Rawls wrote the manuscript, was rife with serious and intractable political conflicts in the US. Abroad, the US was embroiled in a devastating and unpopular war in Vietnam whose constitutionality was challenged by critics. Domestically, the 1960’s witnessed the emergence of a powerful, non-violent civil rights movement that attempted to racially desegregate the US cities of Albany, Georgia, and Birmingham, Alabama by introducing non-violent civil disobedience methods articulated by Martin Luther King Jr.

Two years prior King's assassination in 1968, Rawls presented the first of his two treatments on civil disobedience, "A Justification of Civil Disobedience" and later "A Theory of Civil Disobedience" within his opus "A Theory of Justice." Rawls's insightful articles show a subtle progression of thought, but they demonstrate a continued struggle to reconcile examples of successful civil disobedience, such as King's non-violent civil disobedience struggle with Rawls's own theory of civil disobedience. However, King's example of civil disobedience, based in natural law and influenced by Gandhian ideals of non-violence, represents an approach Rawls cannot fully dismiss nor fully embrace. Moreover, Rawls struggles to articulate an adequate theory of civil disobedience that could accommodate both the civil rights and the anti-war movements of the 1960's, and it leads him away from the two principles that justify civil disobedience in his original article towards a third condition whose conceptual terrain was explored more rigorously by Jurgen Habermas.

The various displays of civil disobedience during the era also left traces in the works of Habermas. Habermas, along with his contemporary Rawls, has been one of the most important political philosophers of the late twentieth century. Habermas's philosophical mission has been to reorient German philosophy away from radically subjective accounts of autonomy and reviving aspects of it through its own rationalistic traditions. Simultaneously, he maintains a spirit of openness to other philosophical orientations, such as American Pragmatism, such as Mead's social psychology and other disciplines, such as Weberian sociology.

During the late 1960's, Habermas witnessed the emergence of a domestic, German civil right movement in which some students turned aggressively "left" and flirted with violence to achieve their political demands. In "Student Protest in the Federal Republic of Germany" (Habermas, 1968) Habermas analyzes the basis of this movement, criticizes the students' facile "actionism" and links it to "neo-anarchism." Along with others, Habermas contrasts the legitimacy of the anti-war and civil rights movement in the US to what was occurring among students in Germany (Arendt, 1969).

In Habermas's major works, "Theory of Communicative Action Vol. 1 and Vol. 2" he attempts to develop validity justifications for the objective, the social, and the subjective life-worlds (Habermas 1984, 1987). His notion of discourse ethics appropriate the appropriate validity standard for norms in the

social world and attempts to reconstruct normative legitimacy through actual inter-subjective discourse. However, one can also interpret the normative orientation of discourse ethics as a historically specific non-violent philosophical response to the political violence espoused by some in the civil rights movement in Germany. His theory of discourse ethics simultaneously eschews the political violence countenanced under certain leftist ideologies, such as Maoism, embraced by some German students, but provides a non-Marxist normative basis for social criticism, social reconstruction, and social integration.

Habermas's own approach to civil disobedience is problematic because of an unresolved tension between discourse ethics non-violent moral dimension within his social theory. Whereas Rawls's approach to civil disobedience can be charged with a failure to recognize what Charles Taylor describes as moral sources outside the subject through languages that resonate within him or her (Taylor, 1989). However, among the other contributions of discourse ethics is the idea that it is only through actual rather than simulated discourse can arrive at the principles that underlie our democratic practices and norms.

Habermas's notion of discourse ethics can be interpreted as highly compatible with Gandhi's theory of non-violent conflict resolution but without reliance upon Gandhian metaphysics.¹ The affinity between discourse ethics and Gandhian non-violence has been noted by others but not properly explained by them (Pantham, 1986).² Habermas's discourse ethics can be presented as Kantian moral philosophy stripped of its transcendental metaphysics and rearticulated through inter-subjective communicative rationality. The Gandhian critique of civil society has many points of convergence with Habermas's own critique of modernity, including an opposition to: 1) the scientization of politics, 2) the secularization of politics and ethics, 3) possessive individualism, and 4) the notion that "sovereignty" mediated through representatives is detached and problematic. But the larger question is: Does discourse ethics really incorporate all the essential aspects of Gandhi's notion of civil disobedience, or Satyagraha? I will argue that is neither Rawls's liberal nor Habermas's democratic approach to non-violent civil disobedience is theoretically adequate

Neither the liberal nor the democratic approach to civil disobedience can be properly called a "theory" of civil disobedience capable of empirical

falsification (Popper 1962). I will therefore refer to Rawls's liberal approach and Habermas's democratic approach as systematic arguments or "discourses." First, I will start with Rawls's liberal discourse of civil disobedience, which emphasizes the protection of individual rights against democratic majorities. Next, I will then sketch Habermas's democratic discourse on civil disobedience, which emphasizes the extra-institutional requirement of forming democratic laws which have inclusive normative validity – not just a coercive capacity and the ability of civil disobedience actors to bring suppressed moral issues into the public arena (Cohen, Arato 1994).

Overview of a Liberal and a Democratic Discourse on Civil Disobedience

Within the liberal discourse, civil disobedience is often conceived as a special case justified law-breaking contained within the general problem of democratic political obligation in which a citizen is expected to obey all democratically enacted laws, including those to which the individual does not fully consent within the state. This approach has been developed in a variety of guises by a wide range of theorists, including Martin Luther King, Ronald Dworkin, Michael Walzer and Hannah Arendt. The most brilliant liberal version is by John Rawls who argues that the "democratic dilemma" between respecting majority rule and protecting the rights of a dissenting minority is an inevitable problem for all constitutional democracies.

In "A Theory of Justice" Rawls's theory of civil disobedience functions within a neo-Kantian social contract theory of political obligation to reassert a natural duty to resist injustice against the excesses of majority rule, even when that democracy is based upon a moral theory of justice.³ Yet, this approach has its critics, including Hannah Arendt, who dismisses Rawls's de-ontological moral as just another misguided "higher law" justification of civil disobedience. However, even she accepts the liberal conclusion that civil disobedience can be legitimately used to force federal courts to use judicial review to overturn individual rights violations by unconstitutional local and state laws (Dworkin, 1985).

Alternatively, Jurgen Habermas re-conceives of civil disobedience as a special case of forming legitimate democratic political consensus in times of

severe economic, social or political crisis. Habermas's normative account of deliberative democracy emphasizes that legality without inclusive, normative validity undermines the legitimacy of democratic law – which cannot exclusively be based upon its Weberian coercive capacity⁴. From this democratic perspective, civil disobedience is involved with the unending democratic process of trying to establish normatively valid law that freely includes the viewpoints of all willingly engaged citizens.

Habermas's characterization of civil disobedience suggests that it occurs in episodic emergency situations. However, other democratic theorists argue that civil disobedience is more than an infrequent democratic stop-gap measure. For them, civil disobedience is perpetually involved with dynamically re-drawing the boundaries between ethics and justice from within civil society inspired by reference to utopian principles of constitutional democracies (Cohen, Arato 1992).

The hurdle for normatively justifying civil disobedience is challengingly high because civil disobedience is an illegal political act that often violates the democratic principle of majority rule. As a result, democratic theorists tend to emphasize that, despite its illegality, civil disobedience may sometimes contribute to making democratic laws which more fully include the intensely felt views of those citizens who want to be heard but are often unable to effectively influence politics through standard channels of influence which are often distorted in favour of the privileged few.

From a democratic perspective, civil disobedience inevitably occurs within constitutional democracies because our social norms continually attempt to evolve from within civil society into new political norms that seek formal recognition and equal protection. Civil disobedience is a means to publically express these “subjugated discourses” within civil society by attempting to take issues from the private dimensions of life-world into the public sphere. Alternatively, from a liberal perspective, democratic majorities everywhere will inevitably enact legislation which is in violation of some individual rights. Civil disobedience is needed to extra-institutionally help redress these democratic excesses.

Martin Luther King and his Non-Violent Civil Disobedience Campaign

The case that challenges liberal and democratic theorists of civil disobedience is Martin Luther King Jr. and his non-violent civil disobedience movement in the US during the 1960's. This is the case becomes the template for justified civil disobedience, but its systematic justification is complicated because King's own profound self-understanding of civil disobedience is not easily reconciled within the works of his most ardent admirers and supporters. Within King's conception of non-violent civil disobedience, religious discourses play a central role of justification. Gandhi's religious theory of non-violent civil disobedience looms large and directly influenced the formulation of King's radically different form of civil disobedience described in Martin Luther King's "Letter from Birmingham Jail" (King, 1963) which also retrieves an older discourse of normativity based in natural law while promulgating an ecumenical understanding of modern Christian theology that speaks to its own diverse spiritual traditions and simultaneously recognizes more distant religious influences in modernity.

Although Martin Luther King's use of non-violent civil disobedience during the civil rights movement accords with these liberal theorists' intuitions about a compelling case of justified civil disobedience, it is nonetheless problematic for them. Systematically justifying King's non-violent civil disobedience actions is challenging for these liberal theories of civil disobedience because it relies upon a variety of religious discourses – both modern and pre-modern which are at odds with their own modern, secular discourses of civil disobedience.

A Rawlsean Sketch of Civil Disobedience

In "A Theory of Justice", John Rawls sketches a "Theory of Civil Disobedience" designed to illustrate the content of "natural duties" (Rawls, 1971). This original theory has a limited scope and applies only to the "special case" of a nearly just society which is well ordered, features a democratic regime, but has "serious violations" of justice occurring within it. Rawls envisages the problem of civil disobedience as a conflict of duties among citizens, even when these citizens acknowledge the legitimacy of the constitution. In some cases, the

laws created by the majority are in violation of a minority's liberties. Thus, a minority of citizens are sometimes obliged to submit to an unfair law and yet have a simultaneous duty to oppose it. For Rawls, the problem of civil disobedience is a "crucial test case for any theory of the moral basis of democracy." However, the legitimacy of the state is also strained under this condition. The state's problem, as Thomas Nagel succinctly puts it, is the legitimate use of coercion. He writes: "The real problem is how to justify making people do things against their will" (Nagel, 1987).⁵

Rawls's brilliant but inadequate account of a "constitutional theory civil disobedience" has obvious limits. First, his theory does not attempt to describe the historical genealogy of "civil disobedience." It provides no historical analysis of its Western roots in both the drama of Sophocles' "Antigone" through Plato's philosophical works, such as "Crito" and "Apology". Second, Rawls's theory is not systematically linked to its modern elucidation in Thoreau's essay "On Civil Disobedience" (Thoreau, 1849) and onto Martin Luther King's "Letter from Birmingham Jail" (King, 1963). For our purposes, the primary usefulness of Rawls's sketch is that it provides an initial set of three requirements that a constitutional theory of civil disobedience should address. He does not claim that his conditions are exhaustive, but only that they are necessary to start developing a theory.

Let us recapitulate his requirements. First, Rawls argues that a theory of civil disobedience must define this form of dissent and differentiates it from other forms of opposition to democratic authority. Rawls defines civil disobedience as "a public, non-violent, conscientious, yet political act contrary to law, usually done with the aim of bringing about a change in the law or policies of the government."⁶ He then makes the important distinction between "civil disobedience", which relies upon a public conception of justice, and "conscientious refusal", which may rely upon other conceptions, such as religious doctrines at odds with the constitutional order. This distinction foreshadows a similar, but even more significant, differentiation between public "reasonable comprehensive doctrines" and private "comprehensive doctrines" in Rawls's later work "Political Liberalism" (Rawls, 1993).

Second, a theory of civil disobedience must set out the conditions under which civil disobedience can be legitimately used. Rawls limits the justified

use of civil disobedience to three conditions: “serious infringements” of the first principle (i.e. the principle of liberty), a “blatant violation” of the second part of the second principle (i.e. the principle of fair equality of opportunity), and an ill-defined third condition which is not formally derived from the principle of justice identified within “A Theory of Justice.”

This theoretically interesting third condition extends the conditions under which one can justifiably use civil disobedience beyond the scope of liberal theories which usually emphasize that civil disobedience may occur “defensively” when there are serious violations of individual rights by the state (Dworkin, 1985). Rawls briefly describes this third condition as a systematic failure of civic communication that justifies the use of civil disobedience.⁷ However, this theoretically exogenous condition is provocative but undeveloped. Philosophically, it may suggest themes of distorted communication developed more rigorously by Habermas in his “discourse ethics” than by Rawls in “A Theory of Justice.” The conceptual affinity of Rawls’s third condition for justified civil disobedience to ideas within Habermas’s discourse ethics was not missed by him. In his article, “Civil Disobedience: Litmus Test for the Democratic Constitutional State” Habermas elucidates his own position (Habermas, 1985).

Finally, Rawls argues that a theory of civil disobedience must explain the role of civil disobedience within a constitutional system and account for the appropriateness of this form of expression within a democracy. His concern is that an inadequate theory, which indiscriminately justifies any pretext for civil disobedience, may create perverse incentives that lead to social chaos and undermine stability. Rawls writes: “It [civil disobedience] invites anarchy by encouraging everyone to decide for himself, and to abandon the public rendering of political principles.”⁸ According to Marxist historian Howard Zinn, who rejects the idea that civil disobedience needs to be non-violent, it is no accident that the legislative victories of the civil rights movement in the US simultaneously engendered a new congressional definition of a “riot” to suppress other forms of political activity (Zinn, 1995).

However, one can detect an evolution in Rawls’s thoughts on civil disobedience. Before publishing his sketch of civil disobedience in “A Theory of Justice”, Rawls wrote an article called “The Justification of Civil Disobedience” (Bedau, 1969). While this article has much in common with the sketch

of civil disobedience developed in “A Theory of Justice” it differs in important ways. In this earlier article, Rawls identifies two rather than three principles for assigning rights, duties, and allotting distributional shares. These initial two principles of justice are well-known as the first and second principles of justice which Rawls mentions but does not derive until “A Theory of Justice.” In “The Justification of Civil Disobedience” Rawls makes no mention of the third condition of distorted communication that also justifies acts of civil disobedience.

Arguably, this third condition emerged later in his “sketch” of a theory of civil disobedience as Rawls struggles to develop a theory of civil disobedience that could justify the use of civil disobedience directed against US foreign policy in its unconstitutionally “undeclared” war in Vietnam and “secret” bombing of Cambodia. Although the civil disobedience used in the civil rights movement could be justified by reference both to the first principle (i.e. the principle of liberty) and the second part of the second principle (i.e. the principle of fair equality), neither of these conditions could justify the use of civil disobedience to protest against the war in Vietnam. Rawls’s subsequent third condition, which emphasizes communicative openness, is related to the Kantian notion of “publicity” and seems to justify civil disobedience in this later case.

A Shared Normative View: Civil Disobedience as Litmus Test of Democracy

Rawls and Habermas concede that civil disobedience is an important litmus test for democratic legitimacy, but why each fails to articulate a more developed discourse of civil disobedience is puzzling. My intuition is that one underlying problem for both Rawls and Habermas is the unresolved tension between natural law theory, Gandhism and a contemporary discourse of civil disobedience. Although each thinker defines the problem slightly differently, they raise the issue: Do contemporary discourses of civil disobedience successfully obviate the need for any reference to religious discourses?

Rawls cannot include Martin Luther King’s justification of his civil disobedience campaign as a form of justified civil disobedience because of its connection to natural law which cannot be accommodated within his theory of civil disobedience. His version of a theory of civil disobedience seeks to avoid

religious establishment by not endorsing what he later calls “comprehensive doctrines.” If the state endorses one religion over others than it violates formal equality by giving one perspective a special status among others that cannot be normatively justified. Rawls therefore redacts exogenous normative references from his constitutional theory of civil disobedience that might appear to endorse a particular religious perspective. Thus, in “A Theory of Justice”, he categorizes such normative expressions as laudable forms of “conscientious refusal”, but not a possible basis for civil disobedience which must be based in a universally shared theory of justice, and abruptly marshals them out of his theory. However, it means that the theory itself is unstable in terms of “reflective equilibrium”, because it does not accord with strong intuitions about King’s justified and successful use of civil disobedience to secure civil rights during the 1960’s.

For Habermas, religiosity in the public sphere presents a slightly different and more complex problem. Constitutional democracies must manage to confront ossified forms of meaning offered by reactionary religious fundamentalists and antiquated natural law arguments while redressing the loss of meaning resulting from the eclipse of legitimating world-views that were both universalistic and exclusive. Constitutional democracies now must provide alternative grounds for political legitimacy in the aftermath of modernity’s “disenchantment”, but modern democracies must simultaneously avoid reducing politics to the sterile liberal proceduralism alleged by communitarian critics (Taylor, 1992). In modernity, natural law arguments are anachronistic because they are grounded in a pre-conventional stage of moral development and therefore useless as a source of legitimacy (Habermas, 1987).

Rawls’s Evasion of Religiosity and Civil Disobedience

Rawls’s inattention towards his nascent theory of civil disobedience in “Political Liberalism” is no accident. Within his “sketch” of civil disobedience in “A Theory of Justice” conceptual fault lines are aggravated if a more rigorous theory of civil disobedience is systematically pursued. Thus, rather than re-working aspects of his theories to accommodate a revised theory of civil disobedience, he stops developing the theory of civil disobedience. Rawls implicitly admits to us that his account of civil disobedience is inadequate by describing it as a “sketch.”

Rawls's failure to develop this constitutional theory of civil disobedience more fully within the political conception of justice articulated in "Political Liberalism" is also highly problematic (Rawls, 1993). Within a political account of justice, there is an even more urgent need to develop a constitutional theory of civil disobedience to explain how within a pluralistic, democratic society in which citizens hold irreconcilable world-views, a democracy does not ineluctably slide into violent conflict, bitter intolerance, and anarchy. Arguably, the philosophical terrain of a theory of civil disobedience would shift from a conflict between natural duties in a moral theory of justice to a democratic dilemma between majority rule and minority rights in a political theory of justice. Yet, despite the thematic links I have suggested, Rawls does not elucidate his theory of civil disobedience while he renders a political conception of justice as an "overlapping consensus" among "reasonable comprehensive doctrines." In fact, Rawls never mentions his constitutional theory of civil disobedience in "Political Liberalism."

One might argue that Rawls decided not to mention his theory of civil disobedience because it was not particularly significant. However, this position is not tenable. If developing the theory were unimportant, Rawls would have not raised the issue, started developing it as a proto-theory, and described it as a "crucial test case" for democratic legitimacy. Thus, Rawls's subsequent reticence towards his own theory of civil disobedience raises more unanswered questions.

In "Political Liberalism" Rawls suddenly makes an important distinction between an "exclusive" and an "inclusive" view of public reason that has significant bearing on his theory of civil disobedience sketched in "A Theory of Justice." He now distinguishes between an "exclusive view" which requires that public reason exclude any explicit reference to "comprehensive doctrines" and an "inclusive view" which may include them provided they encourage citizens to honor the ideal of public reason. Thus "public reason" may include expressions of comprehensive doctrines, but only if they encourage the use of public reason.⁹ This redefinition of public reason should entail an entire reconsideration of his theory of civil disobedience, but Rawls does not undertake it.

However, in a footnote, Rawls indicates that Martin Luther King's non-violent civil disobedience struggle illustrates the need for modifying his

account of public reason. In “Why We Can’t Wait,” Martin Luther King described his understanding of civil disobedience, the conditions under which civil disobedience can be justified, what it attempts to achieve, the problem of anarchy, and the selection of an appropriate method to achieve its ends. King explicitly invokes a “natural law” argument to buttress his justification for civil disobedience. A “natural law” justification for civil disobedience was initially dismissed as “conscientious objection” by Rawls. Yet, Martin Luther King’s leadership, philosophy, and actions are always in the “margins” of Rawls account of civil disobedience. They are never discussed in the main text, only in a footnote where, Rawls admits, “I have not begun to cover the complexities of this question.”¹⁰

Rawls’s revised notion of public reason in “Political Liberalism” directly relates to the rigidity of the earlier distinction between “civil disobedience” and “conscientious refusal” presented in his theory of civil disobedience in “A Theory of Justice.” I suspect that Rawls realizes an “exclusive view” of public reason, assumed in his theory of civil disobedience, which would exclude King’s example of civil disobedience as well as any natural law basis of political action. His civil disobedience theory is inadequate because it is suited to accommodate only secular justifications of civil disobedience advanced by individuals, such as King’s contemporary and president of Amherst College, John William Ward who also protested against US involvement in the Vietnam war and who advocated for civil rights for African-Americans but on the basis of arcane aesthetic theory and political grounds.¹¹

Rawls’s early distinction between “civil disobedience” and “conscientious refusal” almost renders his approach to civil disobedience untenable. Without expanding the scope of public reason from an “exclusive” to an “inclusive” version, a theory of civil disobedience is not able to accommodate King’s successful civil disobedience actions, the actual US constitutional practices that supported them, and the normative theory of justice that inspired these civil rights activists. However, Rawls chooses not to develop the implications of an expanded understanding of inclusive public reason into a reformulated theory of civil disobedience in “Political Liberalism.” Instead of confronting the implications of his revision of public reason, he evades this problem.

At first blush, the revision of the limits of public reason seems to open up a new set of rich theoretical possibilities that were previously unavailable

within the initial theory of civil disobedience developed within his moral theory of justice. One such important possibility is articulating a “natural law” approach to a theory of constitutional civil disobedience within a political context that “honors” the ideal of “inclusive” public reason. While a “natural law” approach to a theory of civil disobedience seems incongruous in the context of “A Theory of Justice,” it might be possible to develop it within the context of “Political Liberalism.” However, the theoretical problem of developing a liberal, political account of civil disobedience runs still deeper.

In his first article, “A Justification of Civil Disobedience”, Rawls explains why his sketch of civil disobedience is interpolated within his theory of justice. He introduces a “stage theory” to explain the normative progression from a theory of justice to a justification of constitutional civil disobedience. He argues that one starts with a theory of justice. The social contract is a hypothetical device to simulate agreement among all rational citizens about the principle of justice derived from the original position and the epistemic constraints imposed by the veil of ignorance which make us deliberate in a disinterested fashion.

Next, given a different set of epistemic constraints imposed on citizens by Rawls, these hypothetical citizens must freely convene a constitutional convention to construct a constitution consonant with the two principles of justice. Finally, the citizens must use a legislative body to enact laws inspired by the principles of justice and consistent with the formal procedures of their constitution -- which was itself derived from the two principles of justice.

The residual problem is that when majority rule operates and majorities sometimes pass legislation inconsistent with the principles of justice, such as passing laws which violate the civil rights of minorities. Therefore, at best, one can only achieve an “imperfect procedural justice” in a constitutional democracy guided by a shared normative understanding of the principles of justice (Bedau, 1969). However, because citizens have a shared normative sense of justice and a practical realization that there is only an imperfect democratic procedure to realize it, they therefore have legitimate grounds to countenance limited acts of civil disobedience which are consistent with the common sense of justice. In this scheme, there is a low risk of undermining the rule of law itself in constitutional democracies. In other words, for Rawls these citizens may legitimately object to specific democratically enacted laws which violate

the individual rights of some citizens by appealing to the collective sense of justice, which is shared. On occasion, citizens may use civil disobedience in important cases as a legitimate normative expression to redirect politics towards the shared norms of justice after all other political options have been sufficiently explored.

The political system can continue to legitimately regulate behaviour since each of the stages is logically linked and integrated with the prior stage by extending the normative consensus of justice through each subsequent stage. Yet, each stage is further removed from the construction of justice in the original position. Respect for the institution of law itself is maintained despite a systemic awareness that cases of injustice will arise. Paradoxically, Rawls believes that civil disobedience used judiciously actually increases social stability by regulating an imperfect procedural justice closer to its own principles of justice.

Rawls does not attempt to develop his “stage theory” of civil disobedience within “Political Liberalism.” The reason might be that if citizens no longer share a normative conception of justice, then Rawls’s “stage theory” fails to function properly. If instead of a shared idea of justice we can only achieve an “overlapping consensus” of “reasonable comprehensive doctrines”, then there can be no reliable guide to selecting a constitution compatible with agreed upon principles of justice and no assurance that laws will be inspired by justice or procedurally consistent with a just constitution. Consequently, the two principles of justice used to justify the introduction of civil disobedience might need to be re-justified after having been cut from the moorings of justice in “A Theory of Justice.”

Habermas probes the normative weakness in the Rawlsean idea of moral validity of justice and dismissively characterizes it as a lucky convergence of reasonable worldviews whose moral components only happen to overlap. Habermas argues that an overlapping consensus appears to be a compromise but without the mutual normative understanding among citizens.¹² Although Rawls contends he is not a radical “contextualist”, such as Richard Rorty, an overlapping consensus appears to be nothing more than a *modus vivendi* rather than a thoughtful, public consensus or a normatively significant compromise. Without a shared conception of justice, it is hard to politically justify why citizens should comply with laws which violate their conscience – although

they might have private incentives to comply with these laws, such as wanting to avoid punishment for violating laws. However, if citizens violate laws which they deem unjust, should they accept punishment for these violations?

Habermas's Sublation of Religiosity and Civil Disobedience

Whereas Rawls uses evasion, one could interpret Habermas to have already incorporated a non-violent normative dimension into the construction of his theory of communicative action that does not rely upon a religious perspective. Rawls notes that Habermas's theory of communicative action imports the Hegelian doctrine of "logic" in the broadest sense -- "a philosophical analysis of the presuppositions of rational discourse which includes within itself all the apparent substantial elements of religious and metaphysical doctrines."¹³

King's practice of non-violent civil disobedience carried by television stations around the world would have also provided Habermas with a successful, practical alternative to endogenous, German understandings of praxis. Witnessing these events through the media underscored the importance of how communication affects the formation public opinion in the public sphere and highlighted how a minority's access to effective public communication must be safeguarded for democratic legitimacy. Moreover, the civil rights movements in both countries showed law based solely upon its coercive capacity or derived from the aggregate sum of each individual pursuing his "private autonomy" is socially distorting and normatively inadequate.

Habermas describes the democratic dilemma of balancing majority rule and minority rights, which is a central challenge to a theory of civil disobedience, within a larger historical context. His discussion of "popular sovereignty" and "human rights" directly relates to an account of civil disobedience as a conflict between "majority rule" and "minority rights."¹⁴ However, Habermas focuses mainly on the genealogy of these concepts as democratic norms and the challenge for continually reanimating these norms in modernity. He describes "human rights" and "popular sovereignty" as political residue left over from anachronistic religious and metaphysical doctrines which are then later appropriated by republican and liberal traditions, respectively.

However, the idea of non-violence Habermas uses in his definition of civil disobedience has already been transformed from its connection to religious context of natural law and generates a new form of legitimacy from within

the specific workings of his discourse ethics. Indeed, the basis to justify the democratic ideals of “popular sovereignty” and “human rights” has already changed and must continue to evolve. His approach confirms the Weberian thesis of an ineluctable decline of religious and metaphysical world-views yet permits us to simultaneously reanimate these important normative aspects in open, reflexive practices in modern, constitutional democracies.

Habermas argues that social norms need to be re-legitimized by actual discourse in reflexive, inclusive procedures in modern constitutional democracies. Thus, his discussion of one dimension of the crisis of our democratic norms of “human rights” and “popular sovereignty” is also an indirect treatment of the conflict between minority rights within a majority rule relevant to a liberal discourse of civil disobedience. The discussion of the need to re-legitimize these essential democratic norms in modernity begins to help us to understand the role Habermas might envisage civil disobedience to perform.

Habermas believes that modern democracies therefore require “constitutional patriotism” -the capacity to reflexively renew their constitutional missions, to provide their own internal sources of legitimacy, and to forge resilient forms of civic identity. Through this interpretation of Habermas, it is possible to begin to view civil disobedience as a stabilizing force related to the mission of reviving political legitimacy through “constitutional patriotism.” However, one can also understand “constitutional patriotism” as responding to the specific post-war German need to legitimizing a constitution that was imposed upon them in the aftermath of war after the fact through actual discourse.

Despite Rawls’s silence in “Political Liberalism”, Habermas does not drop the subject of civil disobedience from his purview. Habermas concurs with Rawls that civil disobedience is a litmus test of the legitimacy of a constitutional democracy. He defines it as a non-violent, symbolic, and illegal form of protest, undertaken with the intention of appealing to the formal institutions of the state, and a normative consensus among the public (Habermas, 1985). His interest in the topic was rekindled in the aftermath of the West German government’s foreign policy decision to base US Pershing II nuclear missiles on its territory which ignited protest from within the peace movement. Exploring this debate, Habermas continues to develop his democratic discourse of civil disobedience.

His objection to the German government's decision to base US missiles in Germany is derived from the precepts of his discourse ethics. His principle argument is that the decision to allow the US Pershing missiles on German territory was normatively invalid because it was rendered without sufficient communication between the active players, such as the German government and members of the German peace movement, and others affected by it. For Habermas, such issues are a test of communicative rationality, which attempts to create conditions of political legitimacy by achieving inter-subjective understanding among engaged citizens within a democratic state against an open and ideal communicative situation in which only the force of the better argument determines the outcome of the dispute.

The abrupt manner in which the political decision was made by the German government indicates it did not meet the necessary communicative conditions for fully testing the validity of these norms to base the US missiles in Germany. Therefore, since the political process did not freely include all those affected by these norms who desired to participate in a mutual dialogue, it cannot be judged as a valid decision. In this sense, it was *legitimus interruptus*, and civil disobedience was justified to protest the hasty violation of communicative rationality required by Habermas's theory of deliberative democracy (Habermas, 1985).

For Habermas, civil disobedience is a "guardian of legitimacy" in constitutional states in which forms of private autonomy often undermine the conditions of public autonomy required for communicative freedom that underlies his theory of deliberative democracy (Habermas, 1985). However, Habermas realizes that in itself a theory of civil disobedience raises two moral problems within a democracy. First, its illegality appears to undermine the status of law itself and hence the capacity of law to regulate the behavior of all citizens. Second, by contesting the outcome of legitimate constitutional decision making procedures, civil disobedience contests the fundamental principle of majority rule in arriving at public decisions through elected legislatures. Habermas's response is to emphasize that civil disobedience may appear to undermine both the functional stability provided by law and challenge majority rule, but it provides what is also crucial for the functioning of a modern constitutional democracy: reflexive, inclusive, and un-coerced *political legitimacy* based upon communicative freedom.

In “Between Facts and Norms” Habermas returns to the theme that civil disobedience is justified when there are conditions of seriously distorted communication in a constitutional democracy which closely resembles Rawls’s third condition (Habermas, 1998). Habermas addresses civil disobedience as the functional possibility that in moments of crisis actors can reverse the “normal circuits of communication” in the public sphere. Habermas describes civil disobedience as a “last means for obtaining more of a hearing and great media influence.”¹⁵ However, Habermas never makes clear how this “informal” channel of communication and potential source of democratic legitimacy is related to his theory of discourse ethics and deliberative democracy.

Habermas and Supererogatory Moral Actions

Habermas’s work on civil disobedience is profound but also enigmatic. He defines civil disobedience as a non-violent, symbolic, and illegal form of protest undertaken with the intention of appealing to the formal institutions of the state, and a normative consensus among the public (Habermas, 1985). Although he is seriously interested in the topic of civil disobedience and both discourse ethics and deliberative democracy seem logical places where he could have developed a specific sketch of civil disobedience, Habermas always seems reluctant to fully engage with the issue of civil disobedience. However, some prominent liberal theorists resist the ethos of his democratic account of civil disobedience.

Habermas defended the German peace activists’ use of civil disobedience, but liberal theorist Ronald Dworkin repudiates Habermas’s justification for the activists’ appropriation of the civil disobedience discourse. Although Dworkin accepts both the liberal and democratic arguments for civil disobedience, he argues that this policy dispute is neither an issue of formal political justice nor subjective conscience and therefore not an appropriate issue for civil disobedience. Dworkin argues that this protest was based upon an unprincipled, subjective argument against policy. He also repudiates the activists’ use of “non-persuasive”¹⁶ tactics which he calls “civil blackmail.”¹⁷ He observes that most of the protesters did not characterize a majority seeking to advance its interests over the rights of a minority but that the majority choose wrongly from a “common standpoint” of its own interests¹⁸.

Habermas disagrees with Dworkin's characterization of their justification of civil disobedience. Others argue that Dworkin misses the communicative goal of the actual protest in Germany (Cohen, Arato 1994). Although there was no clear consensus about the democratic legitimacy and moral validity of the German government's foreign policy, Habermas's normative defence of this civil disobedience protest addresses these empirical facts. This case appears to stretch the normative justification of civil disobedience clearly beyond liberal criteria of protecting minority rights into a subtle debate about a further object domain appropriate to a democratic justification for civil disobedience and the range of tactics appropriate for non-violence.

Habermas's argument is that his government's decision, putatively based upon a slim majority of support in public opinion, to allow the US Pershing II missiles on German territory was normatively invalid because it was rendered without sufficient communication among the German government, members of the German peace movement, and other actively concerned German citizens. For Habermas, such issues are a test of communicative rationality, which attempts to create conditions of political legitimacy by achieving inclusive, inter-subjective understanding among citizens within a democracy in a communicative situation in which only the force of the better argument determines the outcome of the dispute.¹⁹

The abrupt manner in which the political decision was made by the German government indicates that it did not meet the necessary communicative conditions for fully testing the validity of these norms to base the US nuclear missiles in Germany among concerned citizens. Therefore, since the political process did not freely include all those who wanted to be involved, and all those affected by these norms in an open, mutual dialogue for the political decision, it cannot be judged as a valid moral-political decision. In this sense, it was *legitimus interruptus* and civil disobedience was justified to protest the hasty violation communicative rationality required in Habermas's theory of deliberative democracy²⁰. For Habermas, civil disobedience is a "guardian of legitimacy" in constitutional democracies in which forms of private autonomy often undermine the conditions of public autonomy required for communicative freedom (Habermas, 1985).²¹

However, Habermas acknowledges that a theory of civil disobedience raises two moral problems within a democracy. First, its illegality appears to

undermine the status of law itself and hence the capacity of law to regulate the behaviour of all citizens. Second, by contesting the outcome of legitimate constitutional decision-making procedures, civil disobedience contests the fundamental principle of majority rule in arriving at public decisions through elected legislatures. Habermas emphasizes that civil disobedience may appear to undermine the functional stability provided by law and challenge majority rule, but it provides what is also crucial for the functioning of a constitutional democracy: reflexive, inclusive, and un-coerced *political legitimacy* based upon communicative freedom. Habermas describes civil disobedience as a “last means for obtaining more of a hearing and great media influence.”²² But why does Habermas not develop a systematic democratic discourse on civil disobedience?

Arguably, Habermas articulates such a robust notion of legitimate communication under variable conditions in the public sphere that one could argue he avoids the need to develop a more explicit theory of civil disobedience to protect the voices of a democratic minority.²³ Thus, his reticence towards an explicit theory of civil disobedience might result from a confidence that its important normative elements are already fully sublated within his discourse ethics. In some of his earlier works, there is a hint of utopianism that suggests that discourse ethics properly instantiated in a democracy could obviate the unruly practice of civil disobedience (Thomassen 2007).

Cohen and Arato give an alternative but compelling interpretation that Habermas’s differentiation among action spheres, with different validity standards, is uniquely able to accommodate “resource mobilization theory”²⁴, “political-process model”²⁵, identity models of collective action, as well as a “discourse-based” form of normatively-based communicative collective action, might be the basis of a broadly differentiated theory of the diverse motives behind collective actors who engage in civil disobedience.²⁶ They develop an explicit democratic discourse of civil disobedience from within Habermas’s discourse ethics in which the pursuit of a collective identity replaces the elucidation of generalizable interests (Cohen, Arato 1994).

Within a nearly just society, they describe civil disobedience as an unending process of “self-limiting” radicalism in which citizens in civil society attempt to collectively redraw the boundaries between private, subjective ethics and public, inter-subjective justice by forcing a re-conception of democratic

constitutional law. Cohen and Arato attempt to construct a democratic justification of civil disobedience on a conceptual and normative level, but their reading of Habermas, which inspires their chapter on civil disobedience, is not connected to a strong *non-violent* theory of civil disobedience. It is more description than prescriptive and includes references to union actions, which were violent, that also involved civil disobedience. Cohen and Arato's dynamic interpretation of civil disobedience is as a form of collective political action which redraws the political boundaries between public justice and private morality through a variety of political means which is not limited to non-violent means (Cohen, Arato 1994). But if Habermas's notion of political legitimacy can be interpreted as a form of non-violent conflict resolution highly compatible with Gandhi's own theory of non-violent conflict resolution but without reliance upon Gandhian metaphysics, then who is right?

There is an alternative account for Habermas's reticence towards articulating a discourse ethics of non-violent civil disobedience: a theory of non-violent civil disobedience presents a "boundary question" for Habermas²⁷ that even discourse ethics cannot address: "supererogatory" moral action. From a liberal perspective, this problem was already discerned by Dworkin who senses an "injustice" committed against civil disobedience actors, especially non-violent actors, who can be legally punished by the state for violating laws that might even later be deemed as unconstitutional.

The justification of punishment is especially problematic because if civil disobedience can be justified as an expression of a minority group's political right (or a "natural duty" in Rawlsian terms) to disobey some democratic laws inconsistent with natural liberties, then it is unclear how the state can legitimately impose a penalty for such actions. From a liberal perspective, Dworkin therefore advocates reducing its *formal* "costs" by reducing legal penalties imposed against these activists. He also argues there should be only minimal legal punishments against this type of moral, political behaviour as determined by the *informal discretion* of judges.²⁸

One could interpret Habermas to envisage a different moral basis of non-violent civil disobedience because it has a different relation to normativity than the normative basis of discourse ethics. Thus, there may be a "self-limit" internal to discourse theory in which it cannot morally justify those moral actions required of Gandhian non-violent civil disobedience. To put it

another way, discourse ethics is universal in the sense that it “justifies” moral actions inter-subjectively, re-inventing Kant’s categorical imperative for discursive norms in the social world. But discourse ethics is not the exclusive and exhaustive source of individual morality or profoundly significant moral action for us.

In particular, it does not account for all those behaviours in the “life-world” which exceed the boundaries of what one could rationally expect of others implied in the communicative “meta-norm” of symmetrical reciprocity, which is a precondition of all rational discourse in the social world. Whereas discourse ethics tries to articulate the presuppositions of rational communication free from distortion as a practice-transcendent goal which we work towards to make our political decisions morally valid, Gandhi’s notion of Satyagraha, or non-violent civil disobedience, works fearlessly under those exploitative conditions of discrimination even when there are distortions of prestige, influence, and the exercise of violence towards a peaceful transformation of conflict. In some cases, when arguments fail to persuade, the Gandhian civil disobedience activist reluctantly accepts receiving unwarranted violence rather than administering against others because it initiates a dynamic which may further social justice.

Discourse ethics is a public, inclusive, non-coercive, and rational form of reciprocal norm evaluation, but it may not be designed to justify the validity claims of “supererogatory” actions, such as a non-violent civil disobedient actor who is involved in a deeply important cause, which exceed the demands of what one could rationally expect of others in the social world. For example, in the case of non-violent civil disobedient actors, if there is a high risk of police brutality, or gratuitous legal penalties, not all those who are affected by the moral norm to be inter-subjectively tested, but who support the validity of the aspirations, would be reciprocally willing to risk so much for the political cause.

From this perspective, discourse ethics therefore does not fully sublimate all desirable aspects of normativity, some of which are expressed in life-world relationship which cannot be captured by the process of discourse ethics, such as in a parent’s self-sacrifice for a child, or the Gandhian conception of non-violent self-sacrifice for a just cause. Gandhi’s non-violent civil disobedience makes an additional moral demand of its practitioners which exceeds

the “meta-norm” of communicative symmetrical reciprocity. From, a liberal perspective such actions would tend to be characterized as irrationally “self-exploitative” and represent an unfair social exchange. This Gandhian perspective therefore takes an individual’s expressions of “supererogatory” moral conduct and its collective form of non-violent mass civil disobedience actions, beyond both the ken of most readings of discourse ethics and liberal rights theory.

This form of normative collective, political action of self-sacrifice may fall between the analytical grids of Habermas’s conceptual scheme (Taylor, 1898). If this interpretation is plausible, it could better explain why Habermas has never developed a theory of civil disobedience or fully explained its democratic role. Arguably, Habermas can be charged with “conservatism” because he wants to keep those aspects of the “life-world” which produce “supererogatory” moral conduct free even from the “colonization” of any of the three kinds of validity claims, including the claims of discourse ethics.²⁹

One can now observe that Habermas could not fully countenance Gandhi’s philosophy of non-violence, his de-differentiating among the value spheres, and his ideas about “integral democracy.” Whereas they agree on the baleful effects of “scientistic” modernity, the colonization of the moral-political “life-world” by instrumental rationality, Gandhi attempts more than simply rejuvenating moral-political rationality. Gandhi actually attempts to collapse and re-colonize the other two autonomous value spheres making science and aesthetics subservient to it. It is a position which must be repudiated by Habermas in order to remain consistent to the integrity of his own theory (Chatterjee, 1986). Thus, while there is an affinity between Habermas’s discourse ethics and Gandhi’s Satyagraha, we are now in a better position to see their divergent normative trajectories in relation to science, art and modern constitutional democracy.

However, there is more to be learned from Gandhi. He describes his theory of civil disobedience as one branch of the tree of non-violence, in which Satyagraha, the soul-force derived from accepting self-suffering (tapas) non-violently (ahimsa) transforms an unjust situation. From the Gandhian perspective, when there is injustice and a rational dialogue fails, civil disobedience may be used. It requires the practitioner of non-violence to violate the unjust law while willingly accepting the unjust punishment as a consequence of violating the law.

Courageously standing up for one's convictions and accepting punishment rather than doling out more violence is a powerful, non-verbal form of moral communication that ideally allows one to transcend injustices by changing hearts of oppressors and to mobilize public opinion to end political injustice. It does not replace rational dialogue but accepts its limits and attempts to complement it. As indicated, the challenge for liberal and democratic theories of civil disobedience is that Gandhi and King introduce both natural law arguments about universal justice to justify civil disobedience, but also other universal principles, such as the Gandhian ideas of non-violence (*ahimsa*), to explicate the precise methods and goals of civil disobedience.

Yet one need not only rely upon Gandhi's religious discourse to interpret it. The process can be re-described in terms of social psychology, more suited to social theory. Briefly, in order to justify an exploitative relationship with another person, a person must believe in an ideology that "de-humanizes" the other, such as "racism" or "imperialism" (Brehm, 2005). When someone engages in non-violent civil disobedience to protest against an unjust law which has "legality" without "validity" and simultaneously accepts the consequence of violating the law (including unfair punishment), he creates an internal moral dilemma for the oppressor. The oppressor must try to psychologically explain to himself: "Why is this person overriding the biological dictate of either "fighting or fleeing" from the confrontation – which is what I would do?" The non-violent civil disobedient actor who neither violently confronts, nor withdraws, sends a clear intention to non-violently resist oppression but also a commitment to resolve the conflict peacefully in the future.

A "cognitive dissonance" therefore emerges within oppressor who holds a de-humanizing ideology which justifies violence against another person (Baum, 1985). The experience of interacting with a living expression of a non-violent ethic that still seeks mutual cooperation, despite the gratuitous violence, causes "internal ambivalence" within the oppressor's moral beliefs which cannot accommodate this non-violent world-view. For a Gandhian, this existential tension between a deformed and limiting de-humanizing "ideology" of violence, when confronted by the universal "truth of non-violence", begins to cause a crack within the oppressor's ideological armour of violence.

To end on a note of optimism, moral psychologist Kohlberg's gives some empirical evidence to suggest this process of overcoming moral dilemmas

represents an invariant, universal pattern how all of us progress through the various stages of “post-conventional” moral development. Kohlberg’s own conjecture is that a better understanding of civil disobedience is not just crucial for understanding the moral basis of democracy, as Rawls and Habermas believe, but it is necessary to advance our own moral development within the “post-conventional” level assumed by Habermas and Cohen and Arato (Kohlberg, 1981). Thus, a slightly better understanding of King and Gandhi’s theories of non-violent civil disobedience may help us all move tentatively forward on this uncertain but ongoing moral journey.

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NOTES

- ¹ Jean L. Cohen, Andrew Arato, "Civil Society and Political Theory", MIT Press 1992, In Chapter 8, these authors come close to a characterization of discourse ethics as non-violent conflict resolution but they never develop a theoretical connection between discourse ethics and Gandhi's notions of conflict resolution.
- ² I will argue that they are mutually 'isomorphic': Gandhi's conflict theory allows for symmetrical solutions that permit withdrawal, compromise, and transcendence. Habermas's conflict theory within discourse ethics allows for symmetrical solutions that permits withdrawal, compromise, and consensus.
- ³ John Rawls, "A Theory of Justice", Harvard University Press, 1971.
- ⁴ Jurgen Habermas, "Between Facts and Norms", MIT Press, 1998.
- ⁵ T. Nagel, 'Moral Conflict and Political Legitimacy', from *Philosophy and Public Affairs*, Vol. 16, No. 3. Pg. 300-323, Princeton University Press 1987
- ⁶ John Rawls, "A Theory of Justice", Harvard University Press, 1972, p. 320.
- ⁷ John Rawls, "A Theory of Justice", Harvard University Press, 1972, p. 327.

- 8 John Rawls, "A Theory of Justice", Harvard University Press, 1972, p. 341.
- 9 John Rawls, "Political Liberalism", Columbia University Press, 1993, p. 248.
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- 12 Jurgen Habermas, "The Inclusion of the Other: Studies in Political Theory", MIT Press, 1998, p. 83.
- 13 John Rawls, "Political Liberalism", Columbia University Press, 1993, p. 382.
- 14 Jurgen Habermas, "Between Facts and Norms", MIT Press, 1998, p. 94.
- 15 Jurgen Habermas, "In Between Facts and Norms", MIT Press, 1985, p. 382.
- 16 Cohen, Arato "Civil Society and Political Theory, MIT Press 1992. Alternatively, they argue that the peace movement's goal was to spur inclusive dialogue into substantive democratic debate into important issues and areas that resist democratic influence (pg. 586)
- 17 Ronald Dworkin, "A Matter of Principle", Harvard University Press, 1985, p. 114. Dworkin argues both against the use of non-persuasive tactics in "policy-based" civil disobedience cases but also for prosecutorial discretion in cases of civil disobedience.
- 18 Ronald Dworkin, "A Matter of Principle", Harvard University Press, 1985, p. 106. Dworkin re-introduces the idea of a dispute over interests rather than a dispute over opinions, as distinguished by Arendt.
- 19 Discourse ethics validity testing of norms must be made in actual practice and not just in imagined or simulated situations. This position is also a critique of Rawls's approach in "A Theory of Justice."
- 20 One problem with this stand-alone justification is that almost any issue fails to meet the ideal communicative standards of discourse ethics and therefore could justify civil disobedience.
- 21 Arendt argues that civil society has born both modern lobbying groups and civil disobedience. Arguably, Habermas would want to limit the influence of lobbying groups who pursue private autonomy and may undermine public autonomy but realizes these groups have a practical influence today and thereby sanction an informal role for civil disobedience for excluded or marginalized voices of protest.
- 22 Jurgen Habermas, "In Between Facts and Norms", MIT Press, 1985, p. 382.
- 23 Some theorists believe Habermas's account of "social power" is not adequate for a theory of civil disobedience (Bohman 2000)
- 24 Mancur Olson, "The Logic of Collective Action", Cambridge: Harvard University Press, 1973.
- 25 Charles Tilly, Louise Tilly, and Richard Tilly, *The Rebellious Century: 1830-1930*, Cambridge: Harvard University Press, 1975.
- 26 In a theory of non-violent civil disobedience, Habermas may only permit the validity standards appropriate for the social world: discourse ethics. Thus, the diversity of

collective action theories accommodated within his theory of communicative action may not be as useful as one might hope to develop a justification of action within a theory of civil disobedience.

- ²⁷ Jean L. Cohen, Andrew Arato, "Civil Society and Political Theory", MIT Press, 1992 p. 355. They argue that the object domain of discourse ethics is political legitimacy rather than "autonomous individual judgment" and civil disobedience is to be used to dynamically adjudicate the redrawing of boundaries between questions of justice and ethics.
- ²⁸ A "public goods" perspective struggles to maintain the rationality of "supererogatory" moral conduct, such as non-violent civil disobedience actions among diverse associations of citizens, in terms of potential reciprocity of selective incentives over extended time horizons. For example, the civil rights movement was aided by groups who did not share this form of exclusion, such as white Catholics, Jews, Protestants, atheists and others. This collective action theory might attempt to justify the rationality of their involvement as an "insurance policy." The logic would be: If the rights of this group can be denied, then we are also at risk. Therefore, if we are at risk in the future, we would want mutual aid from other groups, similarly situated, so we must aid these excluded groups now in the event of needing future help.
- ²⁹ Nancy Fraser, "What's Critical About Critical Theory? The Case of Habermas and Gender", *New German Critique*, No. 35 (Spring/Summer 1985). The reluctance of Habermas to critique familial relations via discourse ethics seems related to this dispute. For Habermas, it is the family, and especially mothers and women whose "unspectacular, selfless sacrifices, mostly from mothers and women, without which the last moral bond would long ago have been broken in many pathologically distorted societies (and not just there), (Habermas, 2002) Habermas seems to want to keep these sets of relations largely untouched by any kind of validity claims.

**PUBLIC ADMINISTRATION AND
PUBLIC POLICY ANALYSIS**

EXPLAINING INNOVATIONS IN THE LITHUANIAN PUBLIC SECTOR: NEW PUBLIC MANAGEMENT, ADMINISTRATIVE CULTURE AND STRUCTURAL CAPACITIES

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Abstract. The article seeks to assess the main factors explaining innovations in the Lithuanian public sector organisations. The empirical analysis is based on the COBRA survey of the Lithuanian public sector organisations. Our results indicate that the structural capacity is the most important explanation behind organisational innovations: larger organisations are more likely to develop new products and services than small ones. Furthermore, we found that the New Public Management argument does not hold in Lithuania: higher managerial autonomy and incentives for performance do not foster innovations. The assessment of importance of administrative culture yielded mixed results, and more research is needed in this area.

Introduction

During the past two decades, a number of initiatives aimed at modernising or “reinventing” government have proliferated in the established Western democracies as well as in the former post-communist countries of Central and Eastern Europe. The ideal of innovative, flexible, efficient and effective organisations is contrasted with procedural, sluggish, bureaucratic organisations of the 20th century. However, despite an increased academic and public attention to innovations in public organisations, there is a lack of unified “causal theory of innovativeness”¹. Furthermore, large arrays of managerial doctrines have never been tested empirically. Therefore, this article seeks to assess, the factors that explain variations in innovative activities of Lithuanian public sector organisations. We address this issue by empirically testing the importance of three theoretical proposals: the New Public Management (NPM) argument, administrative culture and structural capacities.

The NPM has long argued that introduction of its key principles – higher autonomy and incentives for performance – will enhance the innovativeness of the public sector organisations. This argument is based on a straightforward logic. First, in order to innovate, the managers of public sector organisations should have a high managerial autonomy. Second, there should be strong incentives for the managers to enhance the performance of their organisations by adopting innovations. Such incentives, for instance, could include sanctions and rewards for achieving planned results.

Despite its broad appeal, there are only few empirical tests of this argument. Verhoest, Verschuere and Bouckaert in their study of Flemish public agencies found that higher autonomy and managerial pressure are merely stimulating factors for innovation, while the legitimacy of an organization plays a key role². Læg Reid, Roness and Verhoest found that higher autonomy and control did not translate into innovative behaviour in Flanders and Norway³. The NPM hypothesis however, has not yet been systemically tested in Central and Eastern European countries.

The critics of the NPM theory argue that it ignores the importance of administrative culture in structuring the motivational framework of public administrators. Previous research indicated that countries with the 'Rechtsstaat' tradition experience substantial difficulties in implementing broad-ranging NPM reforms⁴. Hence, the inherited mix of traditional and post-communist culture in Lithuania could be counter-productive for adopting NPM-style innovative products and processes.

Lastly, the new institutionalist literature argues that structural capacities should be considered, when analysing innovations in public sector organisations. The adoption of new processes or the development of new products is associated with high costs. Therefore, one could expect the size of organisation (a proxy for capacities) to correlate with innovations. This proposition proved to be empirically valid in Norway and Flanders⁵.

Innovations in this article are defined as the new products and processes that are considered as innovative by the managers of public agencies. Hence, we focus on the adoption of such new products and processes as long-term performance planning, development of cost calculation systems, e-governance and application of IT, quality management, benchmarking, implementation of the principle of one-stop-shops and others.

Overall, our results indicate that the structural capacities of organisations do correlate with innovations in the Lithuanian public sector. The test of importance of administrative culture provided ambiguous results, and more research is needed in this area. Furthermore, our results indicate that the NPM hypothesis does not hold in Lithuania. There is no empirical relationship between higher autonomy and managerial incentives on the one hand and the adoption of innovative techniques in public sector organisations, on the other hand.

The empirical analysis is based on a survey of public sector organisations (N=98), carried out in Lithuania in 2008. The design of the survey and analysis of the data were based on the COBRA (comparative public organisation data base for research and analysis) methodology⁶. The sample was representative of the Lithuanian public administration system at the central level.

The article is divided into several sections. The first section elaborates the analytical framework and develops the hypothesis. The second section discusses data and methods. The third section presents the main findings of the analysis. The fourth section discusses these findings, and the final section concludes.

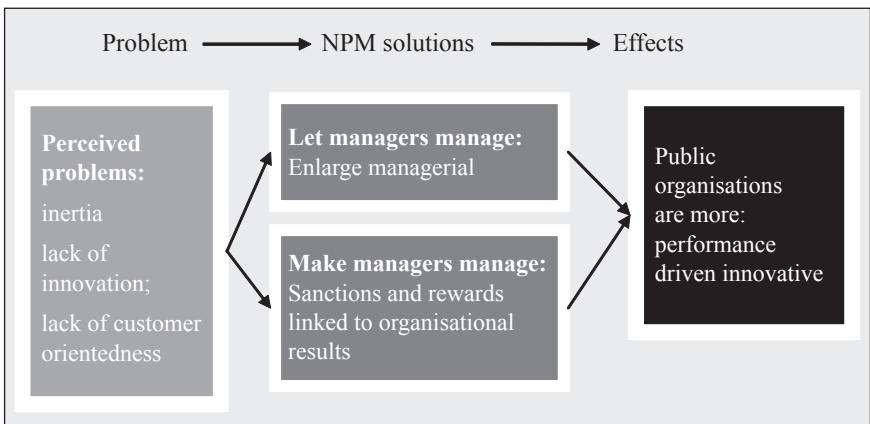
Explaining the adoption of innovative performance techniques

Over the past 20 years, “innovations” have become a buzzword which is used in a wide variety of contexts. However, frequently it is poorly defined. This problem is especially relevant in the analysis of public sector organisations because of the problems related to measuring innovative activities and conceptualising what innovation is. In contrast to inventions, innovations are generally conceived not just as a new idea, but rather as a new practice which has been actually adopted⁷. Hence, in the broadest sense, innovations are defined as “adoption of an internally generated or purchased device, system, policy, program, process, product, or service that is new to the adopting organization”⁸. We further narrow the definition of innovations by focusing on the new products and processes that are considered by the managers of public agencies as innovative. Hence, we focus on the adoption of such new products and processes as long-term performance planning, development of cost calculation systems, e-governance and application of IT, quality management, benchmarking, implementation of the principle of one-stop-shops and others. What factors explain the adoption of these innovations?

The NPM doctrine emerged by offering universal cures for the perceived weaknesses of traditional bureaucracies: inertia, focus on processes and procedures rather than on results and outcomes, low flexibility and adaptability to service the needs of the citizens, high costs of service provision, etc. Therefore, the NPM urges to focus on innovative capacities in fostering the effectiveness (capacity to deliver planned results) and efficiency (capacity to achieve better results with fewer resources) of the public sector⁹. Performance- and innovations-driven behaviour of public agencies in the NPM literature is associated with a wide variety of factors such as delegation, decentralization and deregulation¹⁰, results-based funding and accountability regarding the extent to which planned results were achieved¹¹, adoption of contract-based relationships among agencies, utilisation of competitive market-based mechanisms¹² and strengthening managerial culture among top civil servants. This wide variety of instruments could be grouped under two broad principles: “let managers manage” and “make managers manage” (see Figure 1).

“Let managers manage” refers to structural preconditions for innovations: in order to initiate and provide leadership for innovations, the managers should have a high managerial autonomy. In line with the literature¹³, we distinguish between managerial autonomy and policy autonomy. The former

Figure 1. NPM solutions for more innovative organisations in the public sector



Source: adapted from K. Verhoest, B. Verschuere, G. Bouckaert. „Pressure, „Legitimacy and Innovative Behavior by Public Organisations“, *Governance: An International Journal of Policy, Administration, and Institutions*, Vol. 20, No. 3, 2007, 471.

involves discretion over the choice and utilisation of inputs such as personnel and financial resources. High managerial autonomy provides necessary decision-making powers to the manager to allocate human and financial resources to the development and adoption of innovations. The policy autonomy refers to the extent to which an organisation chooses policy instruments to achieve its objectives.

Managerial autonomy should create the means for innovations, but it is not sufficient to foster innovations. Therefore, the second principle – “make managers manage” – refers to a system of managerial sanctions and rewards which are based on the organisations’ results. It could be expected that high *ex post* control of achieved results should put pressure on managers to adopt innovations in order to increase performance.

The above discussion leads to the formulation of the following hypothesis:

H1: Higher autonomy and the existence of a system of sanctions and rewards are correlated with the adoption of innovative performance techniques.

Critics of the above NPM approach argue that it ignores a wide range of contextual factors¹⁴. In particular it ignores the importance of administrative culture which could be crucial when the NPM “travels” to the East from Anglo-Saxon countries. The academic literature has strongly argued that in the continental European countries (with the ‘Rechtsstaat’ tradition) it is hard to implement broad-ranging NPM reforms¹⁵. Similarly, Lithuanian case studies have also found that the adoption of performance management and the development of innovative culture in Lithuania as a post-communist country are problematic due to the traditional public administration system which is based on the strict following of legal and procedural regulations¹⁶. Therefore, it could be expected that an inherited mix of traditional and post-communist culture could be counter-productive for adopting NPM-style innovative techniques, copied from the West and Anglo-Saxon countries in particular.

Traditional administrative culture could be counterproductive to innovations because it emphasises legality, procedural decision-making, hierarchy and specialisation. Innovations require the emergence of administrative culture characterised by such values as risk taking, experimentation, creativity and innovations. Therefore, we hypothesise that:

H2: The extent to which administrative culture is innovation-oriented correlates with the adoption of innovative performance techniques.

Another way to contextualise innovations is to focus on the age of public sector organisations. It could be argued that older organisations tend to represent traditional and post-communist culture, while innovation-friendly managerial culture could be expected to be found in younger organisations. In fact, previous research has found that path-dependency rather than internal or external shocks (e.g. the EU accession) is the most important factor in explaining the autonomy and control of Lithuanian public sector organisations.¹⁷ On the other hand, research on Flanders and Norway indicates that organisational age was important in explaining innovation in public sector organisations.¹⁸ Nevertheless, we shall assess the importance of institutional “stickiness” by hypothesising that:

H3: Younger public sector organisations established in the 1998–2008 period will develop more innovative products and services compared to older organisations established before 1998.

Finally, in addition to the factors of autonomy, incentives and culture, it is important to analyse the structural capacity of public sector organisations to innovate. The importance of organisational capacity was recognised in the new institutionalist literature.¹⁹ In addition to stable institutions to guarantee democracy, the rule of law and respect for human rights, a functioning market economy, the administrative capacity to undertake the obligations of the EU was recognised as one of the conditions of EU membership.²⁰ Moreover, the comparative research found the structural capacity as a very important factor in explaining innovation in Norway and Flanders (both the staff and budget size of agencies).²¹ In this article, the structural capacity to innovate will be analysed by using two main measures: the staff and budget size. Our fourth hypothesis is as follows:

H4: Large (in terms of staff and budget) organisations will adopt innovative performance techniques more extensively compared to small organisations.

The next section discusses methods for testing our hypotheses.

Data and methods

We propose to test the above hypotheses on the basis of data generated by the survey of managers of public sector organisations. The main feature of surveys is that they portrait subjective perceptions of the respondents. This is particularly important in the context of the present study, because the majority of our variables do not permit exploration of their “real” or “actual” values. For instance, the system of sanctions and rewards could be hypothetically assessed by analysing the legal acts. However, this would not indicate to what extent the managers of public organisations feel the threat of sanctions or, alternatively, to what extent they anticipate to be rewarded in the case of good performance. Hence, the capacity of surveys to capture perceptions of respondents is, in our case, superior to the analysis of legal acts, which could only indirectly indicate the framework of incentives faced by the managers.

The survey of public sector organisations (N=98) was carried out in Lithuania in 2008. The design of the questionnaire and analysis of the data were based on the COBRA (Comparative public organisation data base for research and analysis) methodology²². A representative sample of organisations included 263 respondents. This encompasses 106 public institutions regulated by the public law, 147 public organisations regulated by the private law, and 10 state-owned enterprises. Due to the low response rate, at the end of the survey we received 98 responses. However, this is representative of the Lithuanian public administration system at the central level. About 69% of the public sector organisations that which answered the questionnaire, were state budget institutions, about 18% were public non-profit institutions and about 9% state-owned enterprises. The remaining organisations, that participated in the survey were foundations, non-governmental organisations and other types of public organisations. A vast majority of respondents were directors or deputy directors of public sector organisations.

We used data from the survey to construct an index for each of our dependent and independent variables. In the previous section, we defined managerial autonomy as the extent to which an organisation can take decisions regarding its personnel, financial resources and choose policy instruments to achieve its objectives. The autonomy in terms of personnel management includes two

dimensions. First, it is the extent to which an organisation without interference from a higher jurisdiction (minister or sponsoring department) can take decisions regarding general rules for setting the level of salaries, conditions for promotion, evaluation, appointment and downsizing of personnel. This type of autonomy is called strategic personnel management autonomy captured by the SPA 1 index. Second, it is the extent to which an organisation can independently take decisions regarding the level of salary, promotion, evaluation, appointment and dismissal of specific employees. This type of autonomy is called operational personnel management autonomy captured by the OPA 1 index. The financial management autonomy relates to the extent to which, in its overall budget, an organisation can shift between personnel and running costs as well as between personnel or running costs on the one hand and investments on the other. This type of autonomy is captured by the FA 2 index. Furthermore, autonomy in terms of the choice of policy instruments is defined as the extent to which an organisation can independently choose its policy instruments (subsidies, etc.). This type of autonomy is captured by the POINST index.

The second independent variable – the existence of sanctions and rewards – assesses whether there are rewards in the case of good results or the achievement of goals/targets (captured by REWARDS) and whether there are sanctions in the case of bad results or failure to achieve goals or targets (SANCTIONS). The existence of sanctions and rewards is also measured by the composite SAREW index.

The third independent variable examines the main features of administrative culture. An index of innovation culture (CULTINNO) was constructed to assess the pertinence of such values as innovation, risk taking, experimentation and creativity. The fourth independent variable concerns organisational age (AGE) as a specific characteristic of administrative culture. It is measured in terms of the date of establishment of the Lithuanian public sector organisations by dividing them into two groups (organisations established before and after 1998).

The fifth independent variable is the staff size of the Lithuanian public sector organisations (STAFFSIZE). Small organisations are defined as employing less than 50 staff (36 organisations in the COBRA data sample of 68 organisations), medium-size organisations – 50–199 staff (22 such organisations), and large organisations – more than 200 staff (only 10 organisations).

The sixth independent variable is the budget size of the Lithuanian public sector organisations (BUDGETSIZE). Small organisations are defined as having budgets below Eur 1.16 mill. (25 organisations in the COBRA data sample of 60 organisations), medium-size organisations – the budgets in the range of Eur 1.16–7.24 mill. (23 organisations), large organisations – above Eur 7.24 mill. (only 12 organisations). The breakdown of these organisations reflects that in terms of staff and budget Lithuanian public sector organisations are small.

The main dependent variable – adoption of innovative practices – is captured by the extent to which organisations use the following innovative techniques and methods: long-term performance planning; special human resource management instruments (competence management, result-based pay, etc.); improvement of internal management processes; impact assessment of draft decisions; e-government and the application of IT; performance assessment and monitoring; development of cost-calculation systems; review and simplification of legal acts; involvement of private persons in the provision of infrastructure or services; commissioning research and other analysis; publishing performance reports; participation of stakeholders; quality management; surveys of the customer's satisfaction; benchmarking; the principle of one-stop-shops. The extent to which these practices are adopted is captured by the INOV index which provides a mean of the answers to the questions regarding the adoption of innovative practices and techniques.

Findings of the analysis

This section of the article seeks to explain the main factors behind the adoption of innovative performance techniques based on the hypotheses raised in the first section. First, in line with the NPM argument, higher managerial autonomy and managerial incentives should lead to the adoption of innovative techniques. Second, the adoption of innovative techniques could be linked with administrative culture. The latter could impose path-dependent limits on the degree of innovation in public sector organisations. Hence, one of the variables seeks to analyse the importance of administrative culture in fostering innovations. The other variable seeks to assess the impact of culture indirectly, by analysing the importance of organisational age in explaining innovations. Third, innovation in the public sector could depend on the structural capacity

of the public sector organisations with larger organisations being more innovative. The outputs of the correlations between these variables are provided in Tables 1 and 2.

Table 1 indicates that the first hypothesis is not confirmed: higher autonomy and existence of the system of sanctions and rewards are not correlated with the adoption of innovative performance techniques. This implies that the NPM argument does not hold in the Lithuanian case.

Table 1. Outputs of correlations among the degree of autonomy, system of incentives and the adoption of innovative performance techniques

	<i>SPAI</i>	<i>OPAI</i>	<i>FA2</i>	<i>POINST</i>	<i>REWARD</i>	<i>SANCTION</i>	<i>SAREW</i>	
Kendall's INOV tau_b	Correlation coefficient	-.035	.183	-.005	-.092	.202	.100	.166
	Sig. (2-tailed)	.702	.065	.966	.365	.053	.337	.103
	N	68	69	54	58	66	66	64

*. Correlation is significant at the 0.05 level (2-tailed).

**. Correlation is significant at the 0.01 level (2-tailed).

Source: the analysis of the COBRA data, 2008.

On the other hand, Table 2 indicates that there is a weak correlation between the type of administrative culture and the adoption of innovative performance techniques. However, these results are not highly statistically significant. Therefore, more research is needed to test the second hypothesis. In addition, there is no empirical support to argue that innovations are affected by organisational age. Therefore, the third hypothesis is not correct.

Table 2. Outputs of correlations among innovative culture, organisational age, staff and budget size and the adoption of innovative performance techniques

	CULTINO	AGE	STAFF SIZE	BUDGET SIZE	
Kendall's INOV tau_b	Correlation coefficient	.208*	.182	.301**	.243*
	Sig. (2-tailed)	.017	.073	.002	.019
	N	68	69	68	63

*. Correlation is significant at the 0.05 level (2-tailed).

**. Correlation is significant at the 0.01 level (2-tailed).

Source: the analysis of the COBRA data, 2008.

However, there is a strong statistical relationship between the personnel size of the Lithuanian public sector organisations and the adoption of innovative performance techniques. A weaker statistical relationship was found between the budget size of the Lithuanian public sector organisations and the adoption of innovative performance techniques. These findings imply that larger (in terms of budget and especially staff) organisations are definitely more active in developing innovative products and services in the Lithuanian public sector. Therefore, the most important factor behind innovative behaviour is the structural capacity of the Lithuanian public sector organisations.

Discussion

What are the implications of these findings? First, our results indicate that the attempts of the NPM doctrine to “travel” to the East faced substantial difficulties. The NPM argument, which was presented in this article, is based on the attempts to model the behaviour of rational agents who seek to maximise their utility. More specifically, it was argued that managers with substantial managerial autonomy and under pressure to perform will seek to maximise their utility (gain rewards or avoid sanctions) by fostering innovations. Such logic is based on several implicit assumptions: a) innovations are crucial for performance; b) sanctions and rewards are linked with the achievement of objectives rather than with other factors. It is easy to see that both of these assumptions are rather shaky.

Previous research about performance management in Lithuania found that Lithuanian organisations deliver and usually exceed planned results owing to the overly pessimistic planning of targets²³. Since the failure to achieve a set target triggers the need to explain perceived lack of performance, the managers are setting their targets intentionally low in view of increasing the changes of their achievement above 100 percent. Furthermore, the second implicit assumption of the NPM argument does not necessarily hold in the administrative culture of traditional and post-communist nature. If the core values of administrators feature legality (the discharge of functions within the limits set by the legal acts) and hierarchy, it is unlikely that sanctions and rewards will be intimately linked with the capacity to adopt

innovations. Therefore, it is highly feasible that the dominance of legalistic and post-communist administrative culture plays a key role in hindering bottom-up innovations. Our data set, however, did not allow us to fully test this hypothesis.

The importance of the structural capacity behind innovative behaviour in the Lithuanian public sector could stem from two interrelated factors. The small size of the Lithuanian public sector organisations is the first factor clearly constraining their innovative activities. From the communist system, Lithuania inherited a rather fragmented institutional structure which became even more structurally disaggregated during the EU accession process. According to the previous COBRA-based research, a combination of the EU's influence and the lack of domestic organisational reforms explain this uncontrolled proliferation of agencies in Lithuania.²⁴ Since the adoption of quality management techniques often involves additional workload²⁵, only larger organisations are capable of applying such models as the Common Assessment Framework. All five central-level agencies, which applied this quality management model in Lithuania by the end of 2008, were large or medium-sized agencies. Therefore, the correlations between the adoption of innovative techniques and the structural factors (organisational size in terms of staff and budget) reflect a weak innovative performance in smaller organisations.

Second, the fact that the larger organisations are more active in adopting innovative performance techniques points to the importance of an innovation infrastructure at the agency level. The quality and quantity of human resources is an important part of this infrastructure. For instance, the application of quality management techniques requires not only a strong leadership from the top and good team work, but also intensive facilitation by specially designated quality managers. It is much easier for larger organisations to finance the costs of innovations by recruiting such quality managers or procuring innovation-support services from the market.

However, we are aware that innovative behaviour of larger organisations could also stem from a bigger and more complex mix of administrative tasks. Therefore, further research is needed to explain the reasons behind the adoption of innovative techniques in larger organisations.

Conclusions

This article sought to assess the factors that explain variations among Lithuanian public sector organisations in adopting innovations. We have found that the structural capacity of organisations is the most important factor in explaining their innovative behaviour. More specifically, our findings indicate out that the larger organisations (in terms of size of the budget and number of employees) are more likely to adopt innovations. Our findings are consistent with the results of the comparative research which focused on Flanders and Norway²⁶.

Assessment of the importance of administrative culture provided ambiguous results. While innovative administrative culture correlates with the index of innovations, this result is not very significant statistically. Furthermore, there is no relationship between innovations and the age of organizations, which we used as a proxy for old-style administrative culture. This implies that further research is needed in this area.

Lastly, we have found that the NPM argument (higher managerial autonomy and performance-related incentives lead to innovations) does not have empirical support in Lithuania. We speculate that the NPM argument does not hold in Lithuania for several reasons. First, due to deficiencies in the strategic planning system, pessimistic targets set for the public organisations do not provide incentives for innovation and performance. Second, the inherited mix of legalistic and post-communist administrative culture hinders innovation. However, we have not enough empirical data to fully test these hypotheses.

These findings have several important implications for policy makers. First, our results indicate that small public sector organisations are not likely to develop innovative products or processes. We argue that this is the result of insufficient structural capacities. This finding should be interpreted cautiously because it is a probabilistic rather than law-like generalisation. However, it indicates that further research should aim at assessing the impact of structural capacities on the performance of Lithuanian public sector organisations. If the size does have an impact on performance, a consolidation of public sector organisations should be considered. The new Lithuanian government has already proposed a merger of some smaller organisations into larger entities.

Second, our results indicate that the NPM argument, despite its popularity in the current policy circles, does not have empirical support in Lithuania. Hence, any attempts to introduce NPM-based managerial frameworks should take into consideration the type of administrative culture and the actual incentives faced by the managers in the public sector.

The article was prepared under the COST action No. ISO601 “Comparative Research into Current Trends in Public Sector Organization (CRIPO)”.

NOTES

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**INTERNATIONAL RELATIONS
AND EURO-ATLANTIC
INTEGRATION PROCESS**

AN OVERVIEW OF LITHUANIA'S FIVE-YEAR MEMBERSHIP IN THE INTERNAL MARKET OF THE EUROPEAN UNION: PRE-ACCESSION EFFORTS, IMPACT AND CURRENT TRENDS

Saulius Kolyta and Darius Žeruolis

Abstract. The overview of Lithuania's five-years membership in the internal market of the European Union was written with three aims in mind, namely to review Lithuania's pre-accession efforts, to discuss the current deepening of the EU internal market, and to analyse data on the impact of the internal market on the economies of the EU member states, including the case of Lithuania. The deepening of the internal market is discussed mainly through the case study of the Services Directive which was the flagship EU post-enlargement initiative in this area. The debate around this directive and its impact are in the focus of this overview.

The article argues that the membership in the internal market of the European Union brought an important additional stimulus for growth to the relatively small and open economy of Lithuania. It brought motivation and pressure to modernize also its public administration. Lithuania's long-term economic growth is intrinsically dependent on its further integration to the EU's internal market and emerging opportunities to continue modernization of the Lithuanian regulatory system, improvement of the business environment, reducing the administrative and bureaucratic burden and creating a more effective public sector. The first quantitative calculations (in 2007) of the membership contribution to the growth of Lithuanian economy show that the impact of membership has led to an economic growth by 2.7 percentage points higher than in the no-membership scenario. This impact has been twice higher than forecasted by an *ex ante* assessment in 2002. The share of membership of the internal market and free trade in this additional GDP growth is 1.8 percentage points.

The authors argue that the negotiations on the draft Services Directive were one of the key positive elements of Lithuania's post-enlargement EU policy. Although Lithuania favoured a more ambitious scope of the directive contained in the first proposal of the European Commission, even the adopted 'trimmed' text is an important step forward as it opens new opportunities for Lithuanian and European services providers and should help them to recover after the economic crisis.

Economic benefits of the membership in the EU internal market were among the main driving forces for Lithuania's membership in the EU because of the new opportunities to its citizens and businesses. These opportunities are especially important for small and very open economies. Looking back at the pre-accession efforts, the adoption of the EU *acquis communautaire* in the area of internal market provided a short-cut access for Lithuania to the legal system of the Community which had been developed and fine tuned during decades. Similarly, joining a large market of highly developed economies has created proper foundations for Lithuania's long-term sustainable economic growth and competitiveness as well as convergence of living standards to the levels of the European Union. EU initiatives are useful not only because they aim at deepening the integration in the area of the internal market, but also because they provide incentives to further modernize the regulatory system and improve the business environment, reduce the administrative burden and bureaucratic obstacles and stimulate a more efficient public administration. Lithuania is taking advantage of the use of the EU structural funds to improve its manufacturing sector and upgrade its human capital stock. These funds also provide opportunities to modernise transport infrastructure so as to meet Lithuania's economic demands and needs of international trade links, as well as energy infrastructure which should ensure physical connectivity with the EU grids and security of energy supply.

(1) Lithuania's preparation for membership in the internal market of the European Union

The history of Lithuania's rapprochement with the European Union and its subsequent rapid integration into the structures of the European Union is well known and documented.¹ For the purposes of this overview, it could be briefly repeated that the road to the internal market was paved by the free trade agreement between Lithuania and the EU in 1994, which provided for a significant reduction or total abolition of a trade tariffs between the two parties. The provisions of this treaty were transferred to the Association (Europe) Agreement between Lithuania and the EU, which was signed on 12 June 1995 and entered into force on 1 February 1998. In addition to the above-mentioned tariff reduction and abolition, the Association Agreement aimed at legal harmonization. In other words, by signing this agreement Lithuania

committed itself to taking over the legal and institutional provisions of the EU regulatory system in many fields of public policy and to a gradual implementation of these provisions.

A definition of the internal market of the European Union is necessary as integration into the Union and its internal market are obviously the overlapping but not identical processes². In geographical terms, the internal market of the EU is an area which is governed by the rules of internal market. In terms of the public policy, the internal market is understood as four fundamental freedoms of the Community (free movement of goods, persons, services and capital) and related public policy areas (such as, for example, company law, public procurement, intellectual property rights, competition policy) which are directly related and needed in order to ensure the smooth functioning of the four freedoms³. After creating the economic and monetary union, common currency (euro) and common monetary policy are playing an increasingly important role in shaping the economic integration.

It is important to note that during the pre-accession period many important differences between Lithuania and the EU did exist not only in terms of the content of the regulatory policy, but also in applying the notion of internal market policy as it is understood in the EU. Law approximation during the pre-accession period had been primarily focused on the transposition and enforcement of the sectoral directives which implied the prevalence of sectoral approach in policy making and the development of administrative capacities. Without a consistent and uniform understanding of the horizontal nature of the internal market policy and the complexity of its scope, the institutional building-up process and the coordination of implementation of internal market policy had been complicated for a long time⁴. Therefore, it was not a coincidence that the European Commission in its regular reports on the candidates' readiness to become EU members singled out creation of administrative structures for the implementation of the EU internal market policy as a priority in developing administrative capacity for the membership in the European Union.

During 1999–2001, in Lithuania a real breakthrough in legal harmonization when it adopted the fundamental laws and amendments to the existing laws regulating the internal market. Unlike the first laws in independent Lithuania in the early nineties, which were drafted to fill in the vacuum of regulation, these laws consciously transposed the EU norms. In parallel, a

set of new regulatory institutions (formulating policy and/or implementing it) was established or the existing ones were strengthened, such as Competition Council, Communications Regulatory Authority, State Data Protection Inspectorate, State Non-Food Products Inspectorate, Lithuanian Standardisation Department, National Accreditation Bureau and many others. The functional responsibility for the formulation of internal market policy in certain specific areas was attributed to the ministries of Economy, Finance, Transport and Communications, and Environment.

The rationalization of management and modernisation of the contents of the public policy to a certain extent were also a response of the Government to the impact of the Russian crisis on Lithuania. The Government understood that transposition and implementation of EU norms and other policy recommendations, in other words, accelerated pre-accession efforts would be the shortest way in managing the impact of the crisis on the Lithuanian economy. However, the biggest impetus for the preparation for EU membership, including the internal market, was provided by the start of the membership negotiations. The remaining part of this chapter provides a synopsis of the main issues during negotiations and the implementation of EU norms in the internal market during the pre-accession period.

The most complicated issue in the area of the internal market was negotiations in the chapter of free movement of capital and more specifically, liberalisation of the sale of agricultural land in Lithuania, especially for EU citizens. In the area of free movement of persons, the most sensitive issue was instalment by the EU side of a transitional period for up to seven years for movement of workers from new member states to old member states. These issues and the context of Lithuania's domestic politics were already analyzed at length in the book *Lithuania's Road to the European Union: Unification of Europe and Lithuania's Negotiation for Membership in the European Union* (published in English in 2005). The following is a short overview of some important technical aspects of preparation for EU membership and participation in its internal market, which did not fall within the scope of this book.

In the area of free movement of goods, introduction of the good manufacturing practice for pharmaceuticals as prescribed by the EU directives⁵ was the most difficult negotiation issue. For this purpose, in 2000 the European Committee under the Government of the Republic of Lithuania commissioned an

impact assessment study which was supported by the Phare SEIL Project⁶. In the beginning of the negotiations, Lithuania applied for a transitional period for the full introduction of good manufacturing practice, but this request was rejected. A compromise was found in agreeing about a three-year transitional period (until 1 January 2007) for the preparation of all necessary documentation accompanying the manufacturing of pharmaceuticals produced in Lithuania according to the EU requirements. This period was sufficient for Lithuanian companies, as by the end of this period they renewed 4000 certificates of registration of their pharmaceutical products, while only 250 old certificates (and subsequently the products) were discontinued.⁷

The biggest challenge for the development and implementing of administrative capacity in the area of internal market was a fundamental overhaul of market surveillance, which was carried out in Lithuania in 2000.⁸ This reform not only encompassed fundamental institutional and legal changes to the existing system, but also profoundly changed the approach towards market surveillance. In other words, Lithuania then moved from controlling the quality of produced goods to surveillance of the safety of goods, i.e. to establishing the principle that the goods supplied to the market should be safe, and the consumer decides about the quality and the price to be paid. Unnecessary authorisations for marketing of products were abolished. The responsibility for the conformity of goods to the corresponding requirements was transferred from state to producers and importers. The numerous control institutions were reorganized into two main authorities – State Non-Food Products Inspectorate under the Ministry of Economy and State Food and Veterinary Office (directly reporting to the Government).

Institutional reform in the field of market surveillance and later in the coordination of internal market policy in Lithuania was based on an extensive analysis of the best administrative practices of the EU member states. During the preparation of the concept of market surveillance in Lithuania, Lithuanian experts visited Sweden, Denmark and the Netherlands where they studied the functioning of the system in practice, and the experience of other EU member states along with the requirements of respective EU legislation were thoroughly analysed. In this regard, the reform of market surveillance at the time was one of the best prepared institutional reforms in Lithuania. Of course, the very clear political mandate and support from the Government

was an equally important factor of success. While establishing the institution (structural unit) responsible for the co-ordination of internal market policy, inspiration was drawn from Swedish, Danish and Austrian examples.

In this context, it is interesting to note a recent certain shift in ensuring the proper functioning of the internal market. During the pre-accession phase, the European Commission pointed to the market surveillance reform as the fundamental pre-condition for the proper functioning of the internal market principles in Lithuania. On the other hand, the Commission refused to provide any methodological support of the preparation and implementation of this reform and referred to exclusive competences of the EU member states in this area. Now, after almost a decade, the European Commission admitted that a joint effort on the EU level is needed in this area, and tabled a draft regulation which was adopted in 2008.⁹ Moreover, the European Commission is actively co-operating with the member states in search of the best solutions to ensure a proper implementation of this regulation. This example is a good illustration of the new trends over the recent years in the deepening and fine tuning of the functioning of internal market, as the European Commission is very active already in the early stages of legislative proposals and in facilitating co-operation among member states and exchange of best practices.¹⁰

In order to achieve unrestricted access for Lithuanian producers to the internal market of the EU, the Government had also to undergo other important institutional and legal changes, especially in standardisation, accreditation and conformity assessment. In 2001, the National Accreditation Bureau signed EA (European Co-operation for Accreditation) Multilateral Agreements, which guaranteed acceptance of certificates and test reports issued in Lithuania, and thus became one of the first national accreditation bodies from Central and Eastern Europe to gain international recognition. This was a key pre-requisite for Lithuania in signing a *Protocol to the European Agreement on Conformity Assessment and Acceptance of Industrial Products* (PECA) with the European Communities in 2002. This protocol aimed at removing technical barriers to trade in certain industrial goods. Almost simultaneously Lithuania signed a similar agreement with the member states of the European Economic Area (Norway, Lichtenstein and Iceland). Therefore, Lithuanian producers of certain industrial goods gained access to the EU internal market even before the formal membership in the EU.

Preparation for membership in the European Union enabled the Government of Lithuania to adhere to a modern regulatory policy and reform or establish its institutions. Lithuanian industry was modernised, too. In some industrial sectors this process of meeting the new challenges of the increasing competitive pressure and adjusting to the new technical, environmental and safety at work standards was evolutionary and gradual. However, in some sectors, such as pharmaceuticals and food processing, these regulatory changes were quite radical, and adjustment on the company level was quite painful. Multimillion investments were made in food processing companies (especially milk and meat processing) in order for them to comply with the EU veterinary and hygiene standards (such as, for example, Hazard Analysis and Critical Control Point (HACCP) system) and obtain veterinary certificates recognized by the EU member states.

Political sensitivities of the old EU member states related to the free movement of persons have been already noted. Further to this, other two technically challenging issues from the implementation point of view, namely coordination of social security systems and recognition of professional qualifications is worth reminding in this policy field. Lithuania also amended Article 119 of its Constitution in order to enable residing citizens of other EU member states to participate (vote and be elected) in the municipal elections.

In the chapter on the free movement of services, Lithuania managed to negotiate two transitional periods for gradual alignment with the EU norms for investor compensation schemes and deposit guarantee levels.¹¹ However, the most challenging issues were those on which Lithuania did not ask for transitional arrangements (for example, functional independence of the State Data Protection Inspectorate of political pressure, its administrative capacity and budgetary resources), or its requests were turned down. The latter case could be illustrated by the compulsory third party motor liability insurance. Despite many attempts and preparatory efforts, the Seimas (Parliament) and the Government failed to introduce such system ever since the independence of Lithuania in 1990. In the context of EU accession, this system had to be created, and the minimal EU compatible insurance levels (500 thousand euro for bodily injuries and 100 thousand euro for vehicle damage) had to be reached in less than three years. In other circumstances, a more gradual approach would have been natural and desirable as it would have allowed for

development of the market in this type of insurance and would have softened political and public opinion fears about 'cosmic' insurance premium rates. Initial calculations made by insurance companies showed that in order to achieve the EU directive compatible insurance levels, an average insurance policy would cost 800–900 LTL for a car, which at the time was comparable to an average monthly salary. However, now we know that these calculations proved to be wrong, and the system was set up with an average premium about four times lower than the forecast, and Lithuania as the last country in Europe has bridged this 'civilisation gap' rather smoothly.

(2) The impact of internal market of the European Union on the economies of its member states

This chapter addresses the issue of the EU membership impact on the Lithuanian economy and the impact of internal market on the member states. While evaluating economic impact a certain proviso should be made in view of the overlapping effects of the EU membership and participation in the Union's internal market. In 2007, the European Commission carried out the Single Market Review, and in this context some EU member states (such as the Netherlands and Ireland) published assessments of the internal market on their economies. In the same year, the Office of the Government of Lithuania commissioned an ex-post assessment of the impact of Lithuania's integration into the European Union in 2002–2006. And finally, in 2006, the European Commission commissioned a study about the economic impact of the last (fifth) wave of EU enlargement on old and new EU member states. The Commission also published its own assessment as regards the impact of free movement of labour from new to old EU member states.

One of the most recent examples of the impact assessment of the EU internal market on national economies was provided in the document entitled *The Internal Market and the Dutch Economy* by the Netherlands Bureau for Economic Policy Analysis in September 2008.¹² This analysis employed gravity equations (model) and assessed the impact of internal market on trade in goods and services as well as foreign direct investment. Calculations were based on data available from the old EU member states (EU-15). They showed that in 2005 the internal market effect in trade volume amounted to 8% in the trade of goods and 5% in services. It is important to qualify this estimate

and to note that this and other assessments presented below were calculated while taking into account changes of trade patterns of the EU member states with third countries (the so-called effect of trade diversion, which in this study was found to be insignificant) and a more general trend of the global open economy. This impact was found to be somewhat lower than at the beginning of the EU integration and after achievement of the EU internal market, because the full impact of the fifth enlargement has yet to be experienced. In the beginning of the 1970s, about 15% of EU trade volume of industrial goods could be attributed to the effects of internal market, and this share rose to 18% when the internal market was truly and formally achieved in early 1990s. It is difficult to provide a similar historical account for trade in services as data about bilateral trade in services among EU member states have started to be collected only recently. The authors of this study came to a conclusion that the impact of enlargement on the volumes of trade is much more significant than the deepening of the internal market. As at the time of calculations and with available data the impact of the last enlargement has not yet been fully experienced, a new peak of impact on bilateral trade volumes among member states could be expected. The internal market effects in the EU have generated about 11% of external and 17% of internal foreign direct investment. Internal investment is higher because of the higher incentives for non-EU investors to invest into a big internal market (in other words, to make the so-called horizontal investments).

These trade-generating effects are converted into the contribution to the growth of GDP. In 2005, the additional trade volumes resulted in a 2–3 percentage point higher GDP per capita growth across the whole European Union. If the current levels of integration and its impact are maintained, in the long run this will result in an additional GDP per capita growth of 10 percentage points. This higher growth in the long-term perspective is very likely because of labour productivity growth lags in comparison to market opening. The authors of this study estimate that after its last enlargement the EU has already experienced less than half of the likely positive effect of enlargement on the GDP growth.

These assessments are made both for the European Union as a whole and for the Netherlands as a member state. For example, the impact of internal market on the Netherlands corresponds to the general EU trend in foreign direct investment and trade in services, but its impact is double as on the EU as a whole in trade in industrial goods and on contribution to the GDP growth. These calculations could be individualized for all old EU member states.

The impact assessment made by the European Commission after two years of the last wave of enlargement is rather a summary of conclusions made by other studies and assessments as well as a comparison and interpretation of statistical data (during the period 1994–2006 and more often during 2000–2006) than an original modelling.¹³ This assessment pronounces the last wave of enlargement as a historical success and derives a strong economic stimulus for the growth achieved during the pre-accession period in the new EU member states from successful regulatory reforms. In 1997–2005, the new EU member states on average annually grew by 3.75%, while the corresponding figure for old EU member states was 2.5%. However, the unemployment rate in the new member states in 2005 was 13.4% or by 5.5 percentage points higher than in the old member states.

A big gap still persists in the employment levels – 56% among the EU-10 against 64.7% among the EU-15. This difference was mainly produced by the low employment levels among the working age population in Poland, Malta and Slovakia. The labour productivity gap was extremely wide as in 2005 labour productivity among the EU-10 stood at only about 2/3 of the EU-15 level, and in the Baltic states it was less than half of that. We have already noted that other researches demonstrate that closing of this gap is potentially the biggest contributor to the impact of enlargement on the economic growth. The European Commission Assessment also notes that the new member states are much more open in their trade (trade volume amounts to 93% of their GDP) than the old member states (55%). The old member states are very important trading partners of the new member states. The share of the EU-15 trade in the total trade increased from 56% in 1993 to 62% in 2005. However, variations within the EU-10 are large. For example, the importance of markets of other new member states is relatively very significant for Lithuanian, Estonian and Slovakian foreign trade.

In 2004, the stock of foreign direct investment in the EU new member states stood at 191 billion EUR, or 40% of their GDP. The study concludes that this amount, nevertheless, is not very significant in the context of the EU-25, because it makes up only 4% of all investment in the EU and therefore there has been no important delocalisation (transfer of production facilities to the lower cost (new member states) economies).

In 2007, the Lithuanian Economic Consultation and Studies group carried out an *ex-post* assessment of the impact of Lithuania's integration into

the European Union during 2002–2006.¹⁴ Its methodological setup was very similar to the above-mentioned two-stage approach of the Dutch study. The Lithuanian authors in the beginning also calculated the impact of integration factors, such as membership in the internal market (i.e. all four freedoms) and EU financial support on economic indicators (first and foremost trade and prices), and during the second stage they calculated the aggregate impact expressed as a contribution to the GDP growth. During the analysis and similarly to the *ex-ante* study in 2002, the integration scenario was compared to the scenario of non-integration. In addition to the indicators (dependent variables) analysed in 2002, the authors estimated the impact of Lithuania's integration into the European Union on the level of prices, as well as the impact of (e)migration flows on the Lithuanian economy.

The analysis showed that the impact of integration in 2002–2006 was much greater than forecasted in the *ex-ante* study. The GDP growth attributable to integration was by 2.7 percentage points higher than expected (1.3%). The share of membership in the internal market and free trade in the additional GDP growth was 1.8 percentage points, and the EU financial support generated additional 1 percentage point. These two factors were the most important contributors to GDP growth. The contribution of free movement of persons (emigration) was negative (0.1 percentage point; due to the shortage of reliable data, this estimate did not take into account the positive impact of remittances¹⁵). No significant contribution of foreign direct investment was observed. In turn, the higher than expected economic growth fuelled inflation (extra 0.6%).

On the other hand, sectoral assessments of the impact of EU membership would be very much needed. The authors of the above-mentioned study recommended a closer study of agriculture and food processing industry, transport and construction, a somewhat unexpectedly increased trade with the countries of the Commonwealth of Independent States, migration and the stock of human capital. Some of these issues will undoubtedly be addressed by the *ex-post* evaluations of the use of the EU structural and cohesion assistance to Lithuania. Finally, in order to gauge the full impact of EU membership, it would be interesting to address also the micro (i.e. enterprise) level adjustment to the conditions of the internal market. At the time of writing, there were no such research reports available about Lithuanian companies.

It could be concluded that the benefits of the integration into internal market are obvious for both new and old member states, especially in the

longer run, because the full effect of the last wave of enlargement on the national economies has not yet occurred. In the future, there will be more assessments made, and they will be very interesting not so much in terms of the aggregate impact on the economy, but on a disaggregated (e.g. sectoral) level where a higher variation of impact can be expected.

(3) Lithuania's EU internal market policy priorities

Promotion of economic integration and awareness raising both among the general population and businesses about their rights and opportunities in the EU internal market in Lithuania have started long before Lithuania's membership in the EU. The content of this policy is well reflected in the *Strategic Directions of Promotion of Lithuania's Integration in the Internal Market of the European Union*. This document was adopted in 2001.¹⁶

According to opinion surveys, in 2001 only 17% of Lithuania's businessmen thought of their knowledge about the business environment in the EU as adequate. Therefore, promotion efforts focused on the dissemination of information about the EU internal market, training of market participants and dialogue with businesses through modern IT means and innovative forms of co-operation. In the beginning of 2001, the European Committee under the Government of Lithuania launched a monthly free-of-charge specialized electronic bulletin *Euroverslo naujienos (Eurobusiness News)*. It was the only publication of the kind with four thousand subscribers via e-mail and freely available on the internet. Together with the International School of Management, the Government implemented training and qualifications upgrading programme "Euroverslas". In 2002–2003, a number of targeted information and training materials were published (in Lithuanian), such as the *Guide for Business in the EU Internal Market, Establishment of Business in the EU Member States, Internal Market of the European Union, Free Movement of Goods, Guide on Investment Procedures in Lithuania* (the latter publication had been updated quarterly). Events at the *Euroverslo klubas* (Eurobusiness Club) were organised in order to maintain a regular dialogue with the representatives of Lithuanian business and to exchange views about the topical political and economic issues of the European Union and Lithuania's EU integration.

However, the account of the first five years in the framework of the EU membership is not a clear cut. On the one hand, Lithuania functions as

a full-fledged EU member state, Lithuanian companies also gradually learned to play according to the EU rules, the legal environment was overhauled and administrative capacity was accumulated. However, the positive pre-accession experience of awareness raising among businesses and co-ordination of internal market policy did not continue after the membership. The European Committee under the Government of Lithuania was abolished after conclusion of membership negotiations with the European Union. Ministry of Economy was tasked with co-ordination of the internal market, but the continuity of pre-accession initiatives and programmes in this area was not ensured, while new initiatives did not receive political support.

Publication of *Euroverslo naujienos* was discontinued from the beginning of 2004, and the contacts with as well as dissemination of information for businesses were significantly reduced. The horizontal functions related to the formation and implementation of internal market policy were fragmented, and issues related to the implementation of the (new) Services Directive were not properly addressed or not addressed at all.

Despite internal institutional frictions, the experience gained during participation in the EU decision-making processes gradually enabled a more focused definition of Lithuania's interests and priorities in the area of internal market. Thus, Lithuania's economic and consequently social interest is to support a deeper economic integration of the European Union and in this regard to support such efforts of the EU institutions and like-minded member states. In concrete terms this is expressed through overcoming the still existing fragmentation of the internal market, removal of non-tariff barriers to trade with the Community and maintenance of fair competition. Lithuania's long-term strategic interests in the area of internal market are expressly defined in the document approved by the Government of Lithuania and entitled *Strategic Guidelines of Lithuania's European Union Policy for 2008–2013*.¹⁷ This document emphasizes the importance of the functioning and liberal internal market in the European Union, removal of still existing barriers, the necessity to ensure the need to fully exploit the opportunities offered by the internal market.

Still existing barriers in the EU internal market may vary by type. Even in the relatively well functioning internal market for goods, various technical obstacles arise because of differing requirements, resulting from national legal acts of the member states.

A good example is national marks which are placed on goods meeting certain requirements. The use of such marks is declining, however, they are still widely used in certain fields, for example, to mark construction materials.¹⁸ Discussion about the benefits and damage incurred by the use of the national marks often occur during deliberations about the new legislative proposals in the European Commission or Council¹⁹. New barriers for the internal market may arise also from certain provisions in the EU sectoral legislation.

During negotiations about the new EU legislation or horizontal EU policy initiatives in the internal market, Lithuania's position is usually supported by the new member states from Central and Eastern Europe and the proponents of open economies from the camp of old member states, such as the United Kingdom, Ireland, the Netherlands, Luxembourg, and in some cases Sweden, Denmark and Finland. However, national positions on concrete issues are determined by a complex of factors which may range from the historically inherited structure of economy to the strength of interest groups and public opinion. For example, the Scandinavian states traditionally emphasise consumer and environmental protection even at the disproportionate expense of implementation of stricter policy to the business community or society at large.

Very often the national positions of member states' are determined by the leading institution in a policy field in question. For example, during discussion about the Toys Directive, member states representatives from the health care and consumer protection institutions promote the aspects of consumer protection more insistently, while representatives from ministries of economy tend to take a more holistic position and weight the cost of implementation against the benefits. Therefore, compatibility of various policies is increasingly gaining importance, especially in the draft legislation of the so-called horizontal nature. This is equally important on both the national and on the EU levels.

(4) The EU Single Market policy as an attempted new approach towards the functioning of the internal market

At the end of 2007, the European Commission announced a new EU Single Market policy which is a package of documents under the so-called Single Market Review.²⁰ This policy includes a set of guidelines for the further improvement of the functioning of internal market and economic integration. In contrast to the previous policies (and strategies). which emphasised the

need for legal harmonization as the main instrument for removal of barriers in specific sectors of the internal market, this time the European Commission opted for a new and truly horizontal approach to the internal market.

It advocated 'putting the interests of citizens and businesses first', in other words, to deal with the beneficiaries or potential beneficiaries of economic benefits derived from the functioning of the internal market, and vice versa, to approach the problems experienced by those who cannot make use of the business or consumption opportunities because of the improper functioning of the internal market. The policy suggests a combination of 'classical' legal harmonization measures with a wide range of non-legal measures, such as monitoring of the markets, an improved co-ordination of various public policy fields, administrative co-operation, Exchange of the best practices, a wider recourse to voluntary enforcement mechanisms (for example, codes of ethics), and awareness raising measures about internal market issues. This overview does not aim at a very comprehensive assessment of the new EU Single Market policy and its implications for Lithuania and will only touch on a few aspects of this strategy.

The horizontal approach to the internal market, instead of the traditional sectoral treatment, will be a great challenge not only for the European Union as a whole, but also for Lithuania in particular. During accession negotiations, the domestic internal market agenda was dominated by sectoral legal approximation. This narrow sectoral approach is still dominating the work of most Lithuanian institutions with internal market responsibilities. Therefore, efforts in awareness raising about internal market issues and principles will be needed not only for enterprises and businesses, but also for state administration and courts, which should become more important in enforcing internal market rules in Lithuania.

An important role in member states will be played by Internal Market Centres which could accumulate the functions of a) dissemination of all information with internal market relevance, b) international administrative co-operation, and c) solution of internal market related problems which occur to citizens and businesses. Establishment of such centres would be a concrete step for member states (including Lithuania) in assuming responsibility for the functioning of internal market and streamlining the governance of internal market issues on the national level.

The European Commission tackles yet another important problem, namely the insufficient compatibility of sectoral public policies with the internal market policy. For example, environmental, consumer and social protection policies are naturally aiming at policy objectives which sometimes could be implemented through measures with a negative impact on the functioning of internal market. As internal market policy is one of the most horizontal policies, it touches upon many sectoral policies and issues. Compatibility between them is very important because sectoral legal acts sometimes legalize the existing trade barriers or create new obstacles for trade. Thus, the potential of the EU internal market is limited as consumers' choices of goods and services becomes inadequate or worse, the grounds are created for their discrimination.

A good example is provided by the regulation on the law applicable to contractual obligations, or the so-called Rome I regulation. Among other important goals, it aims at consumer protection when the goods and services are purchased from suppliers established in other EU member states. This regulation is aimed at establishing a general rule that the purchase contracts should be adjudicated by the law of the consumer's country and thus eliminating the option for contracting parties to choose the applicable law. However, the impact of such rule would not have been an unambiguous one in the context of the EU internal market, as the requirement to apply the law of the consumer's country would kill the business opportunities provided by the EU directives of electronic commerce and services. This would have been so, because in order to provide services in the whole European Union, the supplier would have had to comply with all 27 national consumer protection regimes. Fortunately, at the end an acceptable compromise was found and internal market principles were respected.

Implementation of the Directive on Electronics Commerce has already produced discrimination of consumers, as internet shops often decline to sell goods to clients in other EU member states because they don't want to take risks of unfamiliar national consumer protection rules. This is also an example of fragmented internal market when enterprises and customers cannot reap its full potential.

The importance of sectoral policies (such as, for example, consumer protection) is not and should not be contested. The European Parliament has suggested an instrument of the so-called Internal Market Test for checking the

compatibility of sectoral policies with the goals of internal market. This initiative was actively supported by Lithuania. Lithuania also proposed that this test should be included into the impact assessment methodology applied by the European Commission. The test helps to assess the impact of proposed decisions on internal market and check whether they will not create new barriers.

In the context of the global financial crisis which started in 2008, and with the crisis already apparent in real economy, it is very likely that protectionist appetites of some EU member states will become real. It is very likely that the national measures to combat economic and social consequences of the crisis will be at odds with the EU internal market rules and competition law. The instinct of protectionism typically resurfaces among politicians, trade union activists and even among the business groups in the times of economic stagnation and fall. This time, it can become a real challenge for the Community for a short and medium-time perspective.

(5) The Services Directive as one of the most important EU integration projects after the last enlargement

A closer look at the Services Directive and the lessons learned during the process of its adoption are justified by the context of Lithuania's membership in the EU and the deepening of the EU internal market. This directive is one of the most important recently adopted EU legal acts, while the negotiations surrounding it were a good opportunity to check Lithuania's ability to formulate, represent and defend its interests already in the status of a full-fledged EU member state. The directive must be fully implemented in the EU member states in 2010. Then it will become clear how Lithuanian companies are able to detect, understand and make the full use of opportunities of the internal market in which now they enjoy equal rights. The Services Directive is one of the broad systemic measures, which may enable the Lithuanian companies to benefit from the internal market in practice and to avoid discrimination. The impact of this directive on Lithuania and its opportunities are discussed later in this text.

It is a well known fact that the EU internal market resulted from a few decades' long economic integration and legal harmonization. The fundamental EU principle, namely that of free movement, so far has been well applied in three areas – goods, capital and labour. It has not yet been so successful as

regards the free movement of services. A lot has been achieved in removing the barriers, especially for goods, since 1993 when the first Internal Market Programme was adopted²¹. Later priorities shifted towards creating the Economic and Monetary Union and introducing the euro, as well as gradual liberalisation of some important sectors of infrastructure and services.

Services make up half of the total EU output and yet, despite all the efforts, the internal market rules do not fully apply for them.²² This is obvious volume from the fact that services constitute only 20% in the total intra-EU trade, whereas their share in the national economies of the member states is as high as 60–70%. In 2002, the European Commission has published a report²³ which revealed that the barriers among member states do not allow the full economic potential in the services sector to be reaped and thus harm especially small and medium-sized enterprises. National markets of services markets have traditionally been closed and difficult to penetrate from the outside.²⁴

The main provisions of the Treaty applicable to services, namely Article 43 on establishment and Article 49 on free movement of services, were interpreted in the rulings of the European Court of Justice, and the details were set in the sectoral EU legislation regulating financial services, telecommunications, information society services, energy, transport, postal services and recognition of professional qualifications. During recent years, the focus has been placed on changing the regulation of financial services and transport (especially railways). Important decisions were adopted as regards creation of EU-wide electricity and gas markets.

However, for a long time there were no other legal acts than Treaty provisions which would set common rules for the provision of services in the Community market. In fact, the only horizontal legal act related to the supply of services was a directive on posted workers, and it has been adopted quite recently.²⁵ The directive did not contribute to the elimination of barriers for the provision of services as temporary posting of workers for assignments in other member states is just an important element in the whole range of measures needed for free movement of services. On the other hand, even with unified requirements for posted workers, the member states encountered enormous difficulties in implementing the norms of the directive. Interpretation of these norms varied among the member states, and the administrative co-operation procedure (as set by the directive) was not effective.

The economic benefits of the internal market and common currency could not outweigh the existing fragmentation in the services as one of the most important sectors. It gradually became evident that rulings of the European Court of Justice are not sufficient for systemic solutions regarding the functioning of the internal market. On the other hand, the problems could not be solved by amending the existing sectoral legislation, either. The service sector badly needed a set of common rules and principles of regulation.

The political decision was ripe by 2000, and the European Council adopted a decision in March that year and called for a strategy on removal of inter-state barriers in the services sector.²⁶ This political decision was implemented in 2004 through the draft Directive on Services.²⁷ To cut a long story short, it is interesting to note that the Directive on Services will be due for implementation exactly a decade after the first related political decision. Despite the fact that this decision was made by the highest level of heads of state and governments, some member states later on adopted an extremely negative stance on the issue.²⁸ Quite a number of EU member states were still drifted by inertia and were not ready to begin the needed economic reforms. They also feared the increasing competition from the new member states, and this was very well reflected by the mood of public opinion.

The services directive was the first big project of economic integration after the enlargement of 2004. The enlargement increased the economic and social diversity of the European Union, but various impact assessment studies consistently show that the services directive will bring a considerable aggregated economic benefit to the European economy as a whole, its consumers and business recipients of services. It is likely that the distribution of economic benefits as well as adjustment costs will vary depending on the sector of services and member states. The draft service directive proposed a major innovation and suggested that the use principle of mutual recognition (as applied to trade in goods)²⁹ should be extended to the sector of services, and the so-called principle of country of origin is established for services.

As usual, the draft text of the directive was accompanied by extended impact assessments. Three assessments stand out in the pile of these documents, namely those conducted by the European Commission itself, the Netherlands Bureau for Economic Policy Analysis, and by the Danish consultancy company *Copenhagen Economics*.³⁰ The latter assessment was the most extensive

of the kind, as it used the data of 275 thousand companies from 19 member states. This sample covered approximately 2/3 of the regulatory scope of the directive. This assessment did not include restriction-sensitive service sectors such as construction, leisure and part of education and health care services. Therefore, the estimations made during this assessment should be regarded as conservative. The restrictions in the service sector were converted into tariff equivalents. The biggest restrictions were found to exist in the sector of services supplied by regulated professions and ranged, in tariff equivalent, from 5.5% to 11.8% depending on the type of restrictions (cost inducing or reducing of competition). In the retail and wholesale trade this tariff equivalent ranged from 0.9% to 3.1% and for services to businesses from 0.2% to 1.3%. The study estimated that the directive as outlined in the draft proposal will on average reduce these restrictions by 50%, and this will result in the rise of consumption in the European Union by 0.6% (or 37 billion euro), while employment will rise by 600 thousand new jobs (0.3%) and wages by 0.4%.

The Services Directive was adopted quite late, and this was already demonstrated by the obvious misfit between the economic importance of services and the efforts of the EU to achieve a functioning internal market. Before, the regulation of the services sector was dominated by the so-called sectoral principle in the hope that the two already mentioned principles of the Treaty (right of establishment and free movement of services) will work by default. This vacuum of regulation on the EU level was filled by various national regulations, and thus barriers for services suppliers from other EU member states were created. It is then not surprising why the search for a common EU interest and compromise was so difficult and the changes proposed in the services directive were opposed by many interest groups and public opinion.

Drafting of a directive of a horizontal nature is always a complex task, as the drafters face many difficult questions, such as decisions on what and to which extent to import from sectoral policy areas regulated by (existing) directives, exemptions, application of general principles to a variety of services (to consumers and businesses) and many other issues. The relevant sectoral legislation as drafted by the European Commission at times was aiming at different goals which in turn were pursued by different measures. The new draft directive had to be made compatible with the existing EU legislation, and at

the same time general principles had to be established for almost all sectors of services, including the services that had not been regulated at the EU level.

Therefore, the draft proposal by the Commission on the services directive was a complex and complicated one with many exemptions. The number of exemptions further grew during negotiations among the member states. It was not clear then (as it is not to this day) exactly how the existing EU legislation would be made compatible with the services directive. It is evident from the state of play in the market of services that the legislative priorities in the EU internal market were not always derived with the economic and rational reasoning in mind. Against this background, the Commission's intention (as expressed in the *Single Market Review* package) was to go beyond the pure legalistic approach and to employ a wide range of measures based on economic reasoning.

It is interesting to ask why in the sector of services sectoral solutions and approaches have clearly dominated over the horizontal perspectives. Until its membership in the European Union, Lithuania had not contributed to the legislative process in the EU, thus the answer is not an easy one. We can assume that the lack of systemic approach and the prevalence of sectoral solutions was a general characteristic of the legislative process, and it was not specific for services. In other words, sectoral approaches prevailed because of pragmatic policy-making. The problems were solved as they appeared and were obvious and needed joint EU-level efforts. It is a particularly telling fact that many horizontal legal acts in the free movement of goods have been adopted rather recently³¹. The specificity of services added to this general trend, because services are often immaterial, supplied locally, tailored for individual consumption patterns. Technologies for supply over long distances were lacking for a long time, too. On the other hand, the regulation of free movement of goods was mostly based on standardising the requirements for the physical qualities of goods, as well as their contents and labelling, whereas other solutions and principles of regulation had to be searched for and established for the free movement of services.

(6) Contents and main provisions of the Services Directive

While drafting the Services Directive, the European Commission departed from the customary method of harmonization, which typically prescribes a set of uniform requirements to all member states to replace different national rules. Instead, the Commission opted for a gradual deregulation and started

with the simplification of administrative procedures, prohibition of discriminating provisions in national legislations and assessment of remaining barriers to establishment and trade. The responsibility for the elimination of these remaining barriers was placed with the member states.

The draft Services Directive did not envisage any radically new or in the EU law previously unknown elements. Articles 43 and 49 expressly prohibit any restrictions for a national subject of other EU member states for establishment of services or temporary supply of services without establishment. Services in other member states can be supplied by either of the two ways. One option is to supply services through establishing a company in the other member state. In this case, the right of establishment and the requirement of receiving member state apply. Discriminatory and other limiting practices, as often applied by member states towards service suppliers from other member states are prohibited and are listed in the draft Service Directive. Services can also be supplied without any establishment in another EU member state. However, beyond the 'enabling' article of the Treaty, there were no clear other legal provisions. The European Commission drafted the text of the Services Directive with a clear goal of applying the principles of internal market also to the sector of services and based it on the relevant rulings of the European Court of Justice.

These two supply routes of services by and large determined the structure of the initial proposal of the Commission. In Articles 24 and 25 of the draft text, the Commission also proposed additional measures to remove excessive barriers in the context of the Directive on the posting of personnel. However, during negotiations among the member states, these latter provisions were dropped from the text.

The main value added of the initial proposal by the European Commission was that it codified the rulings of the European Court of Justice on establishment and free supply of services. It clearly defined the country of origin principle and listed discriminatory practices and restrictions to be prohibited. The country of origin principle was already successfully defined and applied in the other EU legislation regulating electronic commerce, electronic signature, data protection and television broadcasting.

From the very beginning it was clear that provisions of this directive will not apply to labour law. The trade unions were openly against it, and this opposition only grew during negotiations among member states. Therefore,

temporary work (posting) in another EU member state will be regulated, as before, by provisions of the already mentioned Directive 96/71/EC which specifies concrete requirements to posting companies.

The Services Directive will not apply to workers who individually seek employment in other member states, because labour contracts concluded with companies established there are governed by the national law of that country. Therefore, self-employment (or employment through employment agencies) belongs to the area of free movement of persons and not to services. Unfortunately, during the public debate about the Services Directive this distinction was very often mixed up, and wrong interpretations were made by opponents of this directive.

Because of its horizontal nature, the Services Directive does not prescribe detailed rules for specific services nor does it aim at harmonization of requirements applied by the member states. Therefore, different national rules will persist after entry into force of this directive. On the other hand, the directive aims at encouraging competition and improving the business environment through elimination of excessive, ungrounded and discriminatory restrictions of establishing services and supply of services without establishment. Simultaneously it seeks to ensure an appropriate level of consumer protection, improvement of service quality and setting up an effective system of administrative co-operation among member states. The draft directive, and especially the country of origin principle³², became a litmus test for readiness to embrace economic reforms in the EU member states. The country of origin principle, as envisaged in the initial draft text of the directive, would have enabled suppliers of services to provide services temporarily in other member states³³ according to its own national regulations. The Services Directive (as conceived by the Commission) aimed at the real implementation of this principle, which would have been an effective measure for opening the markets and level playing field. The logic behind this principle is very clear. If a service supplier possesses due qualifications and is able to respect the safety of services to customers, let's say, in Lithuania, he or she could do the same in other member states, despite the fact that national regulations may differ. There were some exceptions to this rule, envisaged right from the inception. For example, this principle would not apply if services are supplied for a long time or if the supplier must permanently possess the necessary infrastructure, such as premises and equipment.

The country of origin principle as such would neither limit nor increase the level of wages. Labour conditions and social benefits for temporarily posted workers are regulated by the already mentioned Directive 96/71/EC. It requires that posted workers cannot be paid less than the minimal wages of the receiving country and should enjoy the same labour conditions as the local employees.³⁴

The initial (draft) text of the directive encompassed a wide range of paid services supplied both to companies and to the final consumer in the areas of wholesale and retail trade, advertisement, employment, construction, tourism, consultancy, sport and leisure, certification and other. Free of charge services as supplied by the state and services, which were already regulated by other EU legal acts (financial, transport and to a large extent telecommunications) were excluded from the scope of the directive. Its scope was one of the main issues of negotiations. Health care, social and certain other services were the most debated specific issues (for more details, see below).

The initial (draft) text of the directive was significantly amended during negotiations among member states. These changes mostly concerned the scope of the directive and the mechanism to ensure the free movement of services. The scope was significantly reduced, while the country of origin principle was replaced by the principle of freedom to supply services, which could be restricted by national rules if the restrictions could be justified on the grounds of public policy, security, health and environmental protection. It is very likely that in these circumstances, such restrictive exemptions from the general principles of the directive will add to legal uncertainty for suppliers of services. At the same time, the member states obtained a large room for discretion to maintain existing restrictions and abuse this opportunity to limit the market entry for service suppliers from other member states.

It has been already mentioned that the country of origin principle was deleted from the adopted text of the directive. Moreover, the right to temporary supply of services to other member states according to the rules of the country of establishment was *de facto* abolished, because all disagreements about temporary supply of services from now on will be adjudicated according to the international private law, whereas the member states received a right to establish additional requirements for suppliers from other member states. The country of origin principle was not replaced by any other effective

Table 1. Comparison of main provisions in the initial (draft) and adopted texts of the Services Directive

<i>Initial (draft) text of the directive(2004)</i>	<i>Adopted text of the directive (2006)</i>
<p>Directive is not applicable to:</p> <ul style="list-style-type: none"> – financial services – transport services – services of electronic communications 	<p>Directive is not applicable to:</p> <ul style="list-style-type: none"> – services of general interest (of non economic nature) – financial services – transport services (including port services) – services of electronic communications – services provided by agencies of temporary employment – health care services – audio and video services and radio broadcasting – gambling – notaries and bailiffs – certain social services – private security services – taxation.
<p>For temporary supply of services, the country of origin principle applies with the following exceptions for certain types of services:</p> <ul style="list-style-type: none"> – postal services – services in electricity supply – services in gas supply – services in water distribution and supply and wastewater treatment 	<p>The country of origin principle was replaced by the principle of freedom to supply services with certain exemptions.</p> <p>Freedom to supply services is not applicable to the following services:</p> <ul style="list-style-type: none"> – postal services – services in electricity supply – services in gas supply – services in water distribution and supply and waste water treatment – waste management. <p>Additional opportunities for member states, envisaged both for restrictions of market entry for services suppliers from other member states and for restrictions during the supply of services.</p>
<p>Envisaged elimination of barriers related to posting of workers to other member states</p>	<p>Envisaged elimination of barriers related to posting of workers to other member states was deleted from the final (adopted) text. Instead, the European Commission adopted guidance on implementation of the directive 96/71/EC³⁵.</p>
<p>Member states were made responsible for surveillance of established service providers, also in cases when services are temporarily provided in other member states without establishment.</p>	<p>Recipient member states are responsible for market surveillance of temporary service providers.</p>

mechanism which would enable temporary supply of services without establishing a company. The new provision about exempting the requirements of collective labour agreements from the scope of the directive is also a potential source of abuse, because many restrictions prohibited by the directive can now legally be installed exactly there.

(7) Negotiation of the Services Directive: chronology and political background

Negotiations for the contents of the Services Directive and implementation of the negotiated text proceeded in the following sequence:

- 13 January 2004 – the European Commission submits a proposal to the Council and European Parliament about the Services Directive (draft text of the directive);
- 22 November 2005 – the Internal Market and Consumer Protection Committee (IMCO) of the European Parliament votes for amendments to the draft directive (without altering the main proposals contained in the Commission's text);
- 16 February 2006 – substantial changes to the draft text, proposed in the first plenary discussion in the European Parliament;
- 4 April 2006 – European Commission submits the second amended proposal about the directive in line with the amendments, proposed by the Parliament (amended 41 out of 47 articles of the initial (draft) text);
- 29 May 2006 – political agreement on the amendments reached in the Competitiveness Council by Ministers of Economy of member states;
- 24 July 2006 – the Council common position adopted by the qualified majority;
- 15 November 2006 – the European Parliament adopts the amended text of the directive in its second reading;
- 27 December 2006 – the text of the directive is published in the Official Journal of the European Union³⁶;
- 28 December 2009 – deadline for implementation of the directive in the member states.

Unfortunately, the timetable for deliberation and adoption of the Services Directive coincided with many important changes in the European Union,

namely its Eastern enlargement (and subsequent fears in societies of old member states), election of the new European Parliament and appointment of the new European Commission, and finally the ratification process of the *Constitution for Europe*.

The proposals of the draft directive turned into a real political issue during the referendum campaign on the *Constitution for Europe* in France in 2005. They became also one of the reasons for the French to reject it. The referendum also failed to approve the Constitution in the Netherlands, despite the favourable opinion of the Dutch government, positive results of impact assessment for the Dutch economy and the fact that the directive was conceived by the Dutch Commissioner Bolkestein.

Position of member states

Negotiations about the draft text proceeded in the Council in 2004–2005, yet they did not yield any tangible results. There was no agreement reached on many key issues, such as the country of origin principle and the scope of the directive. While in 2004 member states established their general views about the text, in 2005 they started picking on the concrete provisions. Until the first plenary reading in the European Parliament in February 2006, all EU member states could be roughly divided into three groups. The composition of these groups did not change much until the final adoption of the directive. The first group comprised Germany and France (and in part Spain, Austria and Belgium). It spoke in favour of halting the discussions and for the total redrafting of the text. Interestingly, Germany did not change its position even after the parliamentary elections in September 2005, which brought to power a coalition government lead by the right-wing Chancellor. This group was eventually supported by Sweden and Denmark, as their governments began to give in to the pressure from trade unions.

The second group was composed by active supporters of the directive from new EU member states (Poland, Hungary, Lithuania, Latvia, Estonia, Czech Republic) and from the Netherlands, Ireland and the UK. They advocated a faster adoption of the directive and maintenance of its key principles as drafted by the Commission. The third group contained the remaining countries which kept low profile during negotiations because of either internal inter-institutional disagreements or a conscious decision to wait and see.

As mentioned above, the delegations could not agree on the scope of the directive and on the country of origin principle which had been from the very beginning rejected by France and supported by Portugal, Denmark and Belgium. Germany for a while did not have a position on this issue and was not too active.

Experts and commentators agree that hot debates about the Services Directive and the Constitutional Treaty rejected in the French and Dutch referenda were caused not so much by the public disappointment with the two documents as by the general resentment of the 'Brussels bureaucracy' and the institutional crisis in the Community.

The opponents of the Constitution needed a symbol to tap into popular feelings and stay clear from real issues about the future of the European Union. The draft Services Directive was grabbed as this symbol despite its full irrelevance to the constitutional debate. It was irrelevant, because free market principles (and specifically free movement of services and freedom of establishment) had been enshrined in the Treaty of Rome five decades ago and the Constitution did not bring any novelties in this area. Still, the opponents did not care to analyse this.

French and German governments shied away from a fair explanation of the essence of the Services Directive, and the initiative in public debate was seized by well organized local lobbies. This directive became a symbol of liberal Europe, which for France had always been foreign and unwelcome. French fears of loosing secure jobs were epitomised by the image of the "Polish plumber" who was ready to work more for less. The former Internal Market Commissioner Bolkestein observed that the French views were paradoxical, because the French service providers traditionally had been very competitive in the EU market, especially in providing professional services and in retail trade³⁷. Resistance to the Services Directive in Germany was caused by illegal work which increased after the EU enlargement in 2004. On the other hand, as discussed above, free supply of services is different from and not connected to free movement already. Sweden opposed the country of origin principle because labour relations there are regulated not by laws but by collective agreements between employers and trade unions. Trade unions were afraid that in a more liberal regime of services supply their bargaining power would greatly diminish.

In reality, this opposition is also caused by the increasing competition in domestic markets, which will be generated by the country of origin principle.

It will destroy protected business conditions enjoying a combination of low competition and high wages.³⁸

In the second half of 2005, the above-mentioned groups of member states reached a stalemate in the Council. In order to achieve a breakthrough, a political push was needed either from the presidency (UK) or from the European Parliament. Despite all the efforts, negotiations on the Services Directive reached a dead end as the presidency wanted to conclude negotiations on the EU financial perspectives for 2007–2013 as a matter of priority. The European Parliament did not discuss the directive seriously until early 2006. Before the first reading in the Parliament in February 2006, UK, the Netherlands, Spain, Poland, Czech Republic and Hungary had sent their joint letter to the Parliament in which they called to support the ambitious draft text of the European Commission.

At the end of 2005, the stalemate seemed to have been the main obstacle to a faster adoption of the directive. However, after the first reading in the Parliament, the proponents of this directive faced a challenge of preserving as many provisions of the initial text as possible.

Negotiations at their final stage were further complicated by domestic politics in the camp of proponents, because there were countries with recent or forthcoming elections, weak coalition governments. The Austrian EU presidency pressed for a fast adoption of the revised text in the first half of 2006. It is very likely that these efforts were coordinated with Germany as these countries did not favour postponing decisions until the more liberal and moderate Finland would take over the presidency in the second half of 2006.

The European Council on 23–24 March 2006 took 'good note of the Commission's intention to base the amending proposal largely on the outcome of the European Parliament's first reading and expresses the hope that the institutions will be able to swiftly conclude the legislative process'.³⁹ This statement of the heads of states and governments was clearly influenced by a clearcut position of the European Commission, which maintained that without a signal from the European Council no compromise would be possible on any text of the directive. During debate, only a few prime ministers (Dutch, Hungarian and Lithuanian) spoke in favour of the neutral treatment of the Parliament's vote, while the rest supported a positive assessment.

Position of the European Parliament

The start of negotiations of the initial (draft) proposal by the European Commission coincided with the end of term of the European Parliament, so the Parliament could begin a serious analysis only after the parliamentary elections in June 2004. At the end of 2004, two approaches began to emerge there. The first approach was represented by the socialist rapporteur on the Services Directive Ms Evelyne Gehardt. She advocated a radical narrowing of the scope and dropping of the country of origin principle in favour of a continued use of harmonization. The other approach was supported by liberal and conservative groups of the Parliament. They in principle endorsed the Commission's method in eliminating the remaining barriers, but supported a narrower application of the directive and especially of the country of origin principle.

However, the voting of the first reading at the European Parliament on 16 February 2006 forced radical changes to the principal provisions of the directive: 391 MEPs voted in favour, 213 against, and 34 abstained. Thus, the socialist-led European Parliament managed to block the key provisions of the draft directive, namely the country of origin principle, and severely limited the scope. Expectations about the outcome of negotiations were very much lowered by the Commission's rather positive view towards the vote in the Parliament. It became clear that the proponents of the ambitious Directive of Services should not expect much from the Austrian presidency in the first half of 2006. In addition to political agreements in the European Parliament, the change of the direction in negotiations was also influenced by the U-turn in the Commission's position and public opinion in key old EU member states, which in turn was determined by mass demonstrations organized by trade unions in Strasbourg, Berlin, Brussels and some other capitals of the EU member states.

In his speech before the European Parliament a couple of days before its first reading, Internal Market and Services Commissioner Charles McCreevy congratulated the foreseen amendments of the Parliament in advance and announced that these amendments would be taken on board.⁴⁰ This was a forewarning that the Commission would back down from its initial draft proposal. Indeed, it turned to be so, and on 4 April 2006 the Commission tabled a new amended proposal in which it took into account approximately 90 percent of the amendments suggested by the Parliament.

It is ironic that a breakthrough was made in the first half of 2006 under the Austrian presidency, which as a member state was very negative about the ambitious goals of the first proposal of the Commission. It is also quite telling that the proponent states did not achieve much while in the presidency seat (Ireland, the Netherlands, UK and Finland which took over from Austria).⁴¹ A major influence over the content of the final text was exercised by the European Parliament, because the Commission eventually gave up and maintained a passive stance, while the Council could not agree. In these circumstances, it is not surprising that the Parliament seized an opportunity for initiative and clearly proved its increased importance in the legislative process of the European Union. It remains to be seen whether this is the beginning of a trend.

Position of the European Commission

In political terms, the timetable for debating of the Services Directive was not good to the Commission. The text was drafted and tabled by the 'old' Commission (1999–2004) under the leadership of Romano Prodi. For the Barroso Commission (in office since November 2004) the directive was not a wanted baby but rather a step-child.

It seems that for a long time there was no single view and political agreement in the highest echelons of the European Commission. As the debate in the Council was heating up, the Commission took a view that it wanted to close this process as soon as possible at whatever compromise to the content of its initial proposal. The political level officials of the Commission were afraid that if the amendments of the Parliament were rejected, the directive at the end would not be adopted at all. It is difficult to assess whether this fear was not overstated.

Thus, the proponent member states lost an important ally after the U-turn by the Commission, especially when it refused even to try the question validity of the Parliament's arguments. Looking in retrospect, this seems to have been a real turning point in the negotiations.

In the typical cases of decision-making in the EU, the Council (representing member states) and the Parliament do put forward amendments to the draft texts of the Commission proposals. These proposals in the majority of cases are technical in nature. This time, it was unusual that the Parliament attacked the essential provisions of the directive and the Commission dropped

them without a fight. Usually the Commission takes a very tough line and threatens to withdraw its proposal altogether when the key parts of its proposals are attacked.

Commissioner McCreevy stated in the Parliament that ‘the proposal in its original form was never going to fly’ and signalled his readiness to move away from a ‘poisoned and divisive’ debate⁴². This meant that politically the Commission decided to scale down its ambition to reform the sector of services and go back to its usual step-by-step approach. Needless to say, the increased nationalisation of public policies by the member states after the last enlargement as well as the weakening of the European Commission *vis-à-vis* the member states made their negative contribution, too.

Positions of interest groups

It is clear that internal difficulties in some member states were transferred to the level of the European Union, as the debates at times could hardly be described as rational and correct. This style was forced upon by the interest groups and lobbies which were against the reforms in the services sector. Trade unions and at times business organizations during several decades had managed to create protected and exclusive conditions for themselves. Still, this rhetoric was taken over by politicians, too. It is enough to read some of the labelling which included “the directive of Bolkestein (Frankenstein)”, “Bolkestein tsunami”, “social dumping” or “Polish plumber”. Sometimes the opposition to the directive was extreme. For example, employees of a French state-owned company disconnected electricity supply to former Commissioner Bolkestein’s summer cottage in France.

It appears that the trade unions in many member states used well an opportunity provided by the Services Directive to show their strength and to gain access to the front pages of newspapers and TV screens in the name of defence of the working population. Though the ‘catastrophic’ impact on working people had never been calculated or demonstrated, as the time progressed, the bubble of fear continued to grow. The debate about the directive gave birth to the otherwise unthinkable coalition among the trade unions, anti-globalist and green movements, extreme left and right political parties. The best example of fear-driven and not evidence-based debate is the notorious ‘Polish plumber’ who was expected to drive the French plumbers out of

their traditionally occupied jobs. The fact was that in the middle of 2005 there were six thousand plumber vacancies, while only 150 Polish plumbers were employed in France. However, mass protests were not driven by the rational debates but by emotions.⁴³

Understandably, various interest groups had different opinions about the Services Directive. The services sector had been traditionally populated by small and micro-sized enterprises and self-employed. The *European Small Business Alliance* (ESBA) has a membership of two million small-sized European entrepreneurs. It spoke in favour of removing the barriers for provision of services and supported all the main provisions of the initial (draft) directive, including the country of origin principle.

Summary

During its EU presidency in the first half of 2006, Austria provided a new impetus for negotiations. However, on 16 February 2006 the European Parliament rejected the country of origin principle which in the new partially amended proposal of the Commission was replaced by the principle of freedom to provide services. On 29 May 2006, it was approved by the Council. Implementation of this principle is made conditional on many exemptions and circumstances and therefore its success is very questionable. The amended directive was again sent to the European Parliament in November 2006 and was approved there on 15 November. After almost three years of negotiations the directive was finally fully adopted in December 2006.

As regards the influence of interest groups on the negotiation process, a very good co-ordination by the opponents in many member states and their impact on their governments and the European Parliament was very visible. The biggest potential beneficiaries of a more liberal EU services market, namely individual consumers, industrial consumers of services and service suppliers, stood at the sidelines of the debate (and demonstrations). Thus, definitely the voice of alleged losers was much louder and resonated with decision makers.

The political background was not favourable for a more ambitious directive, either. The Commission's position was weak, and it was further weakened by the protectionist policies of member states after the Eastern enlargement as the well as new real or perceived threats (emigration, immigration and the expected negative impact on national labour markets). On the other hand,

ten new EU member states participated in the negotiation process as full-fledged members, and this enabled to achieve a more balanced outcome. Had the directive been adopted before 2004, the outcome might have been more disappointing.

(8) Preparation and evolution of Lithuania's negotiation position

As a EU member, Lithuania joined many negotiations on the regulatory initiatives of the European Union in the middle of the decision making cycle. The Services Directive was an exception to this, as the real debate in the Council started when the new member states had already a seat at the table. Lithuania's internal preparatory process had two tracks, as is typical of drafting any national position. First, the views of various government institutions had to be collected, aggregated and consolidated into a single voice. Second, interest groups had to be consulted and Lithuania's position had to be discussed with them. The Office of the Government, in co-operation with the Ministries of Economy and Health Care, commissioned two extended impact assessment studies, namely on the economic impact of the draft directive on Lithuania and specifically on health care services.⁴⁴ These assessments were incorporated into the national position.

They showed that the biggest benefits to Lithuania would be brought by improved business conditions in other member states. Implementation of the directive would improve the business environment in Lithuania, too, though by a smaller margin, because Lithuania abolished very many barriers during its preparation for EU membership when national regulations had been substantially overhauled. Assessment by *Copenhagen Economics* shows that, in tariff equivalents, the Lithuanian barriers (cost creating barriers and benefits (rent) restricting anti-competitive provisions) are among the lowest in the entire European Union (except the wholesale trade). The forecast showed that implementation of the directive would increase the general welfare by additional 0.2 percentage points, and the value added in the services sector would increase by 1 percent (25–30 million LTL), while the turnover of services would increase by 500 million LTL. In comparison, as mentioned above, in the European Union the general welfare was forecasted to increase by 0.6 percentage points and the value added in the services sector by 1 percent.

Two problems emerged as regards the drafting of Lithuania's position and representing Lithuania in negotiations. First, there was a mismatch between the general political support in the Seimas (Parliament) and the Government of the position itself⁴⁵ and concrete steps in strengthening the negotiating team and providing appropriate (administrative) resources, especially in implementation planning. One year after adoption of the directive, the planning of its implementation barely began. The second problem was prejudices towards the directive by some of the governmental institutions, especially by the Ministry of Health Care. This ministry viewed the directive as a threat to the existing (not efficient) national health care system and not as an opportunity to reform it and attract paying clients from other member states.

The Ministry of Economy took a lead in drafting the national position. It actively consulted with main business associations⁴⁶. However, the associations were not very active in shaping the position and did not contribute significantly to identifying concrete obstacles for establishment in other member states. Of course, there were objective reasons for such a slow reaction, especially in the early stages, because the draft directive was not typical. It was complex and complicated, with a wide scope, and it was difficult to assess its impact on concrete enterprises beyond the aggregate level. Co-operation with business associations was constructive enough, but interaction with many Lithuanian trade unions was not. Their rhetoric imitated arguments of the old Europe and mechanically repeated them with no relation to the Lithuanian context. The trade unions of old member states succeeded in expanding their influence beyond their borders, although the situation in the two camps was different as should have been the arguments, too.

Right from the beginning, Lithuania accepted the main proposals of the draft directive. Lithuania supported the wide scope of the application of the directive, the country of origin principle, and spoke in favour of its fast adoption and implementation. This position derived from the fact that the new member states had to liberalise their services sectors to a much bigger extent than the old member states because of the full overhaul of their regulatory systems (with the supervision of the European Commission) and the national laws were truly harmonized with the EU requirements. In other words, the new member states had already opened their markets for competition while the old members had not yet. Thus, the demand for a level playing field among

all member states, old and new, was one of the key arguments in explaining why Lithuania supported the ambitious services directive.

During negotiations, Lithuania supported the position of other member states to exclude taxation services from the scope of the directive, which was consistent with the Lithuanian approach towards taxation as not to be harmonized. Lithuania also supported the view that the directive should not be applicable to services provided by notaries and bailiffs (the issue of citizenship became the stumbling block)⁴⁷.

For a long time it was difficult to find an inter-institutional agreement on what position to take about the health services in relation to the Services Directive. Difficulty prevailed despite the clarity of economic rationale, bilateral consultations with the European Commission as to its intentions about implementation and existing case law of the European Court of Justice about the patients' right to choose the provider of health care treatment and prohibition of the authorization system for out-patient treatment. The hope was that the above-mentioned impact assessment study would help to reduce down the difference, and then the problem was solved when the European Parliament voted against the inclusion of health care services in the scope of the directive. This negative view was supported by the European Commission.

The process of negotiations can be divided into two very different stages. This difference impacted the behaviour of the Lithuanian negotiators. The first stage begins with the tabling of the initial draft of the directive and ends with the first plenary reading in the European Parliament. During the two years, progress was made as regards improvement of the clarity of the Commission's proposal and the identification of problematic areas. But the process of negotiations did not lead to any clear direction as the European Commission decided to take a passive stance among the divided member states and the Parliament which had not made up its mind. The second stage proceeded at an avalanche speed, and the contents of the directive were by and large decided in less than four months after the first reading in the European Parliament.

In procedural terms, Lithuania was not happy with the amended draft of the directive tabled by the Commission in April 2006, because it did not give an equal weight to positions expressed in the Council and was clearly biased towards the amendments of the European Parliament. The new text disregarded the two-year-long negotiation process in the Council. However, it was

difficult to hope otherwise, especially when the European Council endorsed the amendments suggested by the Parliament.

As regards the contents of the new proposal of the Commission, Lithuania identified three main problem areas, on which it focused its negotiating position and tactics. These three areas concerned the dropping of provisions relevant to posting of workers, a significant narrowing of the scope of the directive and replacement of the country of origin principle by the mechanism of implementing the principle of freedom to provide services. Lithuania had reservations as regards or even opposed amendments made to twenty-one articles of the directive, which had weakened the initial ambitions and restricted the options of its effective implementation at the cost of reduced legal certainty.

In the second stage of negotiations, Lithuania was forced to accept the new reality and to think seriously about new concessions to the opponents of the directive. Lithuania decided to agree with the narrower scope of the directive but to continue demanding a clear mechanism of implementation. This was based on the hope that in more favourable circumstances in the future it would be easier to expand the scope than to change the mechanism of implementation regarding freedom to provide services. However, when negotiations started slipping out of hands, Lithuania for a while contemplated even a very radical scenario – to drop the chapter regulating free movement of services altogether and leave only the provisions relevant to establishment.

On the other hand, Lithuania wanted also to display a certain flexibility and facilitate the search of a compromise. Thus, it declared that it would not continue raising the issue of posted workers and signalled readiness for concessions in the scope of the directive and even dropping the country of origin principle (in wording, but not in essence). For Lithuania, the necessary condition for supporting a political compromise in the Council was the real implementation of the mechanism of freedom to provide services, which by the will of the European Parliament replaced the country of origin principle.

Three scenarios were considered for the decisive Competitiveness Council, which was scheduled for 29 May 2006, namely to vote in favour (a very unlikely position), to abstain from vote and to vote against. These positions were conditioned by the final outcome of several key provisions included in the text for ministers to debate. Lithuania suggested the deletion of the right to individual member states to establish additional national requirements for

providers of services and restrictions to non-established service providers from other member states (Part 3, Article 16) and supremacy of the international private law over the principles of internal market (Part 2, Article 3 and Point 20, Article 17). If these demands were accepted in the final ministerial debate, Lithuania would have abstained from voting, and would have voted against if they were not.

Lithuania's proposals were fully in line with the initial draft of the directive. It was shared by many member states; however, they were not able to achieve the blocking minority. During the ministerial debate, Commissioner McCreevy insisted that the provisions of Articles 3, 16 and 17 could not be touched in order not to alienate the Parliament.⁴⁸ His statement was indeed extraordinary in the context of the autonomy of EU institutions to pass their own decisions. At the end of the meeting, Lithuania had to decide whether to abstain or vote against. Lithuania abstained and was the only country to voice its disagreement with the text of the directive, but only in a softer and non-confrontational way⁴⁹. Lithuania could not support the text (even if all former allies decided to do so) as the new directive in the final wording could become a step backward in the existing legal regulation and create a bad precedent for internal market *acquis*.

(9) Lessons learned, internal and external

The services directive was one of the first EU legislative acts of a truly significant political and economic importance which Lithuania could negotiate as a full-fledged EU member from the very inception of this legislative initiative. Although Lithuania had accumulated experience in negotiating the terms of its EU accession, it did not have any experience in dealing with the member states in the Council. Thus, in a sense, it had to learn by doing and to test its administrative capacity and its model of co-ordination of EU affairs.

Negotiations about the Services Directive were, and are most likely to remain for a while, exceptional for two reasons. First, the directive is very large in its scope and will have a very great economic impact. In order to implement it, big and very complex preparatory works will be needed. In terms of complexity and the number of institutions involved, these preparatory works can be matched only by the review of national regulations and strengthening of administrative capacity during the pre-accession period.⁵⁰ The exceptional

importance of this directive is recognized both by its proponents and opponents. According to Ms Gephardt, the rapporteur of the European Parliament on this issue, as regards its importance for the European Union, the Services Directive comes second only to the draft *Constitution for Europe*.

Second, Lithuania was the only member state which consistently backed the initial draft of the directive until the end game of negotiations. It abstained from voting as the amended directive was not ambitious and reformist enough. In the context of the EU legislative agenda of Lithuania's early years of EU membership, this argumentation was also exceptional. Typically, Lithuania leans towards blocking or postponing the EU decisions and argues that changes to EU policies as proposed by the Commission or member states are too burdensome for implementation and therefore are too fast or too radical.

Lithuania acquired valuable experience, both positive and negative, in co-ordinating the views of various domestic institutions and thus testing its EU co-ordination system. Lithuania's position was shaped in co-operation with the interest groups in Lithuania and the EU as well as by communication with other member states. Internally, the Ministry of Economy took an active lead. Its pro-active position was also untypical against the whole range of its responsibilities for EU public policies. The negotiations were somewhat complicated by frequent changes of ministers of Economy. During that time, the ministry changed hands three times. Co-operation with members of the European Parliament elected in Lithuania was difficult, although there were attempts to co-ordinate positions. During the decisive vote in the European Parliament, the vote of Lithuanian MEPs was split. Seven voted in favour of amendments proposed by the Parliament, three were against, and the rest did not attend the voting.

Complex and horizontal proposals by the European Commission, such as the Services Directive, can be properly analysed and negotiated in the Council if three basic pre-conditions are met. There has to be a strong and technically competent expert group in place under a strong leadership of the lead institution. It has to enjoy a strong and continuous political support⁵¹. Also, there should be an articulated view of the national-level interest groups. If it is absent or weak and vague, it is difficult to maintain genuine political support both in Lithuania and in the Council, as political position then becomes a pure rhetoric and would be fiercely defended neither at home nor in Brussels.

In this situation, civil servants at expert or higher managing levels are better off by steering clear of taking the risks of initiative. Although the Services Directive was discussed so many times in the Seimas (Parliament) and in the Government, Lithuania advanced in the negotiations by the individual initiative of two or three middle-level civil servants.

Although sometimes formal, in principle the political support was sufficient at all levels (Ministry of Economy, the Government and the Parliament), especially in the context of changing governments and responsible ministers. However, it was difficult to maintain the same coherence throughout the full policy cycle and especially during the implementation stage. During the first year (2007) of implementation of the Services Directive, implementation issues in the lead ministry were left to go adrift, and obvious implementation problems (lack of co-ordination and human resources) were not addressed. This happened most likely because these problems were overshadowed by Lithuania's energy agenda.⁵² This sharp contrast between the active proponent position during the negotiations and passivity during the implementation was damaging to Lithuania's credibility and image.⁵³ The European Commission was surprised by such a turnaround when Lithuania in the beginning had been struggling to achieve even a minimal implementation. It therefore urged, including the highest levels, the Lithuanian authorities to begin implementation seriously.

Thus, one of the negative lessons learned is that an active approach during negotiations is only a half job done. Implementation requires as much political support in the face of very complex preparatory tasks such as a full review of the national legislation for compatibility with the Services Directive and administrative changes, especially in transferring administrative procedures to the internet and establishment of the contact centre.

Hopefully, the experience gained in implementing the Services Directive will help to apply the same principles also in other public policy areas, for example, in making the administrative procedures available and accessible online. Thus, the Services Directive could be regarded as universal guidelines for streamlining of all economy-relevant legislation. Unfortunately, this has not yet been fully appreciated in Lithuania. The experience of the first five years of EU membership and the specific negotiation experience about the Services Directive shows that the majority of Lithuanian institutions do not yet

regard the EU level legislative initiatives as new opportunities for economic, governance and competitiveness reforms, but treat them as threats to existing (though often inefficient) systems. We have already referred to the examples of health care and notaries in Lithuania.

The case of the Services Directive revealed yet another trend. It is easy to define Lithuania's interest clearly when the proposed EU legislation potentially harms the business environment in a short term, for example, when the proposed action concerns environmental protection or fight against the climate change. But, paradoxically, even for business it is still difficult to articulate its interests if the proposed decisions have long-term benefits only. As argued above, it is difficult to quantify the impact of such decisions on individual companies and to comprehend it in real, not abstract terms. In addition to the Services Directive, liberalisation of energy markets is another case illustrating this point. Of course, Lithuanian governmental institutions also suffer from this myopia, but the problem is especially obvious among Lithuanian business associations.

An external assessment of the outcome of negotiations about the Services Directive would probably conclude that Lithuania's position was clear and coherent and that it was among the leaders in the reformist camp of member states. Naturally, one may ask whether the so well trimmed Services Directive is an achievement or a failure. There is no unambiguous answer to this question. In the context of the EU internal market and against the initial draft proposal, a slimmer directive probably is a failure of the entire EU as it was only able to make a small step forward. In view of all circumstances, the final outcome is probably not a failure to Lithuania, despite the fact that the reformist potential of the directive was significantly reduced or in some elements dropped altogether. It is obvious that the final case could have been much worse if it were not for Lithuania and like-minded member states. It is unfortunate that the Austrian presidency managed to break apart the reformist camp.

The axiom of negotiations in the Council is such that a member state alone can rarely defend its goals and therefore has to seek allies and form coalitions to advance them. On the other hand, coalitions are rarely stable and may fall apart when negotiations advance. In the case of the Services Directive, the coalition in favour of reforms was relatively large and strong and at times comprised 14–17 member states who were opposing amendments

suggested by the European Parliament. However, when it came down to the final vote, nobody voted against, and only Lithuania abstained. The member states that face an isolated minority always face a big dilemma whether to try to trade the change of its position to concession in another policy area or to remain principled and not to trade and thus to expect moral or long-term dividends.⁵⁴

(10) Implementation of the Services Directive

This part will examine the practical issues of the Services Directive and its possible implications. As already mentioned, the adopted text of the directive significantly differs from the initial draft. The scope of its application was restricted, while many provisions were made less exact and open to interpretation during implementation. In other words, the member states will enjoy a significant margin of discretion. On the other hand, the directive also includes a possibility of review. Despite Lithuania's opposition to the narrowing of the scope during negotiations and unhappiness about the final outcome, if carried out properly, the implementation of the directive could be a step forward, because the directive obliges member states to carry out a widely ranging review of national legislation and, importantly, other member states can indirectly participate in this process. Other positive elements of the new directive are as follows. Its provisions will help to simplify provisions of services through establishing business in another member state. A clear system for administrative co-operation has been set – up and contact centres were established in order to help enterprises to go through administrative procedures. In turn, administrative procedures will be accessible electronically. A big step forward has been made in ensuring consumer rights.

If negotiation 'losses' are assessed against the structure laid out in Table of this article, it should be mentioned that provisions regulating establishment in member states were left least changed in comparison to the initial draft, while freedom to supply services without establishment was edited down by the Parliament most substantially. Thus, the importance of the directive and its potential for implementation should be assessed with these circumstances in mind.

In view of the complexity of the Services Directive, the volume of work related to preparation for its implementation and the existing variance among

member states as regards progress towards implementation, it is very likely that several member states will not be able to implement the directive or its individual provisions in time. This is likely also because of the technical problems of compatibility between various administrations, especially as regards transfer of electronic procedures into the internet.

Importantly, the member states must by 2010 undergo a full review of their national legislation and abolish the requirements that are discriminatory, economically excessive or disproportionate in order to achieve the regulatory aims.⁵⁵ The Commission's capacity to manage implementation in 27 member states will be critical in view of the complexity of this process and the amount of work to be done.

One of the biggest remaining challenges for Lithuania will be its ability to participate in the review of national regulatory legislation of other member states, as this would be the shortest way to improving business conditions for Lithuanian providers of services. A real economic impact and implementation results will be seen only after a few years, as the directive itself, as planned, should fully enter into force from 2010. It can be reasonably assumed that Lithuanian business approached the Services Directive in a rather cold or at best in the neutral way because the negotiation time coincided with the period of the rapid domestic growth, and many service providers focused on meeting the rising internal demand or tried to penetrate the rapidly growing markets of third countries, such as Ukraine. However, the situation has changed since the global financial crisis. The drastic fall in domestic consumption should make the Services Directive attractive to Lithuanian businessmen, especially to construction enterprises which during the last few years operated in the domestic bubble of real estate and were also showered with interventions of the EU structural assistance. The crisis of real estate market in Lithuania will force them to seek contracts abroad, and thus improvements offered by the Services Directive may appear to be critical for their survival.

The economic impact will obviously depend on the economic situation in Lithuania and in the European Union. Unfortunately, because of the reduced scope and dropped the country of origin principle, Lithuania will not be able to benefit from the legal temporary provision of services through collection of additional tax revenues to the state budget and as a means of stopping the long-term emigration.

The Services Directive is important because it galvanized a chain reaction in adopting practical decisions important for the long-term consolidation of the EU internal market, improvement of public administration structures in the member states and implementation of e-Government initiatives, for example, the internal market information system (IMI), a move towards the electronic management of administrative procedures (establishing enterprises, issuing licences and permits, etc.), recognition of e-signatures of citizens of other member states and other measures geared towards the enterprise-friendly administrative and information environment.

It is envisaged that member states will set up contact centres which will be responsible for electronic management of administrative procedures in the services sector. Product contact centres will be established, too, and they will provide information about implementation of the mutual recognition principle and about national regulations in non-harmonized areas.⁵⁶ It seems that the European Union will continue strengthening this policy direction and will further help the enterprises in making known or clarifying the requirements of the EU and national legislation. For example, a proposal on the new regulation of the construction products (which will repeal the currently valid directive)⁵⁷ envisages an obligation for member states to provide information about construction products and national legal acts regulating their use.

By the time of writing this article, in early 2009, several legal acts directly related to the Services Directive had been either adopted or in the stage of adoption. Two Commission's communications and a proposal for the directive should be mentioned here, namely on posting workers in the framework of provision of services⁵⁸ and proposal for a directive on the application of patients' rights in cross-border healthcare⁵⁹. By tabling this proposal, the European Commission honours its commitment to prepare a separate legal act on health care services, which it made after these services had been excluded from the scope of the Services Directive. This proposal is yet another try to begin application of internal market principles to health care services. It is obvious that negotiations again will be very difficult and the outcome cannot be certain. The fact that they are likely to be concluded by the new Commission adds to the risk of success as the new Commission might not feel bound by what the outgoing Commission proposed.

(12) Summary and conclusions

The benefits of Lithuania's membership in the internal market of the European Union cannot be disputed as it brings an important additional stimulus to a relatively small and open economy as well as motivation and pressure to modernize its public administration. In a very short time, less than a decade, Lithuania adopted the legal system of the European Communities and created a modern regulatory system. After the five years of membership, Lithuania is a full-fledged participant in the EU internal market. The last remaining restrictions of free movement of persons and capital will expire in 2011 when transition periods will end on restrictions for EU subjects to purchase agricultural land in Lithuania and for Lithuanian citizens to gain employment in some of the EU member states. Lithuania's long-term economic growth is intrinsically dependent on its further integration of the EU internal market and emerging opportunities to continue modernization of the Lithuanian regulatory system, improvement of the business environment, a reduced administrative and bureaucratic burden and creation of a more effective public sector.

The first quantitative results of the EU membership for the growth of the Lithuanian economy are already known. The estimates by *Ekonominės konsultacijos ir tyrimai* (EKT) group in the study commissioned by the Office of the Government in 2007 show that this contribution amounts to the economic growth which has been by 2.7 percentage points higher than in the non-membership scenario. This estimate in turn is twice higher than forecasted by an *ex ante* assessment (1.3 percentage points). The share of the membership of the internal market and free trade in this additional GDP growth is 1.8 percentage points, while the EU financial support accounts for an additional 1 percentage point. The impact of these two factors has been the most significant one. On the other hand, the impact of free movement of labour on GDP growth has been so far negative (minus 0.1 percentage points, and it does not account for the obviously positive impact of emigrant remittances because of the lack of reliable statistical data). There has been no significant impact of foreign direct investment. The faster economic growth and the consumption hike resulted in a higher inflation rate (by 0.6 percentage points). Other research yet again confirms the importance of the EU internal market to the economic growth in the entire European Union.

In this article, we have mentioned the research data showing that the impact of the last wave of enlargement on the internal market has already been greater than its further deepening, i.e. elimination of the remaining barriers. Free movement of services and especially the possibility to provide services in other EU member states without establishment is one of the remaining restricted areas. While services generate about 70 percent of the EU's GDP, they make up only 20 percent of the EU's internal trade. The political decision to liberalize this policy area was made by the European Council as far back as 2000, and the draft Services Directive has been the most important project about deepening the EU economic integration after enlargement. Impact assessment studies demonstrated sizeable expected benefits both for the EU and the national economies of its member states.

The draft Services Directive was the first horizontal legal act in the area of services. Until its adoption, the EU regulatory system had been developing as a patchwork because sectoral approaches prevailed. All details of negotiations on the draft Services Directive need not be repeated in this summary. It is enough to say that the final text was the outcome of the decisive proposals of the European Parliament of 16 February 2006. They overwrote the ideas contained in the first proposal of the European Commission. The country of origin principle was dropped, both in wording and in essence. The scope of the directive was restricted, because the list of the services exempted from the application of the directive was expanded significantly. Despite this rolling back, the value added of the new directive is codification of the case law of the European Court of Justice as regards prohibited practices and obligation for the member states to review the national regulations applicable to services. Administrative co-operation among member states was strengthened, including the transfer of administrative procedures to the electronic media.

In the beginning of its membership in the EU, Lithuania continued the accommodative style of its national EU policy. Instead of actively shaping the decision making at the EU level, Lithuania opted just to accommodate to their contents. The dominant mode of this style is an attempted blocking or postponing of decisions at the EU level. Such self-restraint has obviously reduced the positive elements of the national EU policy agenda. With a few notable exceptions, this style has survived until now. Accordingly, it is easy to define Lithuania's interests when the implementation of EU decisions may

worsen the business environment by imposing stricter norms, and conversely, it is rather difficult when they pave the way towards a long-term improvement of business opportunities. In this context, the draft Services Directive was one of the rare exceptions when Lithuania's position was active and strategically correct. This becomes even more obvious during the economic slump and a severe contraction of domestic consumption. In such circumstances, the potential contained even in the trimmed final text of the directive should be especially important to Lithuania's businesses. Unfortunately, the good image has been harmed by the year lost while preparing for the implementation of the directive.

Lithuania persistently opposed the restriction of the scope of the directive, especially as regards the country of origin principle, but at the end of the negotiations Lithuania was the only country to abstain from supporting the renewed proposal of the European Commission, which was in line with the amendments suggested by the European Parliament. A more ambitious content of the directive was not possible because of the negative and strongly politicised public opinion in the old member states and the weakened European Commission. Thus, hopes for a more ambitious agenda are to be postponed, perhaps to a very distant future. In the meantime, implementation of the adopted directive could be a step forward, especially in case the European Commission will be able to manage this process well. Establishment of service supply businesses in other member states should become significantly easier. The administrative co-operation between national administrations will become systematic, and the protection of consumer rights will advance.

2009 will be a very challenging year not only for Lithuania, but also for other member states of the European Union. The worsening economic situation, possibly leading to a long-term recession, will undoubtedly strengthen protectionist sentiments in the public policies of the EU and its member states. This would be yet another challenge to manage, in addition to existing problems of the paralysed financial sector, deteriorating real economy, strained budgetary and social protection sectors and the need for medium- and long-term structural reforms. Lithuania cannot compete with the big economies of the European Union and inject significant amounts of public money into economy or to provide state support to businesses. In this race, Lithuania would inevitably lose. Thus, in a short term Lithuania should aim at

opposing any protectionist proposals at the levels of the European Union and its member states. In doing this, Lithuania should also support the strengthening of the European Commission as the guardian of the Treaty and the institution guaranteeing the implementation of the internal market principles and fair competition.

NOTES

- ¹ See, for example, Maniokas, Klaudijus (2005) “Road to Negotiations: Enlargement Instruments and the Development of Lithuania’s Status”, in Maniokas, Klaudijus, Ramūnas Vilpišauskas and Darius Žeruolis (eds.) *Lithuania’s Road to the European Union: Unification of Europe and Lithuania’s EU Accession Negotiation*. Vilnius: Eugrimas, p. 19–56.
- ² A note for Lithuanian audience – a more detailed account of stages of the economic integration within the European Union and development of the internal market (in the Lithuanian language) can be found, for example, in Budreikaitė, Danutė (ed.) and Saulius Kolyta (2003) *Europos Sąjungos vidaus rinka. Laisvas prekių judėjimas*. Vilnius: Fantazija ir forma, p.18–32.
- ³ It is important to note that there are other ways to define the internal market of the European Union, for example, through the relationship between national and EU level legal acts (and systems) regulating this policy area. Christen Boye Jacobsen (2002) maintains that the EU *acquis* (law) very seldom fully encompasses the entire concrete area of the law. Therefore in order to be able to implement the EU *acquis* in the area of internal market properly, a national system of legal acts is needed. He describes it as a system of several concentric circles, at the heart of which stands contractual, property (including mortgage) and civil law, bankruptcy law and its implementation as well as the criminal code and intellectual and the industrial property law. The middle circle encompasses company, competition, trade and consumer protection law and general rules on recognition of diplomas. The third (external) circle is comprised of a specific law in the area of internal market, namely the law regulating financial services and its supervision as well as the law regulating special protection rules (e.g. advertising, product safety rules), standardisation, conformity assessment, as well as special contracts (e.g. insurance, securities, labour relations and rent). See a paper of the above-mentioned author *Implementing the *acquis communautaire* – the fight over 80.000 pages*, Riga Graduate School of Law Working Paper No 7, Riga, 2002.
- ⁴ It is worth mentioning that this remained on the agenda even after Lithuania’s accession to the EU. However, Lithuania in this respect is not unique at all. The recent initiative of the European Commission to prepare a recommendation to the EU Member States (see Commission’s Recommendation 2009/524/EC of 29 June 2009 on measures to improve the functioning of the single market) indicates that there is a clear need for

the enforcement of the coordinated approach to implementation of the internal market policy at national levels.

- ⁵ Directive 91/356/EEC, laying down the principles and guidelines of good manufacturing practice for medicinal products for human use, and Directive 91/412/EEC, laying down the principles and guidelines of good manufacturing practice for veterinary medicinal products.
- ⁶ The study (final report) in Lithuanian can be accessed on the website *Lithuania in the European Union*, which is administered by the Office of the Government of Lithuania (http://www.euro.lt/documents/poveikio_tyrimai/2001/Farmacijos_pramone_ataskaita.pdf)
- ⁷ See (in Lithuanian) the *Report on Activities of the Government of the Republic of Lithuania in the Field of Integration into the European Union (Lietuvos Vyriausybės veiklos Europos integracijos srityje 2006 m. apžvalga* (2007 m. kovo 19 d.)), http://www.lrv.lt/2006_LRV_apzvalga.pdf
- ⁸ Kolyta, Saulius (2000) *Lietuvos rinkos priežiūros sistemos reforma*. Integracijos žinios, 2000, No. 8 (in Lithuanian) describes this reform in more detail.
- ⁹ Regulation (EC) No. 765/2008 of the European Parliament and of the Council (of 9 July 2008) setting out the requirements for accreditation and market surveillance relating to the marketing of products and repealing Regulation (EEC) No 339/93.
- ¹⁰ This is very visible and productive during implementation of the Services Directive one of the most important recent legal acts in the area of internal market. During 2007 and 2008, the European Commission organised 13 meetings with representatives of member states.
- ¹¹ Directive 94/19/EC on deposit guarantee schemes and Directive 97/9/EC on investor compensation schemes.
- ¹² Straathof, Bas, Gert-Jan Linders, Arjan Lejour and Jan Mohlman (2008), *The Internal Market and the Dutch Economy. Implications for Trade and Economic Growth*, CPB Document No 168. <http://www.cpb.nl/eng/pub/cpbreesen/document/168/doc168.pdf>
- ¹³ European Commission (2006), *Enlargement, Two Years After: an Economic Evaluation*. European Economy Occasional Papers No. 24
- ¹⁴ Ekonominės konsultacijos ir tyrimai (2007) *An ex-post economic impact assessment study of Lithuania's integration into the European Union*. <http://www.euro.lt/documents/poveikio%20lt%20ek-kai%202002-2006%20tyrimo%20summary%2008%2001%2029.pdf>
- ¹⁵ According to the World Bank data quoted in the Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions of 18 November 2008 on *The Impact of Free Movement of Workers in the Context of EU Enlargement* (COM (2008) 765 final), remittances to Lithuania in 2006 exceeded 2% of GDP. According to this report, during the first four membership years, 3.2% Lithuanian residents (or 112 thousand) went abroad.

- 16 This document (in English) can be accessed at http://www.euro.lt/old/iprogramos_eng/VR%20english01.09.18.doc?TopMenuID=42&MenuItemID=62&ItemID=974&LangID=2.
- 17 This document (in English) can be accessed at http://www.euro.lt/documents/Strategines%20kryptys_EN.pdf. The deepening of internal market has continuously been one of the main priorities of Lithuania's European Union policy. Before the publication of the *Strategic Guidelines*, these priorities had been listed in the annual documents of the Government on the priority legislative and policy agenda of the European Union (in Lithuanian – *Lietuvos Europos Sąjungos (ES) politikos aktualiausių klausimų sąvadas*).
- 18 Paradoxically, Germany introduced a new national mark GS, while implementing Directive 2001/95/EC, to mark goods in compliance with the requirements of this directive. It is paradoxical because the Community legislation, as a rule, aims at removal of barriers, and in this particular instance the EU law was used to introduce an additional barrier.
- 19 Regulation (EC) No. 765/2008 of the European Parliament and of the Council of 9 July 2008, setting out requirements for accreditation and market surveillance relating to the marketing of products and repealing Regulation (EEC) No 339/93, Decision No 768/2008/EC of the European Parliament and of the Council of 9 July 2008 on a common framework for the marketing of products, and repealing Council Decision 93/465/EEC, etc.
- 20 It can be downloaded from the website of the DG Internal Market of the European Commission http://ec.europa.eu/internal_market/strategy/index_en.htm
- 21 The Internal Market Programme was drafted on the basis of the 1985 White Book of the European Commission, in which it identified 300 directives in order to eliminate physical, technical and fiscal barriers among the member states. Implementation of this programme was facilitated by the Single European Act (entered into force in 1987). For the most part of the legislation in the area of internal market, the unanimity principle in decision making was replaced by the qualified majority rule. In 1993; the European Commission announced the first EU Internal Market Programme entitled *Making the Most of the Internal Market*, COM (93) 632 final, 22 December 1993 (see the *Archives of European Integration*, University of Pittsburg, <http://aei.pitt.edu/1326/>). On the occasion of the tenth anniversary of internal market, the European Commission published an analytical report about its impact *The Internal Market – Ten Years Without Frontiers* (see the website of Directorate General for Internal Market http://ec.europa.eu/internal_market/10years/workingdoc_en.htm)
- 22 *The EU's Single Market: At Your Service?* OECD Economics Department Working Paper No 449, Paris 2005, report by Line Vogt.
- 23 *Report on the State of the Internal Market for Services*, European Commission, (COM(2002) 441 final). July 2002 (<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:52002DC0441:EN:NOT>)

- ²⁴ The difficulty of penetrating the markets could be illustrated by the fact that it took eight years for Swedish IKEA to enter the market in Belgium.
- ²⁵ Directive 96/71/EC of the European Parliament and of the Council of 16 December 1996 concerning the posting of workers in the framework of the provision of services.
- ²⁶ “The European Council [...] asks the Commission, the Council and the Member States, each in accordance with their respective powers to set out by the end of 2000 a strategy for the removal of barriers to services [...]”. *Presidency Conclusions*, Lisbon (extraordinary) European Council, 23–24 March 2000, Article 17.
- ²⁷ See the text of the *Proposal for a Directive of the European Parliament and of the Council on Services in the Internal Market* [SEC(2004) 21], <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2004:0002:FIN:EN:PDF>
- ²⁸ For example, the French President Jacques Chirac openly asked the European Commission to withdraw its proposal on the Services Directive.
- ²⁹ The mutual recognition principle means that in the areas where no common (regulatory) requirements are established, national rules apply. Goods produced in one member state according to its national rules can be freely supplied in the markets of other member states irrespective of the national rules applied by those member states. The same rule applies to the goods legally imported to the European Union from the third countries.
- ³⁰ Copenhagen Economics (2005), *Economic Assessment of the Barriers to the Internal Market of Services*. <http://www.copenhageneconomics.com/Publications/Impact-Assesment.aspx>; the Netherlands Bureau for Economic Policy Analysis (2004), *A Quantitative Assessment of the EU Proposal for the Internal Market for Services*; European Commission (2004), *Extended Impact Assessment of Proposal for a Directive on Services in the Internal Market*.
- ³¹ The General Product Safety Directive (92/59/EC) was adopted only in 1992 (it was replaced by Directive 2001/95/EC from 15 January 2004), while Regulation 765/2008/EC, setting out the requirements for accreditation and market surveillance relating to the marketing of products and Decision No 768/2008/EC of the European Parliament and of the Council on a common framework for the marketing of products were adopted in 2008.
- ³² For more on the country of origin concept, see (in Lithuanian) Kolyta, Saulius (2006) *Paslaugų direktyva ir reformos ES paslaugų sektoriuje*, Lietuvos ekonomikos apžvalga, 2006/I, pages 46–52.
- ³³ The temporary nature of supply of services is not defined through a certain fixed period of supply, but by taking into account the type of services and their regularity, frequency and continuity.
- ³⁴ In other words, if, for example, in Belgium the minimum monthly wage is 1200 euro, then for its posted employees a Lithuanian company cannot pay less. The directive on posted workers requires that the employer during the posting period fully respects the minimal requirements of the receiving country as regards the limits of working time and minimal periods of testing, minimal paid annual leave, minimal wage, including for overtime, requirements governing labour contracts, health and safety at work, working conditions for pregnant women and mothers with small children, employed teenagers

and youth, as well as regarding equal opportunities and other provisions concerning non-discrimination. Also see the footnote 39 of this article about the recent Laval case in the European Court of Justice.

- 35 Communication from the European Commission *Guidance on the posting of workers in the framework of the provision of services*, 4 April 2006, Brussels COM(2006) 159 final; <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2006:0159:FIN:EN:PDF>
- 36 Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market; <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2006:376:0036:0068:EN:PDF>
- 37 His comment went on as follows: “At the political level, the proposed directive has become a battering ram for trade unions to fight the government with. Unfortunately, President Jacques Chirac has seen fit to side with the opponents, even though his country is a big exporter of services.” (<http://www.fritsbolkestein.com/docs/speeches>). The impact assessment carried out by *Copenhagen Economics* shows that the impact will be positive for all member states, both old and new. It is interesting to note that their research also shows that the overall biggest benefits from the implementation of this directive will be enjoyed by several old member states.
- 38 Debate on the Services Directive coincided with a lawsuit in the European Court of Justice, the so-called *Laval case* (Lithuania also joined the case on the plaintiff side). The summary of this case is as follows. The Latvian construction company “Laval” won a tender in Sweden to renovate a school. Swedish trade unions demanded that “Laval” entered into a collective agreement and that Latvian workers were paid average wages of the Swedish construction sector. “Laval” refused, and in response the trade unions blocked access to the construction site. Subsequently “Laval” was forced to terminate the renovation contract and close its subsidiary in Sweden. The European Court of Justice passed a ruling in this case on 18 December 2007 and argued that the posting directive 96/71/EC does not create any obligations for service providers other than minimal requirements set in the directive, including the minimal wage applicable in the recipient country (see also footnote 35 of this article). The Court ruled that the demand to “Laval” to enter into a collective agreement was illegal and restricted access to the Swedish services market.
- 39 Point 57 of the Presidency Conclusions of the Brussels European Council (23–24 March 2006); http://www.consilium.europa.eu/ueDocs/cms_Data/docs/pressData/en/ec/89013.pdf
- 40 Commissioner Charlie McCreevy’s Statement on the Services Directive at the European Parliament plenary session of 14 February 2006.
- 41 Adoption of the directive was clearly speeded up. Despite the fact that the European Commission practically rewrote the text, less than two months elapsed between the tabling of its new proposal and its final adoption in the Council; 14 member states asked for more time for analysis of the new draft in the Council working group; Austria swiftly moved the file up to the level of permanent representatives (COREPER). Soon a political agreement followed in the Competitiveness Council.

- ⁴² Address of Commissioner McCreevy to the Internal Market and Consumer protection Committee (IMCO) of the European Parliament on 21 March 2006. http://www.europarl.europa.eu/comparl/imco/speeches/060321_speech_mccreevy_en.pdf
- ⁴³ Mass protests against the directive were held in France, Denmark, Sweden and Belgium. On 21 March 2005, over 100 thousand protesters, mostly trade union (ETUC) activists from Belgium, France, Germany, Italy and the Netherlands, marched through the streets in Brussels. Over 50 thousand people protested against the country of origin principle in Strasbourg.
- ⁴⁴ Both studies (*Impact Assessment of the Draft Services Directive* and *Impact Assessment of the Legal Acts Regulating EU Social Protection Systems with regard to Lithuania's Compulsory Health Insurance Fund*) were carried by the Ekonominės konsultacijos ir tyrimai (EKT) group in 2005. They can be found at <http://www.euro.lt/en/lithuanias-membership-in-the-eu/the-impact-of-the-eu-membership/> (the latter study is available in Lithuanian only).
- ⁴⁵ On the other hand, it should be admitted that this political interest had to be stimulated. While externally the Lithuanian position was coherent and actively expressed, domestically it was not formed from top (political level) to down (expert level) but, *vice versa*, in the bottom-up way. Nevertheless, the case of Services Directive stood out from the general (preference accommodative) style of Lithuania's EU policy in the beginning of the EU membership. A more detailed account about this problem is provided by Strateginių studijų centras (2006) *Lietuvos Europos politikos strategijos trumpuoju ir vidutiniu laikotarpiu gairės* (*Guidance for Lithuania's Short-and Medium-term European Policy Strategy* in Lithuanian).
- ⁴⁶ For example, with Investors Forum, Confederation of Lithuania's Industrialists, Association of Lithuanian Trade Enterprises, Association of Lithuanian Chambers of Commerce, Industry and Crafts, Lithuania's Builders Association, Lithuania's Business Employers' Confederation and International Chamber of Commerce – Lithuania.
- ⁴⁷ Despite the fact that the adopted Services Directive will not be applicable to the services provided by notaries and bailiffs, the authors of this study remain convinced that the provisions of the directive would have had successfully contributed to making these sectors more effective. The market of notaries' services is very closed and restricted. The number of notaries in a specific territory is strictly regulated, and prices are also regulated. This obviously raises many problems to customers because of high charges, queues and inconvenient business hours. These problems are too difficult to be solved by administrative measures alone.
- ⁴⁸ As many as ten member states, including Lithuania, had submitted joint written proposals exactly about these articles to presiding Austria before the ministerial meeting.
- ⁴⁹ Some sources (for, example, www.euractiv.com) also put Belgium on the record as another country which abstained from voting. However, the Lithuanian delegates in that meeting do not recall Belgium expressing such a position. In any case, even if Belgium indeed had abstained from voting, it must have done that for entirely different reasons than Lithuania.

- ⁵⁰ During the first phase of implementation of the Services Directive, more than 100 central and local executive bodies are undertaking the review of existing national legislation; 900 relevant legal acts have been identified (including various rules adopted by municipal governments), and many of them will have to be amended to be in line with provisions of the Services Directive.
- ⁵¹ Political support could be defined as continuous attention to and control of the process of negotiation by the responsible minister, parliamentary committees and the Government, especially in ensuring vertical (inside the lead ministry between the expert and political levels, as well as with the Government and Parliament) and horizontal co-ordination (with other line institutions and interest groups). It is necessary in order to solve issues arising during negotiations and implementation and to mobilise the required human and financial resources.
- ⁵² This is what happened after the parliamentary elections in the fall of 2008. The victorious centre-right coalition declared its intention to split the Ministry of Economy into two, namely the Ministry of Energy and Ministry of Innovations, Business and Labour exactly for these reasons.
- ⁵³ Due to the technicalities of sequencing the implementation, it could turn out that the normalisation of implementation efforts in 2008 has come too late. For example, electronic procedures could be uploaded to the internet only after a full completion of the review of national regulations, licensing and permit issuing procedures will be aligned with the requirements of the directives, adoption of appropriate national legal acts and preparation of technical solutions in line with clear procedures.
- ⁵⁴ Internally in the Council, it is not considered to be wise or strong for a member state alone to oppose a clear majority. Such member states typically are thought to have internal political difficulties and therefore not in a position to strike a compromise or accept the will of the majority. On the other hand, sticking one's neck out could be beneficial in attracting attention, especially if the divergence from the majority is not an *ad hoc* act, but part of a well considered strategic line. During the first five years of EU membership, Lithuania used this tactics and was outvoted only several times, namely during the distribution of annual fishing quotas in the Baltic Sea, the Services Directive and during the debate about the mandate for the European Commission to negotiate a new co-operation treaty with Russia. This dilemma was widely discussed in Lithuanian mass media only in the context of the latter issue.
- ⁵⁵ In addition to a significant cost of establishment of business in another member state, various discriminating requirements for Lithuanian citizens and companies still exist in other member states. For example, other member states sometimes insist that Lithuanian subjects complete the so-called "economic test", during which they have to prove that the services suppliers already in the market are not able to satisfy the demand. Providers of services without establishment face even more restrictions. The European Commission impact assessment study has more about this. See European Commission (2004) *Extended Impact Assessment of Proposal for a Directive on Services*

in the Internal Market (http://ec.europa.eu/internal_market/services/docs/services-dir/impact/2004-impact-assessment_en.pdf), pages 17–23.

- ⁵⁶ For the products that are not covered or only partially covered by any EU regulations.
- ⁵⁷ The European Commission proposal for *Regulation of the European Parliament and of the Council laying down harmonised conditions for the marketing of the construction products*, Brussels, May 2008, COM(2008) 311 final. <http://ec.europa.eu/enterprise/construction/cpdrevision/CPRproposal-com2008-311.pdf>
- ⁵⁸ The two communications were drafted when the relevant provisions had been deleted from the draft Services Directive. They are **Communication from the European Commission on *Guidance on the posting of workers in the framework of the provision of services*** (Brussels, COM(2006) 159 final) and **Communication from the European Commission on *Posting of workers in the framework of the provision of services: maximising its benefits and potential while guaranteeing the protection of workers*** (Brussels, COM(2007) 304 final).
- ⁵⁹ *Proposal for a directive of the European Parliament and of the Council on the application of patients' rights in cross-border healthcare* (Brussels, 2 July 2008, COM(2008) 414 final). http://ec.europa.eu/health/ph_overview/co_operation/healthcare/docs/COM_en.pdf

WHY DOESN'T THE MUTUAL EU–RUSSIA INTERDEPENDENCE LEAD TO RELATIONS OF LEGAL RECIPROCITY?

Laurynas Kasčiūnas

The article deals with the question why, despite the mutual interdependence, the EU–Russia relations remain based on the principle of “barter” exchange. To put it in other words, what are the reasons for the EU–Russia relations to be based on the Russian model of bilateral relations? The asymmetry of EU–Russia relations is being analysed in this article in the light of the internal principles of EU integration. Such an approach is complementary to the traditional methods of analysis that deal with the EU’s role in international relations. The causal relations between internal processes of EU integration the attempts of the EU to extend its regulatory governance beyond the EU borders have not yet been analyzed exhaustively. Thus, this article raises the question whether deepening the EU inner integration simultaneously increases the chances of external Europeanization, i. e. chances of binding the third countries to the European norms. The general conclusion resulting from this analysis suggests that the EU–Russia relations are heavily affected by the vacuum of the EU internal integration model in the energy sector. Such vacuum impedes the possibilities to apply the principle of legal reciprocity in relation to Russia, rendering the EU incapable of performing the role of a gatekeeper. This allows Russian business to participate in the EU internal market without the corresponding obligations. In other words, the spill-over of European rules into the Russian internal system is being undermined by the fact that the EU–Russia relations have been traditionally developed in sectors where the European model is still absent, i. e. the European integration has not yet been developed or consolidated.

The EU role in the international arena is usually analysed from three traditional academic angles¹: *firstly*, conceptualising the EU as an actor of the international relations (this approach covers various interpretations: the EU as a civil, normative or transformative power, the EU as a post-modern actor of international relations, etc.). *Secondly*, in the context of institutionalization problems of the EU foreign policy (analysis of EU CFSP/ESDP instruments’

applicability in the European neighborhood policy, employment of cross-pillar instruments in external relations of the communities, etc.). *Thirdly*, in the result analysis of transposition of the EU regulatory model to candidate or potential candidate countries (studies of Europeanization). In the latter case, the ultimate academic goal is to explain the mechanisms that are or could be employed to export the European model. The EU membership perspective in particular is seen by the majority of academicians and analysts as the key source of efficient conditionality and the overall normative power of the EU².

The *fourth* direction of analysis remains covered by rather fragmentary research, i. e. studies of exportation of the European regulatory model to the states that have no European perspective³. Methods of such Europeanization mostly deal with various models of integration without membership (such as the European Neighbourhood Policy) and are usually being analysed by the analogy with the European enlargement policy⁴, i. e. this approach is based on the assumption that all instruments of EU external policy rely on the idea of the EU as a transformative power and on the principle of conditionality. The sole difference among these instruments is the level of adaptation pressure the EU imposes and the scale of reward offered in return for compliance (i. e. the depth of integration the EU offers).

Nevertheless, none of the above-mentioned approaches is capable of explaining the methods the EU relies on in relation to countries that are not interested in becoming its members. Thus, a question could be raised whether the traditional principle of EU external relations (conditionality) is a sufficient factor to magnetize the countries that do not seek EU membership. Another important question is the plausible alternatives to the EU–third country relation models that are direct derivatives of the enlargement policy.

Therefore, the main objective of this article is to identify how and under what conditions do the effects of internal EU integration influence the third countries that do not seek EU membership. The answers to these questions are being derived in this article from the analysis of regularities in the EU–Russia relations. Certain initiatives of the European Union (such as negotiations of the new strategic partnership agreement) are considered indicators that depict the ways multisectoral integration within the EU affects the bilateral relations' regime of the EU as a post-modern and Russia as a modern actor of international relations⁵. There is a common practice to assume that

the EU–Russia relations are defined by mutual interdependence; however, both academicians and analysts are short of answers to explain why this mutual interdependence results in a relation of “barter” exchange (usually taking form of a very exact and particular deal: Russia acquiring objects of energy infrastructure in Europe, whilst offering limited access to Russian energy resources to the European enterprises in return) rather than of legal reciprocity (mutual liberalization of energy markets and setting of common case-indifferent rules)⁶. Bilateral EU–Russia relations are therefore conducted according to the Russian rather than the European model of bilateral relations. Fraser Cameron and Aaron Matta insist that the EU possesses at least two strong levers of influence against Russia, i. e. the internal market, participation in which would be highly beneficial to Russia, and the fact that Europe is the largest consumer of Russian energy resources⁷. This article seeks to explain why these two levers do not work in practice.

The article presents an attempt to explain the asymmetries of EU–Russia relations from a perspective of the EU inner setup in order to supplement the traditional approaches towards the EU role in the international relations. It is important to note that the causality between the inner integration processes of the EU and EU initiatives on extending its regulation beyond the EU geographical borders have not yet been analysed widely. In other words, the main issue of the article is whether the development of EU internal integration leads to increased possibilities to bind third countries to the European norms.

The case of EU–Russia relations is taken as an example to provide evidence that the capability of the EU to expand its norms towards third countries depends not only on whether a country is willing to cooperate in a specific field, but also on whether the EU has achieved a firm internal integration in a particular sector.

Interactions between the post-modern (the EU) and modern (Russia) players of international relations: setbacks for mutual integration

Multiple differences distinguish the EU from Russia: a *sui generis* supra-national organization with tightly knit interdependence of its member states vs. a nation state that materializes its overall objective – strengthening its sovereignty – by all means of domestic and external policies; values of

liberal democracy vs. sovereign democracy; market economy with a relatively low state intervention vs. a centralized and state-regulated economy; foreign and security policy based on mutual interdependence vs. foreign and security policy based on permanent endeavour to maintain the balance of power⁸.

Robert Cooper defines the EU as a post-modern and Russia as a modern actor of international relations⁹. According to R. Cooper, the processes of European integration laid the foundations of voluntary opening of previously strictly country-sovereignty-related issues to external interference. Such partial cession of nation state sovereignty along with a paradigmatic change that called for not regarding sovereignty as the ultimate absolute both constitute the essence of the EU's post-modern statehood. The EU as a post-modern system thus does not depend any more on zero-sum solutions and does not accentuate sovereignty and the distinction between domestic and external affairs, i. e. the EU is a system of mutual interference in the member states' domestic affairs¹⁰.

Several elements of the EU system could be considered revealing its post-modern nature: first, the fusion of domestic and external affairs; second, the mutual voluntary interference in member states' domestic affairs has been institutionalised due to supranational EU institutions; third, the use of power as dispute resolution means has been entirely dismissed; fourth, the concept of security is based on principles of transparency, mutual openness and interdependence¹¹.

All of the above-mentioned principles constitute the distinctive "European method". It is via the exercise of this particular method and attempts to expand it in external contexts that the EU's actorness in international relations is manifested. This in turn means that in relation to third countries the EU applies the logic of institutional binding and increased mutual interdependence. In order to strengthen mutual interdependence with third countries, the EU usually employs its power as the economic magnet, i. e. encouraging the third countries' participation in the internal market in return for compliance with the European rules. The EU decision of 2006 to master a broad network of enhanced free trade agreements with third countries and trade blocs could be considered a good example of such logic¹².

Meanwhile, "modern" Russia follows a strictly "sovereignist" approach towards security and foreign policy. The political regime of the country is

based on a political vertical, whereas its economy (especially concerning the strategic sectors) is highly centralised and fused with the political regime. In contemporary Russia, property rights of large capital have become a matter of negotiation and separate agreements between the business and the state. This trend is particularly vivid in the strategic sectors of economy. The state thus provides guarantees on property rights and safeguards the balance of influence among competing interest groupings; on their part, business people provide their loyalty for the state. Such system could be considered a “new social contract” among the Russian state and its people¹³. A wide spreading variety of models of the business–politics junction could be identified: some private business structures have a protégé status, being patronized by a specific influential state agency and thus enjoying a special protectionist position; another model implies that a large enterprise can be simply owned by high rank bureaucrats and politicians (or their groupings), although such ownership is often not formally validated¹⁴.

According to modernization scholar Anton Oleinik, in countries where modernization was lagging behind, the state usually performed a special role in the “catch-up” process. In Russia, modernization has been governed largely by the state. Such role of the state was a direct outcome of the weak status of the private sector. In successful cases of modernization (Great Britain or the US), the strength of the private property allowed for the separation of economics from politics, i.e. these domains became autonomous vis-à-vis each other, whereas in Russia there were always channels through which the state could penetrate into the economic sphere, something that created conditions for the gradual interlocking of politics and economics. This is how the phenomenon of “property power” was born in Russia, i.e. when the political regime acquired the power to selectively ensure the right to private property in exchange for political loyalty.¹⁵

The interlocking of politics and economics in Russia reduces the likelihood of the emergence of alternative centres of power. The fact that the state has been at the centre of the modernization process in Russia means that those in control of the bureaucratic “machinery” possess the power monopoly within the state. Therefore, the internal architecture of such groups and the principles of their functioning need to be at the centre of attention in efforts to assess the scenarios of future development of Russia’s political-economic

system. It is also important to understand from the outset that any attempts (external or internal) at a systemic reform are going to be met with a severe resistance from the dominant power groups.

According to Oleinik, in developing countries modernization processes are basically imported from the outside and implemented by the governing elite, but always in a selective way. In other words, developing countries tend to choose models of modernization that do not conflict with the established rules-of-the-game and the institutional/power setting. It means the process of conservative modernization – when modernization processes are cautiously adjusted to the existing institutional setting and become a source of reproduction for the existing institutions (Russia is a typical case).¹⁶

Another important feature of Russian “modernity” is the emphasis on sovereignty, which results in a strict differentiation between domestic and external policies. Russia holds a particularly stiff position against any type of external interference and adaptation of external or international rules in its domestic or foreign policies, together with a specific approach to the functioning of international and supranational regimes. This means that the “golden rule” of Russian conduct in international affairs is “no interference in Russian domestic affairs whatsoever”¹⁷.

The principle of sovereignty supremacy obviously spills over into Russian external affairs as well. For example, in relation to various transnational or supranational organizations, Russia usually prefers talking to the key states separately than to the organization as a whole, i. e. Russia tries to bring a certain degree of re-nationalization of foreign policy into international regimes. Concerning international security regimes, Russia remains highly selective and declarative in its participation. Again, the basic principle of participation in any international regime calls for involvement, as deep as possible, in the decision-making of an organization, simultaneously avoiding any strings-attached that could interfere with the principles of Russian domestic or foreign affairs.

Some academicians claim that Russia has developed a very unique and qualitatively new mode of state–market relations, which requires a totally new tool of analysis and does not fit into any existing schemes¹⁸. Nevertheless, the current Russian political and economic regime is now commonly characterized as a political vertical, state corporation or a system of bureaucratic

capitalism¹⁹. The key features attributed to such a system are the following: a hermetic and external influence-resistant political system; fusion of the political and economic elites and bureaucratic-corporate control over the strategic branches of economy, the latter being banned from direct foreign investment. For instance, Russian legal regulations restrain foreign investment in 42 strategic branches of economy, among them arm production, aircraft and space technologies, digital technologies, processing and trade of nuclear and radioactive materials and processing of natural resources (this regulation came into force on May 2008). This legal enactment implies that a government approval is necessary not only in cases when foreign investors seek to acquire over 50 percent of the portfolio, but also when the goal of foreign investors is acquisition of a much smaller share – 25 to 10 percent (dependent on a particular sector)²⁰.

Features of post-modern vs. modern actors of international relations

<i>Cleavage</i>	<i>EU</i>	<i>Russia</i>
Modes of structuring external relations	Institutional binding: expansion of EU norms	Balance of power: action via capitals
Relation between domestic and foreign affairs	Mutual and voluntary participation in other member states' domestic affairs	"Golden rule" of non-interference into domestic affairs
State–market relations	Separation of business and politics	Fusion of politics and economy

Source: Table prepared by author.

The whole of the above characteristics determines that any attempts by external actors (be it states or international organizations) to bind Russia to a specific set of rules (e.g. European initiatives to apply the European method in Russia), as well as initiatives of increasing Russian economic dependence via direct foreign investments in the strategic sectors are usually doomed to failure.

It is exactly the inner architecture of the Russian political and economic regime (isolated from external influence) and the "golden rule" of sovereignty that define the limits of the potential EU's policy of institutional binding. The isolation of Russian political and economic system could only be decreased if the EU–Russia interdependence were developed under the European rules

and in key areas of highest importance. Only then can a spillover of the structural reform be expected to take place in whole of the Russian political and economic system.

***The problem of “policy taker” in the EU–Russia relations:
Europeanization vs. convergence***

As concluded by M. Vahl²¹, the EU's external relations rely on three main principles. The first is that the development of partnership with non-member states is based on the principles of European integration, i. e. a partner state is nearly in all cases the policy taker. This in turn means that, even in cases of sectoral integration, the partner state must fulfil the European standards. Secondly, the EU seeks in all cases to retain the autonomy of decision making. Thirdly, any model of relations towards partner states ought to be properly balanced, i. e. the commitments undertaken by the partner state ought to be counterbalanced with proper advantages offered by the European side.

According to E. Vinokurov, the “policy taker” problem is among the critical factors that put a potential economic EU–Russia integration on a hold. While taking part in the common economic area with the EU, Russia would have to unilaterally adopt the European standards and accept the changing European law, meanwhile Russia's access to decision making would remain low²². Taking into consideration the Russian “golden rule” of non-interference, one can conclude that Russia projects its relations with the EU at best as a mutual convergence or sectoral integration, not as unilateral Europeanization.

Analysis of most models of integration without membership (e. g. European Economic Area or the Swiss model) reveals that in the creation of any common economic area with the EU, the partner states must inevitably accept the policy taker status. The EU follows the principle that third-country access to the internal market cannot bring about more favourable conditions for the non-EU producers. Thus, countries that have extended trade agreements with the EU ought to follow all changes of the EU *acquis* and must integrate them into their own regulatory systems. Any case of the EU–Russia common economic area should in practice be analogous²³.

It should be emphasized that the project of the common EU–Russian economic area should be based on three main pillars: market opening, harmonization of regulatory norms, and trade liberalization²⁴. Any steps towards

market opening and trade liberalization are directly linked to Russian membership in the World Trade Organization (WTO). On the other hand, harmonization of regulatory norms is clearly a field where Russia is to adopt the tighter EU standards.

In this context, one question is of particular importance: is it possible to avoid the policy taker problem in creating a common EU–Russian economic area? Russia is interested in a sectoral mode of relations with the EU, i. e. seeks for opportunities of cherry-picking in the most beneficial sectors of cooperation. Switzerland follows a similar logic in its relations' regime with the EU. However, the experience of EU–Switzerland cooperation reveals that it is not an interest of the EU to allow partner countries to benefit from partial integration with the EU without bearing the costs of adaptation. For example, the mutual recognition of the production clause in the EU–Switzerland regime is applied only if Switzerland adopts EU regulations in the corresponding sector²⁵. A selective or partial implementation of the EU internal market *acquis* is hardly possible. Exclusion of particular sections could cause an erosion of the European internal market. Thus, a situation when the EU opens its market to a third country without requiring to adopt its standards (for example, environmental standards) is inconceivable. This in turn means that a sectoral approach as projected by Russia is not a viable solution for the policy taker problem in EU–Russia relations.

It is therefore obvious that the policy taker problem causes a stalemate in the EU–Russia relations. Any type of development and deepening of the bilateral relations (by creating new institutional frameworks or the like) can only be formal and declarative as Russia only sees the incentive and requirement package offered by the EU in the light of zero-sum logic. This also means that the EU's possibilities to apply the traditional principle of conditionality in relations with Russia are especially limited.

***Methods of the EU policy towards Russia:
conditionality, effects of “shadow integration”***

In the period of two decades following the end of the Cold War, the EU failed to create an efficient model of external incentives to stimulate Russian economic and political modernization in the European mode (by internalising the European rules) rather than by the “Russian” model of development.

The model currently applied by the EU relies on the principle of “sticks and carrots”. Many analysts note, however, that the EU offers Russia a “carrot” much more frequently than imposes a “stick”. Kataryna Wolczuk, while comparing the EU policies towards Russia and Ukraine, notes that the EU tends to offer Russia the same benefits that are offered to Ukraine as the main incentives for reform; however, in the Russian case these suggestions are hardly ever accompanied by any strings-attached as in the Ukrainian case. Visa regime liberalization stands as a good example²⁶. M. Vahl, for his part, compares the content of the ENP action plans and the road maps for the EU–Russia partnership in the four common areas of cooperation. He notes that the ENP action plans contain a detailed list of political criteria (including democracy, rule of law and human rights). It is only after these criteria are achieved that the ENP partners can move on from the stage of “cooperation with the EU” towards “integration without membership”. On the other hand, in the road maps for implementation of the EU–Russia cooperation within the four cooperation areas, these criteria are merely marginal²⁷. L. Delcour concludes also that there is practically no difference between the benefits that Ukraine and Russia gain from cooperation with the EU, except the fact that Ukraine must accept the application of the conditionality principle, i. e. pursue reforms to gain access to the benefits of ENP instruments, whereas Russia is not obliged to pursue reforms similar to those of the ENP partner states and nevertheless enjoys the same benefits²⁸. This allows to conclude that the external EU relations lack a balance between the legal obligations of a third country (to carry out a structural reform or adopt the European norms) and the level of factual integration with the EU.

In evaluating the effects of the EU conditionality on Russia, it is important to emphasize that the bulk of Russian exports to the EU consist of natural resources and therefore are not regulated by tariff or non-tariff barriers (such as trade regimes set by WTO). This means that deepening the trade regime between the EU and Russia will not have great impacts on Russian exports to the EU or on the profitability of such exports. Therefore, trade liberalization (the main instrument of the EU external relations) is not a strong bargaining leverage in case of Russia. This restrains application of the conditionality principle even further.

In this context, it is important to estimate whether the EU has any alternatives at hand to the conditionality principle in its relations with Russia.

I. Manners describes the EU as a normative power. According to him, the most important aspect in such a concept is *what the EU is* rather than *what it does*²⁹. The EU's effects in international relations thus can be called "shadow" effects of integration: internal EU integration inevitably implies external effects. "Shadow integration" could be defined in terms of a modified "spill-over". Differently from the traditional neofunctionalist logic of spill-over, which suggests that integration in one sector triggers integration in other areas (within the EU), "shadow integration" suggests that particular *internal* EU norms tend to spillover into the domain of the EU *external* relations.

At the very beginning, the content of the EU external relations was largely limited to exclusively economic issues; however, as the integration within the EU deepened and developed, the content of EU's external relations mirrored these developments automatically. It was the deepening of EU internal integration that conditioned emergence of such elements in the EU's external relations as political dialogue, cooperation in justice and home affairs, foreign policy matters, security and defence issues³⁰.

The impact of "shadow" effects of integration could be exemplified as follows: the EU internal market regulations have an immediate effect on third countries' companies that seek to export or invest on the EU territory. These companies then must comply with the environmental, industrial safety and technical standards set for production by the EU. In such a way the European rules spillover naturally into third countries' economic domains, and particular ties of a third country's dependence on the EU begin to emerge. This system of dependence is a channel of influence which the EU can exercise in relations with countries that are not interested in EU membership and thus do not fall under the traditional conditionality clause.

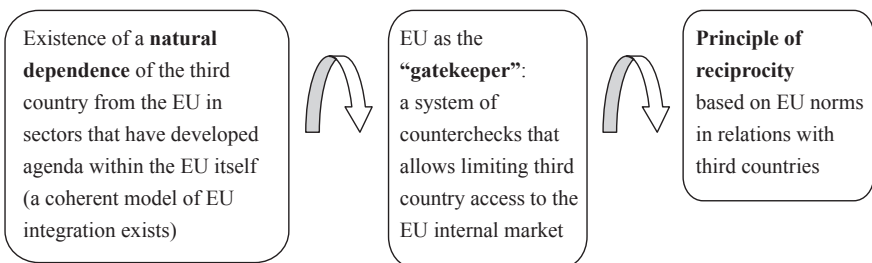
Such ties of dependence urge third countries to seek sectoral entry into the EU internal market. However, "shadow integration" manifests itself only in sectors that are more coherently integrated within the EU itself, i. e. if a sector is regulated on the EU level. Only then can the EU act as a gate-keeper and channel the European rules onto domestic policies of the third countries.

The gate-keeping function can be explained as an adaptation pressure that arises from the internal EU integration. It restricts third countries' participation

in the EU internal market if corresponding reforms are not carried out in sectors where third countries seek access to the EU market. In this case, the internal model of EU integration in one or another sector spills over into the EU relations to a third country, and the principle of reciprocity comes into play. However, this effect of reciprocity should not be directly understood as mutual convergence as the European norms remain the source of harmonization. The principle of reciprocity differs from the conditionality model: instead of offering other incentives, removal of barriers is suggested if corresponding reforms proceed. The more there are elements of positive integration in the internal EU integration model (regulatory norms, etc.), the higher the adaptation barrier to the third country.

The figure above explains how the effect of “shadow” integration turns into a goal-oriented policy of the EU external relations and how the Europeanization processes begin. The ideal model of “mutual interdependence” turning into Europeanization could be defined as follows: a third country accepts European norms in sectors in which the country seeks access to the EU market. Adoption of the European norms can in the long run spill over from one third country’s sector to other areas (traditional neofunctionalist spill over). The latter depends upon whether the Europeanized sector plays an important part in the third country’s political or economic structure. Following the assumption of critics of neofunctionalism, if a strategic field of high politics is Europeanized, the likelihood of a spillover is high; by contrast, if the Europeanized sector is a low-politics issue, the likelihood of further spill over is significantly lower. To put it in other words, the effect of “shadow integration” could only come into play in the Russian case if the EU’s multisectoral potential

Figure 1. The spillover of “shadow integration” into external Europeanization



were capable of suggesting a model of external incentives and counterchecks to the key veto players of the Russian political and economic system and prompt them to adopt the European norms.

What are the key sectors and veto players of the Russian economy? Obviously, the energy sector is the “locomotive” of the Russian economy, as the oil and gas sector produces 30 percent of the Russian GDP, 50 percent of overall budgetary inflow and 65 percent of Russian exports³¹. Analysts claim that all of the structural reform in Russia should begin with a reform of the monopolized and centralized energy sector, above all, from reforming “Gazprom”. And vice versa, without restructuring the energy sector any reform in Russia will certainly be a mere formality³². Therefore, it is particularly important to estimate whether the EU has any leverage at hand to stimulate the reform of the Russian energy sector.

Why doesn't the “shadow integration” effect apply to the EU–Russia relations?

In order to estimate the potential of “shadow integration” effects on the Russian energy sector, an analysis of EU–Russia energy dependence is necessary: is the EU internal market a place where Russia seeks to invest? Secondly, it is important to estimate whether the model of the EU internal integration is has already been developed in the energy sector, and whether it allows the EU to act as a “gatekeeper”. Thirdly, estimation is necessary whether a combination of the above factors allows applying the reciprocity principle in the energy sector cooperation.

It is important to note that the ties of mutual interdependence should in fact be created via direct Russian investment in the energy infrastructure objects on the EU territory. Analysis of the Russian interest to invest in the European energy market should allow estimating the role Russian energy companies attribute to the EU market.

Some overall trends have developed in the period of the last few years concerning the Russian energy market: firstly, the processes of nationalization have intensified, secondly, the role of foreign capital in the strategic sectors of economy has been increasingly limited; thirdly, Russian companies have been “internationalised”, i. e. energy companies have been intensely investing in energy objects abroad, acquiring foreign energy companies, etc.³³

According to S. Ehrstedt and P. Vahtra, Russian direct foreign investment abroad has increased nearly three times between 2004 and 2007. The larger share of this investment concerns the energy and mining sectors. The direct foreign investment of companies working in these sectors attributes to nearly 90 percent of all foreign assets owned by ten largest Russian transnational corporations. It is also important to emphasize that 90 percent of all Russian energy sector investment abroad take place due to two Russian energy companies – “Lukoil” and “Gazprom”³⁴. Why do Russian energy giants invest in the European markets?

S. Ehrstedt and P. Vahtra emphasize several fundamental factors behind such investment³⁵:

- **Lack of “investment targets” in the domestic market.** One has to take into consideration that the leading industry conglomerates in Russia are forced to keep the prices of their production relatively low on the domestic market. This implies that export revenues and access to European consumers become one of the most important parts of development strategies of the Russian companies. Obviously, the EU is one of the most profitable markets for Russian natural resource exports. The increasing prices of fossil fuels have also strongly encouraged investment by Russian energy companies in the European markets. For example, the price for gas on the Russian internal market today reaches \$50 to \$70 USD per 1000 cubic meters (depending on different consumer groups); this price is 4 to 5 times smaller than the price of gas for the EU countries. It should also be noted that the whole of Russian energy export infrastructure is oriented towards the European markets. Thus, attempts to diversify export destinations of fossil fuel exports would demand great investments into infrastructure projects in Russia.
- **Russian energy companies seek to gain larger weight in the whole of the energy system chain, in all segments of energy production, distribution and consumption.** This is the main factor beyond the interest of Russian energy companies to achieve control over EU energy companies, distributors and pipeline networks. This is the main difference between Russian energy policy and, for example, China’s energy policy which is oriented towards ensuring access to energy resources of other countries, not taking hold on the whole chain of energy production

and distribution. Internal trends of nationalization and increasing state control also stimulate foreign investment of Russian energy companies, as protectionist internal measures allow these business structures to transpose competition into the international level.

- **Because of the fusion of the big business and politics, direct foreign investment by Russian companies can sometimes be related directly with implementation of Russian state interests.** Such business activities can take many forms such as strengthening bilateral relations, implementation of politically motivated infrastructure initiatives (e.g. weakening the role of transit states in the system of energy resource distribution) up to interference in the implementation of competing energy infrastructure projects (e. g. competition between the South Stream and Nabucco), etc.

The above-mentioned factors suggest that the Russian interest to invest in the EU energy sector is strong. However, it remains unclear why, despite the mutual interdependence, EU–Russian bilateral relations in this sector remain relying on “barter” exchange rather than on the principle of legal reciprocity, i.e. it remains to be explained why the Russian model dominates over the European model of cooperation.

It is obvious that Russia has managed to make the processes of internal political centralization and economic protectionism somehow compatible with participation in liberal networks of economic cooperation with the EU. Russian energy monopolies are able to invest in the EU market without any “European” restraints, meanwhile, the strategic sectors of Russia’s economy remain closed or of a strictly limited access to foreign investment. This allows Russia to benefit from the mutual interdependence with the EU and to simultaneously maintain full sovereignty of its domestic political and economic processes.

When looking for potential EU leverages against Russia, it is important to note that the clear distinction between business and politics generally renders the EU incapable to use measures that can be freely employed by Russia (e. g. setting ceilings or other restraints for foreign investment in strategic sectors). Thus, the EU faces a dilemma: to be able to bind Russia, the EU should become less liberal towards its own business, i.e. to intensify its regulation heavily³⁶.

A key instrument of the EU's influence over third countries is the extension of the European rules (regulations). However, as already mentioned, European regulation can only be extended in sectors where such regulation has been developed and applied internally (within the EU), i. e. the "European model" has been set. According to the logic of "shadow integration" a third country must comply with the European model in sectors the country seeks access to within the EU market. Thus, the EU turns into a "gatekeeper" which safeguards the EU internal architecture from participation of third countries that do not comply with the European rules (the principle of reciprocity is applied). The general function of the reciprocity principle is to ensure that the balance is safeguarded between third country participation in the EU internal market and the country's obligations and ability to apply the European norms in its domestic domain.

A practical example of reciprocity (however, not implemented) is the so-called "Gazprom clause". According to this clause, the principle of unbundling as applied in the EU energy market should have been made obligatory for the third state companies seeking investment in the EU market as well as the EU enterprises³⁷. This implies that the clause would have ensured equal treatment and regulation on unbundling energy production, distribution and supply in both the EU and Russia. According to the primary project by the European Commission (2007), in cases when a third country company seeks to acquire a stock of a European energy operator, an agreement between the EU and the third country's government would be necessary. Such an agreement would provide for analogous conditions for EU investment in the third country (i. e. involve an opening of the country's energy market for EU investment)³⁸. Thus, the European energy market would only be opened for investments from those non-member states that accept and provide for a reciprocal market opening.

However, the "third country clause" was an integral part of the third energy package which basically dealt with issues of electricity and gas market liberalization within the EU. This made this clause directly dependent upon the internal model of the European energy policy.

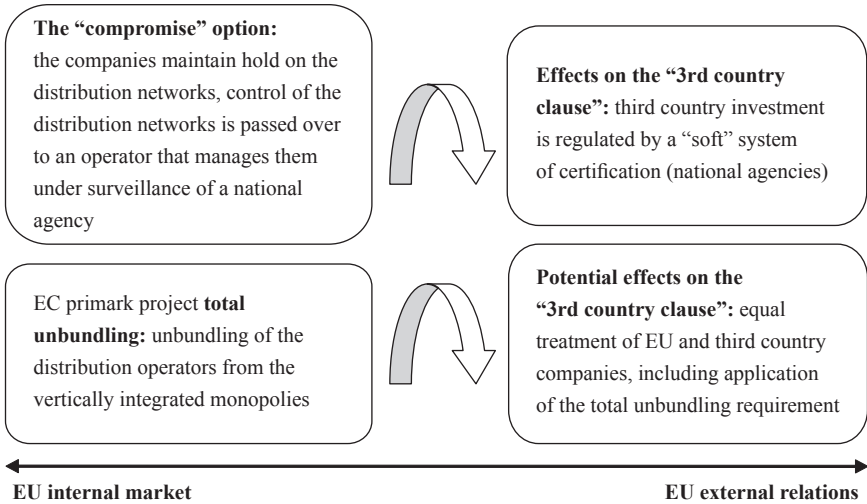
Therefore, it is important to note that the integration of the EU domestic energy market faced resistance within the EU due to existence of national energy market monopolization, trends of strengthening the "national champions",

economic patriotism and other structural factors. Thus, the general outcome suggested the lowest common denominator, i. e. the possibility for the member states to choose one of the three alternatives³⁹:

- **Total unbundling.** This instrument provides for the total unbundling of activities of the distribution operators from the vertically integrated monopolies, i. e. a company engaged in the production and transportation of energy resources under this instrument is obliged to sell its networks of distribution to an independent investor or to a newly established independent company.
- **Establishing an independent operator of the systems of distribution without unbundling the ownership of the shareholders.** This alternative allows the companies that are both producers and distributors to maintain the distribution networks in their property, however, under conditions of the control over the distribution networks to be assigned to an independent operator, and of the total withdrawal of the energy company from decision making related to the management of the distribution networks.
- **A “compromise” alternative of monopoly dismantlement.** This option allows the vertically integrated companies to maintain their hold on the distribution networks, however, the control of the distribution networks must be passed over to an operator that manages them under a strict surveillance of a special national agency which in turn coordinates its activity on the European level⁴⁰. One of the main differences between the second and third (compromise) option is that in the latter case energy companies retain their right to make commercial and investment decisions concerning the distribution networks.

The third “compromise” option spilt over into the EU’s energy relations with third countries. Under the current regulation, third country investments in the EU will be regulated by special national agencies which in turn shall cooperate on the European level as foreseen by the regulation of the third energy package. Therefore, one can conclude that the final version of the energy package set an (enforced) system of national regulation rather than the European regulation. This in turn conditioned the devaluation of the “Gazprom clause” because the reform-related elements of the clause have been removed.

Figure 2. The spillover of the internal model of EU integration in the energy sector into the EU's external relations



It is obvious that a certain vacuum of the internal EU integration remained after concluding the third energy package. Such vacuum also deprives the EU of the possibility to enforce reciprocity (act as gatekeeper) in relation to non-member states. This allows third countries and their national companies to gain access to internal EU affairs without taking up the corresponding and necessary commitments. This means that the spillover of European norms into the Russian domestic system has been restricted by the fact that the EU–Russia ties of mutual interdependence remain beyond the domains restricted by the coherent model of EU integration.

The case of “Gazprom clause” illustrates that in relation to the countries that do not seek EU membership only mutual interdependence and effects of “shadow integration” can be efficient means of extending the European norms. It is thus important to examine the possibilities of turning the economic sectoral interdependence into mutual *legal* interdependence. The EU can only perform its function as a gatekeeper (and impose the principle of reciprocity) only concerning policies where a certain level on internal integration has already been achieved. Meanwhile, such functions cannot be performed in areas where a vacuum of internal integrations exists. This is exactly how the dynamics of the EU internal integration affect the success of external Europeanization.

The *status quo* situation in which the EU embraces both integrated and non-integrated sectors forces the EU to apply the logic of binding sectors in relations with third countries. For example, the European Commission whilst projecting the concept of a common economic area with Russia might bind liberalization of the visa regime to achievements in opening the Russian energy market⁴¹. This basically means that the EC attempts to compensate the vacuum of internal integration in some sectors with instruments derived from already integrated policy areas. This is a policy based on an assumption that the dynamics of cooperation (those that coincide with the European rules) can spill over into other sectors. The viability of such a scheme is highly dependent on the width and depth of mutual interdependence shared with a third country. Could binding sectors together help the EU to bind Russia to the European rules?

***Drawbacks of the EU's policy of sectoral binding:
the non-diversified Russian economy and fusion
of business and politics***

In negotiations on a new EU–Russia strategic partnership agreement, the European Commission seeks to achieve an agreement that is as deep, as comprehensive and as binding as possible⁴². Binding the policy sectors together is expected to increase the EU's bargaining power. Russia, meanwhile, seeks for sectoral agreements in order to be able to pick out areas of the most beneficial and least binding cooperation. Such a sectoral approach has by now been successful because the EU has no “gatekeeping” powers in the sectors that are of particular importance to the Russian political and economic system.

In the opinion of some analysts, creation of a common EU–Russian economic area could compel Russia to pursue reforms of the centralised and state-controlled energy sector. The key to this project is a free trade agreement which was more related with the EU structure of economy. Such an agreement should encompass not solely issues of trade tariffs, but also include a wider range of questions (removal on non-tariff trade barriers, liberalization of the service sector, state support issues and a better environment for foreign investments). An agreement of a wide extent, usually defined as a WTO *plus* type of treaty, should be reached⁴³.

Would the multisectoral EU integration potential and the very core of it – the possibility for a third country to participate in the EU internal market – be sufficient to stimulate the structural reform in Russia?

In order to answer this question, one must estimate whether a free trade agreement as proposed by the EU coincides with the Russian structure of economy, its needs and relations to the internal political system.

Natural resources dominate in the Russian exports to the EU; natural gas and oil are of particular importance, constituting 38 percent of the whole EU-15 import from Russia. Manufactured goods amount to 18 percent of Russian EU-15 exports, steel production amounts to 5.3 percent and other metals to 8.7 percent. Exports of the Russian chemistry industry to the EU-15 make 4.8 percent and agricultural production 3.8 percent of all Russian exports to the EU-15. The following are the sectors where relatively low import tariff rates are applied by the EU: coal, oil and natural gas are imported with a zero percent tariff, timber with a tariff of 0.1 percent, 1.9 percent tariff is applied to manufactured goods, 0.9 percent to steel production, and 1.5 percent to chemistry industry. These figures reveal that the Russian export structure is dominated by the production which is generally already indifferent in terms of whether the EU does or does not remove its trade barriers⁴⁴. It is particularly important when estimating the role of these sectors (energy and metallurgy) in the centralized and monopolized Russian economic system. Kari Liuhto and Peeter Vahtra note that the export-oriented sectors of Russian economy are dominated by a handful of leading industrial conglomerates which are either state-controlled or owned by oligarchs loyal to the regime⁴⁵. These export-oriented conglomerates should be seen as the key element of the Russian state corporation as well as a guarantee of stability in a system of a politics–economy fusion. This in turn means that a free trade agreement cannot trigger the effects of “shadow integration” in the strategic sectors of Russian economy. In other words, a free trade area as suggested by the EU cannot provide the key Russian political and economic veto players with sufficient incentives to begin a structural reform or adoption of the European norms because the key trade tariffs for Russian exporters are already low on the European side.

It is worth mentioning that most assessments of the potential effects of an EU–Russia free trade agreement on Russian economy suggest that such

an agreement would bring about a 3 to 11 percent increase of the Russian GDP⁴⁶. However, an important reservation needs to be made as in order to achieve this positive effect Russia should comply with a wide list of conditions under a comprehensive trade treaty with the EU: not solely to remove tariff barriers in the sectors of agriculture and services, but also to remove the non-tariff barriers, moreover, to pursue a fundamental regulatory reform, to liberalize the service sector and limit the scale of state intervention to a minimum⁴⁷. Calculations of this type are usually based on the assumption that diversification of economy (i. e. purposeful actions of the state aimed to decrease dependence on export of energy resources) is a substantial precondition of long-term economic growth in Russia. However, these estimations hardly ever take into account the internal principles of Russian economy (especially important to the strategic sectors) and its relation to the political vertical. It is therefore important to ask: what are the internal factors that maintain the current Russian structure of economy? And what is the relation between the fusion of economy and policy in Russia to the prospects of structural reform? To put it in other words, are structural reforms in general possible in the context of the current principles of Russian economy and state functioning?

The existing political vertical and a specific model of politics and economy fusion determine the reluctance of the Russian political and economic system to adopt external pressures. Nevertheless, such a model of state and economy governance is especially sensitive to various domestic pressures: redistribution of spheres of influence, competition among the elite groupings, failures to achieve internal consensus, etc. This means that the Russian political stability (and potential change) depends on the settled balance among the agencies of power and the ability to manage the competition among elite groupings via the existent “rules of the game”. To be more exact, the state stability fully depends upon the stability of “rules of the game”⁴⁸.

The equilibrium within the political and economic elites is maintained by a specific system of “checks and balances”, i. e. an equal division of economic benefits and political privileges among separate elite groupings. Such a system can only be maintained in a centralized state economy and by state control over the most important branches of economy (imposing such control directly or through the ownership of loyal oligarchs). Such preconditions

of state stability stiffly anchor the state's economic structure because any structural reform in the strategic sectors (diversification, liberalization or restructuring) implies not solely a radical change in the state's economic foundations, but also a drastic review of the consolidated "rules of the game" for the political elites. A change of that proportion could trigger inner crisis among the elites.

The decisions that have been made by the Russian government in the face of the international economic and financial crisis confirm the assumptions on the complexity of any reform in Russia. At the end of 2008, a list of 295 large strategic companies has been compiled to indicate clearly which companies shall be eligible to receive state support. One of the several criteria for enlisting companies in such a register was the systemic character of a company, i. e. a company was only enlisted if it was capable of making a cross-sectoral impact. Ten largest energy corporations were enlisted. It is expected that the existence of such a list shall trigger further mergers, the growth of companies and emergence of new monopolies dependent on state donations. Such a trend is likely to emerge because the already enlisted companies receive state support and become capable of absorbing smaller and financially weaker enterprises that are not eligible for state support⁴⁹.

Therefore, economic arguments do not reveal the whole picture of drawbacks behind the non-diversification of Russia's economy. The fusion of economic and political games is a particularly important obstacle to the reform.

Thus, it can be concluded that in the context of the EU–Russia relations creation of a free trade area would most probably not allow for an efficient application of cross-sectoral binding.

Conclusions

The limitations of traditional conditionality in the EU's external relations suggest that only the method of "shadow integration" can be potent in the EU's relations with the states that do not seek EU membership. More exactly, the EU must obtain the possibility to exercise its "gatekeeper" potential beforehand. The function of gatekeeping is above all derived from the adaptation pressure created by the internal EU integration; this function enables the EU to safeguard the internal market from third country participation without the third country accepting the pressure of adaptation (without finalizing the

reform of the sectors in which a third country seeks access to the European market).

The practical (non)manifestation of the EU gatekeeper's function can be well illustrated on an example of the third energy package, i.e. the evolution of the "third country" clause. This clause is of particular significance in the EU–Russia relations because the centralized and state-controlled Russian energy sector is the main "locomotive" behind the country's economic growth and also serves as a platform for the fusion of economic and political domains in Russia.

The initial proposal by the European Commission was based on the principle of total unbundling, according to which management of the production and distribution of energy resources should be strictly separated from the ownership and control of the main vertically integrated monopolists. Analogous regulations would have been applied to third country companies seeking to invest in the European energy market (the "third country" clause). However, the initial proposition has evolved into the "compromise" option on a partial monopoly dismantling. The "compromise" version of unbundling provides for persistence of the vertically integrated monopolies; according to this option, they also retained control over the distribution networks, with one reservation stating that the management of the distribution networks should be assigned to a separate operator monitored by special national agencies. The "compromise" formula was automatically transferred to the "third country" clause, thus leaving to national agencies the right to decide on foreign investments. This decision rendered the EU incapable of exercising its "gatekeeper's" function in relations with Russia.

Thus, this article provides a proper proof for making conclusions about the key proposition raised at the beginning: the possibilities of the EU to act in the sectors in which the third countries seek access to the European market (and thus must comply with the EU pressure for adaptation) are limited. It is directly dependent on whether the EU has achieved an elaborate model of integration in these particular sectors where an interdependence with the third country had previously developed. The instruments of analysis employed in this article have also appeared to be useful in explaining the lack of the EU leverage against Russia.

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BACK TO THE BALTIC SEA REGION?

Mindaugas Jurkynas

Abstract. The article focuses upon patterns of cooperation and conflict in the Baltic Sea region, discusses the role of the Council of the Baltic Sea States, Northern Dimension, Baltic, Nordic and Russian visions of the Baltic Sea area and evaluates the EU's Baltic Sea Strategy from the Lithuanian perspective. The study concludes that incompatible modern and post-modern visions in the Baltic Sea region and challenges to the Baltic Sea Strategy do not promise easy regional cooperation in the nearest future.

Introduction

The Baltic Sea Region (BSR) appears to have come back into fashion.¹ After years of political neglect the region rose like a phoenix from the ashes: in October 2009, the European Union has adopted a strategy for Baltic Sea Area (BSS), which is, after all, still a relatively new political phenomenon. Velvet and singing revolutions, the fall of the Berlin wall and the USSR, the reunification of Germany and the withdrawal of the Soviet troops from occupied and annexed countries, the Transatlantic integration and emergence of soft security issues became hallmarks of the latest political processes in the BSR. New democracies across the post-communist Central and Eastern Europe and the Baltics have at the same time experienced one of the most important transformations. The twin enlargement of the EU and the NATO in 2004 opened new opportunities for foreign policy making. Arguably, the membership has not become a panacea for all security and welfare related problems in the BSR. Nonetheless, the potential for the expression of national identities and implementation of interests via regional bodies and initiatives has tangibly increased.²

Lithuanian national interests after the reestablishment of independence and statehood had focused upon hard security and sovereignty. Foreign policy in Lithuania had polarised politics in the early 1990s when right-of-centre

parties (The Popular Movement (later the Conservatives), the Christian Democrats) considered themselves Western-oriented and were overtly negative towards political, economic and social legacies from the Soviet period. On the other hand, left-of-centre political organisations (the ex-Communist Labour Democratic Party, the Social Democrats and some fringe parties) possessed moderate attitudes in respect to the Communist past and cooperation with ex-USSR Countries. With the adoption of the Constitution in 1992 and its ban on the joining post-Soviet alliances, the pro-Western mood has taken its course across the political landscape ever since. In 1993, political parties reached a consensus on Lithuanian foreign policy which de facto has been in force up to date³ with the vast support from intellectual, business, media circles and citizens.⁴

It was evident that geopolitical realities left little room for manoeuvre for Lithuania after the end of the Cold War, and the aiming at the membership in the NATO and the EU became a major driving force for comprehensive security. Transatlantic integration simultaneously implied the reestablishment of historical justice and a come-back to the so-called West, new opportunities to enhance social, economic and political development via Europeanisation and, last but not least, participation in a collective joint decision-making structures and expansion of Western norms eastwards. However, hard security concerns still run high in the eastern part of the Baltic Sea area after the EU and NATO expansion.

In spring 2004, Lithuania framed new visions for its foreign policy, which can be summed up as a Transatlantic activism and Western norm entrepreneurship, via active involvement in regional cooperation around the Baltic Sea and in Eastern Europe, i.e. Belarus, Moldova, Ukraine and South Caucasus. Lithuanian salience in regional and European politics has been gradually increasing. Europeanisation paved the way not only to download Western values as liberal democracy, market economy, rule of law, tolerance, peaceful coexistence and human rights, but also to customising the EU and uploading the country's experiences of post-communist transition and new visions of increasing stability. The evolution of initiatives from the Vilnius Ten Group to active involvement in the EU's political agenda by formulating and promoting the EU's Eastern Partnership, energy security issues and intensifying European and even Transatlantic discussion on Russia and neighbourhood

policies made an indelible, though at times differently interpreted, mark in regional politics and beyond.

Any state, and Lithuania hereby comprises no exception, is involved in different layers of political action – global, regional and local. Global activities have so far been mostly a domain of big powers and required not only a lot of resources, but also a firm normative, whichever it is, foundation, traditions and adaptive and visionary guidelines. However, small and medium-size states cannot be completely written off to margins of international politics. For example, the Nordic countries managed to prove that norm entrepreneurship and focus on international socialisation of new norms (environmentalism, sustainable development, supremacy of international law, conflict management and peacemaking) can increase the profile of any state (Bergman, 2006; Ingebritsen, 2002). Lithuanian ‘globalism’ is expressed through military and civil components in Afghanistan, Kosovo and Iraq and active diplomacy in international organisations and ES’s eastern neighbourhood. However, the global money crunch and limited resources of small states condition their activities on regional (neighbouring) and local (national) levels.

Arguably, regional organisations are among outlets for nurturing national interests and identity. Developing state’s political maturity and organisational capacities go usually hand in hand with increasing responsibilities such as recurring chairpersonship at regional and international organisations. Lithuania commenced a series of annual presidencies. The country runs the Council of the Baltic Sea States (CBSS) since July 2009, and chairs the Organisation for Security and Cooperation in Europe (OSCE) from 2011 and the European Union from 2013, let alone former presidencies at the CBSS, the Baltic Assembly, the Baltic Council of Ministers and informal networks like Nordic-Baltic 8 and Nordic-Baltic 6. Besides, chairing countries are supposed to timely react to latest political developments like to the recently announced BSS. The European Commission launched an introduction to the Strategy for the BSR in June 2009. The strategy and the ongoing chairpersonship at the CBSS raise a problem to what extent the Baltic Sea area becomes a hub and a pilot project for enhanced regional cooperation. Is the BSS a new push or is it just ‘an old wine in new bottles’? The main focus of the article lies on the development of patterns of cooperation in the BSR from regional identity and security points of view up to date. The study will evaluate the emergence

of the BSR, the role of the CBSS, Northern Dimension (ND), Baltic, Nordic and Russian attachments to the BSR and political take-away messages of the EU's Baltic Sea Strategy (BSS) from the Lithuanian point of view.

Cooperation in BSR after the Cold War

After the Cold War, a string of transnational, national and sub-regional collaboration cropped up in Northern Europe: the CBSS, the Arctic Council, and the Barents-Euro-Arctic Council, the Northern Dimension, the North European Initiative overtaken by the E-Pine and the like. The BSR, which did not exist before the end of the 1980s due to the Cold War tensions, rivalry and conflict, has now become an icon of 'new regionalism' and provided an additional forum for the collaboration among littoral states. In fact, the CBSS⁵, as a Danish–German initiative, has been basically directed towards the involvement of Russia or, to be more precise, to avoiding new dividing lines and fostering a dialogue among the Western countries, former Soviet satellites, the Baltics and Russia. All this had to be achieved via cooperation in soft security areas such as the environment, energy, transport, communication, education and so forth.⁶ The 15th CBSS Ministerial Session in Elsinore on 4 June 2009 did not seem to have made any deviations from the initial ideas. It comes then hardly as a surprise that after the dissolution of the USSR, Russia was included in many forms and organisations of cooperation, both globally and regionally, in order to keep Moscow on the path of stability and Westernisation.

A number of CBSS structures were operating under the auspices of the Committees of Senior Officials (CSO) which are now in decline. The CBSS is currently undergoing a reform and, according to the Riga Declaration of June 2008, one of the former working groups has been transformed into an Expert Group and the two other have been dissolved. The CSO monitors the work of the Expert Group on Nuclear and Radiation Safety, the Task Force against Trafficking in Human Beings, and coordinates the work undertaken in the agreed five long-term priorities. The cooperation can be described as decentralised and horizontal. Lithuania, as a presiding CBSS country for 2009–2010, has so far participated in the activities of the CBSS and chaired the regional organisation in 1998–1999, focusing on civil security, economic integration, environment protection, nuclear safety and the Kaliningrad

region. During the newest presidency, Lithuania will continue the CBSS reform measures and stress the areas of energy, environment, economic development, education and culture, civil security, the human dimension and neighbouring areas as the Kaliningrad region and Belarus. The key principles are innovation, cross-border cooperation, clean environment and safe living conditions.

Scholars note that the CBSS has been useful in fostering cooperation between competitors and countries with tensed interpretations of history, e.g. the Baltics and Poland on the one hand and Russia on the other. However, in terms of efficiency, the CBSS according to the obligation-outcome model (Lindberg, Scheingold, 1970) could be placed into equilibrium and output-failure models.⁷ The Baltic Sea area has been skilfully predicted to become the 'internal lake of the EU', which has virtually come about after the penultimate EU enlargement of 2004. This point of departure duly raised questions what is about to happen with this relatively new political construct (the BSR) and to what extent the twin EU and NATO enlargement has affected security configuration in this part of Europe.

There is still a great deal of hope in the BSR as a 'laboratory' of peaceful change in Northern Europe after the East-West conflict. The process of transformation achieved some results like institutional adaptations, practical management of peaceful change and attempts to coin 'regional' awareness despite four different externalities (European, Transatlantic, Nordic and Post-communist) affecting the formation of the BSR (Hubel, 2004). Institutional adaption first of all aimed at putting relations between the so-called West, former socialist and USSR countries and Russia on the track. Therefore, the NATO–Russia partnership agreement of 2002 or even earlier EU–Russia Partnership and Cooperation Agreement of 1994 seemed to have cleared the skies. Enlargement of the NATO has been negotiated by increasing Russia's role in the NATO decision-making and thereby reducing antagonism in Moscow, which was rather taciturn about the eastern enlargement of the EU. Yeltsin's Russia launched democratisation, marketisation and welcomed relations with the Western countries to some extent. All this oiled cooperative practices around the Baltic rim too and, for instance, Russia's participation in the CBSS could be portrayed as subregional socialisation. The involvement of Russia came along with the Soviet legacy in the early 1990s: the presence of

Russian military troops in the Baltic states, escalating the citizenship issue for the Russian-speaking minorities in Latvia and Estonia, Russia's refusal to recognise its borders with the Baltics. However, soft security problems (pollution, crime, illegal migration, spread of diseases, social disparities, improvement of energy and transport infrastructure, etc.) were seen the first to be addressed within the Baltic Sea area.

The disintegration of bipolarity in world politics changed the ways of thinking about security. Hard security had to budge to soft security – this partly happened with the Baltic Sea cooperation at the outset of the 1990s too. Thereof it is important to consider whether and on what grounds the BSR can or cannot be decesuritised. Scholars iterate that security and cooperation are interdependent, and security elements do not easily dwindle from logic of regional cooperation. For example, K. Deutsch (1957) defined a security community as a group of countries which become so integrated that they share a sense of community and peaceful conflict resolution. A longing to overcome security threats, in political and military terms, led to security communities and gave states more motivation for cooperation. In this context, the EU can be viewed as a peace project whose principles of collaboration were attempted to apply in the Baltic Sea area. Browning and Joenniemi (2004) argue that regional cooperation in the BSR can be regarded in terms of realistic, liberalist, Nordic (asecurity) and desecuritisation interpretations of security.

The realistic approach is the Hobbesian 'all are against all', and the preservation of state sovereignty and security become top concerns. Cooperation is understood as alliance building and balancing against other threats (states). Regional cooperation is driven by othering and exclusion, that is, countries find 'the Other' (foe) against which collaboration is being proceeded. During the Cold War, cooperation in the Baltic Sea area was next to nothing. Later the Baltic states and even Poland seemed to have been on the constant run from Russian political, energy and information related influence, and tensions did not ebb away. Regional cooperation served as a way to the NATO and EU membership, as a training ground for the transformation and adjustment process. On the other hand, Liberalism (Pluralism) came triumphant after the failure of Realists to foresee a sudden death of bipolarity and the demise of the USSR. Liberals are keen on explaining cooperation in the aftermath of the Cold War by paying lesser attention to sovereignty and hard security and

elevating soft security concerns instead. According to Liberals, states alone cannot solve problems since they have a transnational, regional or global profile. Therefore, cooperation among states, whatever their attitude towards each other, is a must. Security thus is a uniting argument, and cooperation must proceed by inclusion. Finally, a case of asecurit⁸ region originates with the Nordic example, which has been described as a security community *par excellence* as early as in the late 1950s. The Nordic countries possessed similar regional identities on a number of dimensions – political, societal, cultural, developed dense linkages of cooperation and wrote off hard security threats from each other. Norden is not to be understood as a project like the EU where the main aim was to overcome fears and feelings of mistrust; on the contrary, it is not a sin to state that the EU has been following in the Nordic footsteps in many other ways to promote regional integration. Nordic community-building has been a bottom-up process by people and their voluntary associations and organisations and not top-down by states: borders lost their divisive function, questions of security were minimised or forgotten. Norden has become a non-security-driven community.

Downs followed ups of regional cooperation in Northern Europe: Nordic states were cutting investments in region-building projects, the number of summit meetings of the CBSS has plummeted, and the US has also decreased her attention to this region. The Northern European Initiative was ended by 2003 and turned into the Enhanced partnership in Northern Europe (e-PINE), but resources became even more limited (Browning, Joenniemi, 2004). Regional cooperation was understood as part of a transition process: the states have adapted themselves to the post-Cold-War milieu.

After the end of bipolarity, new ideas about reconstructing political space surfaced. After the change in world geopolitics, weakening Russia and ever strengthening the EU, the Nordic states abandoned the idea of Nordic balance which kept them over-cautious towards close cooperation with either West or East, and joined the EU in 1995. Moreover, if we regard Europeanisation as a two-track process (Flockhart, 2006), then each country tries to ‘upload’ its experiences and national identity. After the EU enlargement of 1995, Finland saw the EU having acquired a 1300-kilometer long border with Russia and raised the Northern Dimension (ND) idea in 1997. The ND encompassed principles of good relations with Russia and aimed at boosting the EU profile

in the region with promoting energy cooperation between Europe and Russia. This subsequently asked for the development of infrastructure in transport, telecommunication, ports and borders. Other concerns within the ND were nuclear pollution and largest poverty gap in Europe in the Baltic and Barents Sea regions. Finland managed to customise the EU and received the approval of all member states since the ND did not require additional resources⁹ or organisations for administration (Ojanen, 1999). Geographically, the ND focuses increasingly on northwest Russia, Kaliningrad region, the Baltic and the Barents Seas, the Arctic and Sub-Arctic areas. The main objectives of the policy are to provide a common framework for the promotion of dialogue and concrete cooperation, strengthen stability and well-being, intensify economic collaboration, and promote economic integration, competitiveness and sustainable development in Northern Europe.¹⁰ Browning and Joenniemi (2003) saw the ND as a joint area for those who are already in the EU and those who are outsiders. Divisions had to be eradicated, and the relation between the EU northern members and the non-applicants had to be improved. With a project-like nature, the ND, like the CBSS, was focusing on soft security, i.e. economic, social and environmental problems and coordinated approaches of the CBSS with the Phare and Tacis EU funding programmes. The ND was in the process to build joint expertise of local actors and NGOs, promote cross-border cooperation and adherence to EU's political, economic and legal norms and values. Moreover, the ND, like the BSR, produced myths creating a common space for 'us' and 'others' and a common set of identities. Two main characteristics of the renewed policy of the ND in 2006 are the co-ownership of EU, Iceland, Norway and Russia and a strong link between the ND policy and the four EU/Russia Common Spaces.

Lithuanian Attachment to the BSR

Foreign policy in Lithuania had been more of an elitist nature for a long time, in which neither population nor even political parties played an active role (Duvold, Jurkynas, 2006).¹¹ Therefore, perceptions of main foreign policy-makers and shapers about Lithuania's affiliation to the BSR are worth taking under an academic eyeball inspection. Iver B. Neumann (1992) has once written that political actors develop and disseminate regional identity. Political

leaders (presidents, prime ministers and foreign ministers) in Lithuania do not get too excited about the BSR, unless they have to say something polite about this region or its cooperation. Statistically, Lithuanian references in political statements to the Baltic Sea area were least popular compared with other regional options and dropped from 13 to 11 percent after twin enlargement in 2004 (Jurkynas, 2007). An interesting question still is how Lithuanian politicians envisage the Baltic Sea area. This region does show an aforementioned postmodern flavour with a soft security agenda which became deliberately constructed by intellectuals and political region builders alike around the Baltic Sea (Joenniemi, 1993). Until 2004, Lithuanian political visions about the BSR rested on low politics, such as economy, trade, environmental, energy and transport issues, networking, democracy fostering, and trust building and the Kaliningrad issue. Alas, the Baltic Sea area was least associated with the benefits and depth of political partnership compared with other regional identities. The Baltic Sea area served rather as a room for fostering collaboration in low politics than regular partnership in foreign policy making. Despite certain claims (Nekrašas, 2003), Lithuania's self-ascription to the BSR, if to believe public political messages, has been moderate till 2004 and later became even more scarce (Jurkynas, 2007). Lithuanian key policy makers have never called their country a Baltic Sea state. One could say that Lithuanians tried to fit the fashion of language towards the Baltic Sea area. Concepts concerning the BSR were embedded in soft security *problematique*. The political language is desecuritized, i.e. hard security issues are deliberately avoided. In modern terms, sovereignty and state borders were not challenged, and states are considered as the main actors, though one can seldom spot some ideas about cross-border regions and the relevance of people-to-people contacts. The pattern of amity is unclear, and the Lithuanian version of the BSR was about a forum of discussions than real partnership. On the other hand, Russia is seen as an inseparable part of the region, needed for a dialogue. However, analysis of political narratives concludes that countries with relatively recently re-established statehood tend to focus on modern attributes as state, sovereignty, state borders and outrun the EU promoted postmodern principles (asecurity, fuzzy borders, post-sovereignty, diversity, networking, complexity, hybridism and ambivalence). All in all, very modern concerns of security, territoriality and sovereignty stand in the centre of the political

visions in Lithuania. Similarly, the BSR does not score high in Estonia and Latvia whose understanding of the area and its functions of cooperation are practically identical with the ones of Lithuania.

Nordic states and the BSR

The geo-strategic changes in the world, such as *perestroika* in the USSR, the reduction of US and Russian military forces in Europe, the unification of Germany, impelled Finland and Sweden towards the EU and relaxed their non-alignment policies. Moreover, the fall of the USSR and the Soviet military Warsaw block, withdrawal of the Soviet/Russian troops from the Baltics, vanishing of bipolarity disrupted the Nordic balance.¹² The changes opened new perspectives for the Nordic foreign policies since the mid-1990s, especially after the EU enlargement into Sweden and Finland in 1995. Nordic states as norm entrepreneurs with a focus on adjacent internationalism took three Baltic states into serious political consideration. A number of cooperative frameworks followed soon after, and the CBSS was one of them. Neumann (1992) claimed that the Nordic states expanded their Nordic identity by adding up the BSR dimension in the beginning of the 1990s. In any event, the Nordic–Baltic cooperation has been increasing ever since. The Baltic and the Nordic countries almost did not have any historical animosities towards each other. The Nordic involvement in Estonian and Latvian history was considered as an advantage. The Nordic countries were the first to recognise Baltic independence and open embassies in the Baltic states. Norden has intensively assisted the Baltic democracies and the build-up of their civil societies. Clive Archer (1999) noted that the Nordic states tried to promote their normative power and export values of democracy, cooperation, compromise, peaceful conflict resolution, at the same time strengthening the Nordic role in the BSR. Besides, nobody can deny an active Nordic involvement in the Baltic privatisation schemes and high shares in FDI.¹³

Political cooperation between the Baltic and the Nordic states has also been visible. The Baltic states became observers in the Nordic Council in 1991. Although *Norden* refused to include the Baltic states into the Nordic Council and Nordic Council of Ministers in 2000 and 2004, intense patterns of cooperation continued. For example, the reform of the Baltic Assembly of 2006 was carried out in accordance with the cooperation with the Nordic

Council. The Nordic–Baltic cooperation has been relabelled from 5+3 (3+3) to NB8 (NB6). In the NB6 framework, the Baltic and Nordic prime ministers and foreign ministers traditionally meet before the EU summits and meetings of the General Affairs and External Relations Council and coordinate their positions concerning common regional issues.¹⁴ The Nordic states have redirected their relations with the Baltics from assistance to equal partnership which requires investments and agreed standards. Off the politics, a number of sub-state actors such as municipalities, universities, NGOs and the like have woven dense patterns of cooperation (Bergman, 2004).

However, with the Baltic and Polish membership in the EU and NATO, the Nordic attention towards the Baltic Sea area encountered a simple question: what's next? Therefore, it is relevant to establish how the main politicians (Prime Ministers in this case) in all five Nordic states imagined a relation between their country and the BSR since 2004. In Denmark, the BSR has been seen as a growing dynamic region with a potential, where the sea is a uniting factor. Cooperation occurs mostly in economic and energy issues. Danes see themselves as a Northern European country and view the Baltics as part of the wider Baltic Sea area but not as the Nordic states. The security focus is on the fields of energy, social affairs, economy and military affairs (in terms of fight against terrorism abroad). The Finns also ascribe themselves to the Nordic region and see their involvement in the Baltic Sea area only via the Northern Dimension. Security for Finland is important from energy, social and EU points of view. Iceland similarly emphasises its attachment to the Nordic region, especially in the time of the economic crisis, and does not even mention the Baltic Sea area. The only security concerns of Iceland refer to military and economic spheres. Norway showed a similar unity in recognising Nordic identity on the basis of partnership and cooperation in economic, welfare, health and technology areas. The BSR is rarely mentioned and is referred to cooperation in energy and economy with Russia. Security for Norway means both hard security issues (military, domestic, international), new challenges (terrorism, weapons of mass destruction) and soft security problems (energy, economy, social aspects). Finally, Sweden as part of the Nordic region puts the stress upon the Baltic Sea area and its enhanced cooperation in low politics – the Baltic Sea strategy originated in the Swedish political milieu.¹⁵ The main security worries in Sweden pertained to energy. All in all, the BSR is mostly

important for Denmark, Sweden and Finland and, perhaps somehow naturally, less to Norway and Iceland. The common denominator concerning the Baltic Sea area for Nordic states is economy, trade routes, energy security and environmental issues which call for an impetus for collaboration. Finland and Norway also put an emphasis on the Arctic and Barents region which included cooperation with Russia. The Nordic visions of the Baltic Sea area coincide with the Baltic ones to a great extent. On the other hand, hard security is not as important for Nordic identity as in the Baltic case, and hard security finds no place in the Baltic Sea cooperation.

Russian Attachment to Baltic Sea Area

Relations between the Russian Federation and the three Baltic states are very important for the existence of the BSR, as the main reason for this project was to cope with the Soviet legacy and cherish cooperation. This relationship has not been easy as tension and political concerns remained visible. Besides, the BSR faces difficulties to find a niche in Russian politics which aims at regional geopolitical games with the US in South Caucasus and Central Asia. Besides, neither the Baltic states nor Russia have desecuritized their ideas about each other.¹⁶

V. Morozov (2004) writes that the breakdown of the Soviet Union led to a national identity crisis in the Russia since Moscow had no other anchoring point but the Russian Empire or the Soviet Union. Therefore, the elite under the president Yeltsin decided to define Russia as the successor state of the Soviet Union (and Russian Empire). This included the aspects that affected the Baltics. First, the compatriots abroad (Russian speakers in former Soviet republics) should have close ties to Moscow and organize themselves as political parties and societal organisations based on their Russian identity. Second, Russia saw itself as a guarantor of security in the post-Soviet area. On the contrary, a crucial part of the nation-building process in the Baltics was the negation of the Soviet past and legacies which led to demands on Russia to pay compensation for the damages caused during Soviet occupation and annexation. Within the Russian political discourse, there has been for a long time a distinction between true (or friendly) Europe and false (or unfriendly) Europe. The true Europe represents a projection of the Russian values and priorities, while the false Europe has lost the genuine European values. This

allowed Russia to define itself as the defender of true European values (Morozov 2004). The Baltic states were regarded as part of false Europe since they, according to Russia, meddled in domestic politics in Eastern Europe and advocated the Georgian and Ukrainian NATO perspective, supported terrorists in the Chechnya, discriminated Russian minorities (in Estonia and Latvia), participated in the American invasion to Iraq in 2003, showed pro-Nazi sympathies (annual marches of SS-veterans), thwarted the EU–Russia cooperation and, perhaps the most importantly, constantly tried to rewrite recent history and downgrade the Soviet victory over the Nazis (e.g. transfer of the Bronze Soldier in Tallinn in 2007).

The arguments of the then Swedish Prime Minister Carl Bildt sounded apt in 1994 when he called the Baltic–Russian relations a ‘litmus test’ (Bildt 1994). According to him, Russian relations and attitudes towards the Baltics will show Russia’s preparedness for a normal dialogue with the wider world community.¹⁷ So far, the Baltic–Russian relations have been at best lukewarm, and the role of history in identity plays a relevant role here. Russian national consciousness is largely being built upon the achievement of the Soviet empire – the USSR, the ‘glorious winner of World War II’ and one of the former centres in bipolarity of the Cold War with vast territories added in the aftermath of the Nazi defeat. The ‘good and praiseworthy’ historical past for Russia¹⁸ was a notorious period for the Baltic sovereignty and statehood which were actually lost during the USSR occupation and annexation. Following opinion polls conducted by Levada Centre in Russia, the former USSR countries are among countries ‘unfriendly’ towards Russia.

Table 1. Unfriendly countries to Russia, 2005–2009

(ranked according to the 2009 poll), %

	<i>2005 May</i>	<i>2006 May</i>	<i>2007 August</i>	<i>2009 May</i>
1. Georgia	38	44	46	62
2. US	23	37	35	45
3. Ukraine	13	27	23	41
4. Latvia	49	46	36	35
5. Lithuania	42	42	32	35
6. Estonia	32	28	60	30

Source: Levada Centre¹⁹.

On the other hand, in Lithuania there is a number of concerns about Russian behaviour not only in the Baltic Sea area. The facts like Russian embargoes of energy and food supplies for many countries (Lithuania, Estonia, Ukraine, Georgia, Belarus, Poland, Moldova, Georgia, Czech Republic), the blockade of Lithuanian transport vehicles in 2009, scrutiny of exports of Lithuanian dairy products, cyber attacks, breaking territorial integrity of Georgia, unresolved homicide cases abroad (UK) and at home, control of media and elections, violation of human rights, destruction of political opponents and business circles, spread of propaganda and revision of history are met with serious concerns in the Baltic states.

Looking for the perspectives, it seems that state's borders are still important for Russia to separate "us" from "them", and Russia cannot accept outside criticism of its history, especially Soviet crimes and atrocities. V. Putin's Russia's project is modernist and nationalist. Russian politicians do not seem to be true believers of the BSR either. Russian images of the region break apart into states or their groups (Baltics and Nordic countries, Poland, Germany), and Russia does prefer bilateralisation of relations to regional collaboration. In sum, the Baltic area as such is peripherised in the Russian foreign policy thinking, and even cooperation in low politics is not full with resources flowing from Moscow; for instance, the Kaliningrad region remains one of the most dilapidated Russian territories and Kaliningrad authorities have virtually no room for political manoeuvre in order to change the course of events.

EU Strategy for the Baltic Sea Region

With the Swedish initiative and after the request of the member states, the European Commission adopted a Communication on the EU Strategy for the BSR on 10 June 2009. This is for the first time that a strategy covering several Community policies targets the whole macro-region (Joenniemi, 2009).²⁰ The action plan for the BSS foresees 15 priority areas and 70 flagship projects. According to the strategy the key regional problems in the region are environmental perils, economic disparities and uneven development, insufficient energy transmission and supply networks, underdeveloped transport links and shortcomings in maritime safety.²¹ The strategy does not call for more funding, additional institutions or legislation, but rather a better use

of available resources. Other inter-governmental and regional bodies such as Helcom, the Nordic Council of Ministers, the Council of Baltic Sea States and the Eastern Partnership will be invited to participate as partners or channels according to their respective competences. The strategy is supposed to receive political blessing at the European Council in October 2009.

The strategy has certain positive aspects, similarities to previous initiatives and challenges. First of all, the BSR has received perhaps the highest political attention on the EU level. According to the Action Plan,²² the implementation of the BSS and the formation of guidelines will be carried out via the General Affairs Council, and the most important issues related to the strategy could gain political visibility on agendas of the EU summits. After the EU enlargement in 2004, the Baltic Sea has virtually turned into the 'inner lake', and a clear-cut line emerged between European insiders and outsiders. Bearing in mind post-Russia–Georgia war tensions and a series of *ad hoc* disagreements between the EU countries of the Baltic Sea rim and Russia, a need for a dialogue and cooperation in low politics with Moscow is a timely need as it was in the early 1990s. The BSS foresees a closer cooperation with Belarus whose foreign policy balancing between Russia and the West has recently become a fact.²³

On the other hand, the BSS does not offer anything spectacularly new. A great deal of ongoing CBSS activities are actually based on low politics. Intellectuals may think that their hour has struck as EU policy makers now and even earlier did follow in the footsteps of academic thinking (Wæver, 1997).²⁴ Furthermore, the strategy bears similarities to the ND, since both have no additional budget and administration and were therefore easier to come true. The BSS, similarly to the ND logic, offers to coordinate existing initiatives and "exit narrow confines of comfort zones", seek for 'synergy', 'added value', rest on openness and participation and consider the strategy as guidelines. In sum, the BSS merges the soft security approach of the CBSS and the openness and inclusions of the ND. From the academic point of view, the strategy borrows a liberal approach with the stress on cooperation in low politics and postmodern daydreaming about a wider security community of tomorrow around the Baltic Sea. This is a logical outcome at the EU, since Europe has been built as a liberal and peace project from the very scratch with pooling of sovereignty, diminishing borders and increasing the role of sub-state units.

However, the velleities of the BSS face several challenges. Firstly, the identity of the BSR had not been formed despite political efforts and institutionalisation of collaboration. The previous analysis indicates that countries do not identify themselves with the Baltic Sea area, but rather passively subscribe towards cooperation whose results come about either due to EU financing or are far from desired. Secondly, the economic and financial crisis bites back. Despite the first signs of recoveries in Germany and a modest growth in Poland, all other countries of the BSR – and especially Lithuania, Latvia and Estonia – face plummeting economies, money crunch in banking sectors and curtailed public budgets. Therefore, co-financing of flagship projects will raise questions of political priorities, financing the strategy's guidelines and management of economy in general. Thirdly, the inauguration of the Eastern Partnership with additional though limited finances (600 million euro) raised eyebrows in political circles of the southern EU member states. Therefore, any significant moves to institutionalise or finance the BSS goals would reignite competition between Southern and North-eastern dimensions within the EU. The 'southerners' remind Brussels that after the last two EU enlargements money flow to ten countries of the former Socialist block. Fourthly, the Baltic Sea area is still divided between modern and postmodern principles of international politics, regionalism and cooperation. Tensions, animosities and competition did not vanish from the eastern part of the region: the Baltics and Poland still consider Russian partnership with a great dose of suspicion. Attitudes towards the future Nord Stream gas pipeline, for instance, unveil that bilaterism and distrust might inhibit cooperation in the area. Besides, Russia has indicated that the BSS is an internal EU project which cannot be imposed on third countries. Russia states that the ND is a more appropriate framework of collaboration in Northern Europe which interconnects the ND, the CBSS, the Nordic Council of Ministers, the Arctic Council and the BEAC. As a matter of fact, Russia has not been consulted during the preparation phase of the BSS (Schymik, Krumrey, 2009). The exclusion of Russia and missing the Kaliningrad region would paradoxically entrench the dividing lines the strategy wants to avoid: the involvement of Russia is vital for three out of four pillars of the strategy. Fifthly, it is hard to anticipate an efficient cooperation in a rebranded region on the basis of overlapping agendas and in absence of the division of cooperative functions (Bengtsson, 2009).

Finally, we cannot exclude a possibility of a competition between the CBSS and the ND. The ND runs on similar principles, but geographically covers a wider area the BSR is only part of. The ND framework is viewed as a basis for the external aspects of cooperation with third countries in the region. The Communication from the Commission to the European Council does not mention the CBSS and notes that “relations with third countries should be conducted primarily through the Northern Dimension with the option to use alternative channels when useful.”²⁵ There is a room, though unspecified, for the CBSS since, according to Communication, “well functioning existing structures, notably but not exclusively within the Northern dimension, will allow further cooperation with these countries“. The Action Plan, in turn, provides a more detailed picture. The ND dominates over the CBSS. According to the EU Council’s conclusions, “the Northern dimension, a common policy of the EU, Russia, Norway and Iceland, provides the basis for these external aspects of the strategy”,²⁶ whereas cooperation with the CBSS, with the Nordic Council of Ministers and HELCOM are regarded as useful for EU–Russia common spaces. The role of the CBSS in the Action Plan is minor and relates to the coordination of activities in cross-border collaboration with the CBSS Working Group on Customs Cooperation and Border Crossing Aspects. Other cooperation aspects among authorities at the border foresee the participation of the CBSS in BASREC²⁷. The ND, apart from being the key guideline for external relations within the Baltic Sea area, is also presented in terms of Environmental Partnership, Partnership on Transport and Logistics, Partnership in Public Health and Social Well-being²⁸, and the future education networking enhancement under the Northern Dimension Institute. Finally, pilot and demonstration projects implemented under the umbrella of HELCOM, Baltic 21, the Nordic Council of Ministers, Partnerships in the framework of the Northern dimension etc. do not refer to the CBSS. In general, the BSS pays a lot of attention to the EU regional cooperation with Russia, and the ND overtakes the competitive CBSS by downplaying interstate cooperation. The ND neatly fits into the BSS as an adjusted and expanded project of Finnish and Swedish initiatives. The Nordic countries seem to slightly reduce their political attention to the Baltic states and Poland whose membership in the EU and NATO signified an assistance case as terminated. Thereof, Norden is now more interested in Arctic opportunities and

Russia. The CBSS, as an organisation of equal members, is replenished with modern Baltic, Polish and Russian *problematique*, and this does not always go hand in hand with liberal and postmodern Nordic ideals of cooperation and peaceful conflict management. The Northern Dimension is a part of the EU external policies and does not have the interstate touch of the CBSS. It is harder to have a BSR's agenda included on the EU level where all countries have a say. Moreover, after the current supremacy of the ND, the enlargement of the CBSS might dilute the regional character of the BSR dimension. In short, the CBSS is a regional organisation where countries can raise their national concerns and would keep the southern dimension of the ND on the regional political agenda.

Conclusions

A legion of studies in the last decade turned their attention to the construction of the Baltic Sea area. This region has become a test ground for a new theoretical conceptualisation with realist, liberal and postmodern approaches. Besides, political endeavours to reduce tensions among regional powers and newly re-established states manifested after the Cold War. An opportunity to create a regional cluster of cooperation and stability around the Baltic Sea appeared appetising in the early 1990s. On the one hand, their wishes came true as the BSR retained political and economic stability and limited cooperation. On the other hand, ideas about a region which as an imagined community could be created through construction and sharing of a newly forged regional identity are still far from reality. Ironically, the BSR has never existed before the fall of the Berlin wall. The BSR has been on countries' political agenda, though to a limited degree, since the 1990s. The Baltic and Nordic countries participate in the regional network, but do not strongly associate with it in terms of identities. Neither does Russia who tends to see "black sheep" among the eastern countries of the BSR. The establishment of the CBSS in 1992 marked the beginning of political Baltic Sea area that has not had any political, cultural, economic or linguistic affinities. The regional construct aimed to bring erstwhile ideological foes together in order to discuss low politics and include Russia into cooperative frameworks. Therefore, the BSR has become a future driven-political construct without roots, common experiences and political will attached. Overall, the BSR with Russia is still at crossroads.

Soft security issues remained at the heart of the Baltic Sea collaboration, yet hard security problems did not sink into oblivion. The Transatlantic enlargement purported policies of differentiation between candidate countries, based on very modern criteria of NATO and EU membership. A clash between modern and postmodern principles in the Baltic Sea area was apparent as well. New democracies in the EU and Russia were preoccupied with very modern concerns like sovereignty, security and territorial and border control, whereas the “Western” part of the Baltic Sea area and the EU itself pushed for postmodern thinking. Security-based and modern discourses are not going to lead to more cooperation; an asecuritization approach to regional cooperation which might be more appropriate, does not have bright perspectives in the nearest future, either. Regional collaboration continues to be immersed in low politics and therefore both liberalist and realist discourses prevail, but the latter is like a mental hurdle to build new bridges. Postmodern approaches in ‘New Europe’ and especially Russia are a slow maturing process with no foreseeable rewards in politics embedded in fresh nation-statehood. Historical memories of the not so distant past lay entrapment for postmodern and peace-oriented visions.

The ND developed into an additional tool to keep up cooperation between the EU and Russia in Northern Europe. Yet its role and capacity for autonomous actions in recentralising Russia is questionable. Policies of the ND have not fully succeeded in breaking out the confines of traditional understandings that characterized the Cold War period. The geopolitical and realistic understandings that have preserved conceptualizations based on “us–them” and the blurring of dividing lines have not been very successful. It is next to mission impossible to change Russia’s current assertiveness. Both the ND and the CBSS can promote the dialogue if Russia does not keep the ball on her side.

The domination of the ND over the CBSS in the BSS is evident. The CBSS as a regional organisation is neither very efficient nor promising in delivering political decisions. Nonetheless, it can become a network of cooperative interactions and political communication. Since the Baltic Sea area is full of sub-regional constellations and modern discourses, the CBSS can serve as an arena for coalition-making among the willing. Although the BSR does not have a common identity, this does not prevent from looking for ‘success

stories' which unite rather than alienate. The CBSS participates in the channelling and adjustment of national identities and interests, constructs social knowledge, develops common experience and elite socialisation and, in success cases, contributes to trust building. Lithuania during her presidency has an opportunity to show also its bridge-building potential. This additionally asks for continuous expertise on the Baltic Sea area, and therefore a regional and virtual think-tank is not such a bad idea after all. Finding common denominators in terms of strategy and tactics for combining and pursuing the Eastern Partnership and the BSS is a window of opportunity for the CBSS.

The BSS as a new EU political initiative for enhancing regional cooperation so far looks like a 'paper monster'. It is a due pilot project which raises the profile of BSR cooperation, includes Belarus, looks for tangents with the Eastern Partnership and upgrades the EU's political attention for the region. However, the strategy faces a number of challenges for implementation, such as the lack of finances, institutions, internal and external competition, overlapping agendas, bilateralism and exclusion of Russia without which the BSR might easily turn into pulp fiction. All in all, the Baltic Sea area might become a renewed idea for enhanced regional cooperation, but it takes mainly two – Russia and the EU – to tango. At the 2009 October EU summit, leaders 'have bottled' the BSS as "an integrated framework to address common challenges, i.a. the urgent environmental challenges related to the Baltic Sea, and to contribute to the economic success of the region and to its social and territorial cohesion, as well as to the competitiveness of the EU".²⁹ yet only 'good care and storing conditions' will deliver the desirable results.³⁰

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NOTES

- ¹ The article is based on the study “Cooperation and Conflict in the Baltic Sea Area: Challenges and Perspectives” (August 2009) prepared by request of the Foreign Ministry of Lithuania.
- ² Theories in political science stress that two elements – identity and interests – are inevitable in international politics (Neumann, 1992; Wend, 1999). Scholars admit that interrelation between national and regional identities precondition the emergence of interests and their realisation (Wæver, 2002; Hopf, 2002).
- ³ Politinių partijų pareiškimai ir susitarimai, 1993–2004, http://www.urm.lt/popup2.php?item_id=11930 [Visited July 24, 2009]
- ⁴ Lietuvos gyventojų nuomonė dėl Lietuvos narystės Europos Sąjungoje: http://www.sti.lt/leid_pristat/Tekstai/europa/III_dalis.pdf; http://www.lrv.lt/2007_LRV_apzvalga.pdf [Visited July 27, 2009]
- ⁵ The CBSS was set up in 1992, and the founding member states were the Nordic and Baltic countries, Russia, Germany, Poland and the European Commission. The CBSS presidency rotates annually and is based on a *troika* principle, i.e. previous, current and future chairpersonship countries. Currently the Council of the Baltic Sea States has designated ten countries with Observer Status. These are Belarus, France, Italy, the Netherlands, Romania, Slovakia, Spain, the Ukraine, the United Kingdom and the United States of America.
- ⁶ Some academicians claim that the Baltic Sea cooperation originated as grassroots and a ‘bottom-up’ movement and focuses on concrete cooperation. Institutionally, the Baltic Sea region consists of loose networks of interest groups, municipalities, NGOs, etc. on the subregional level and intergovernmental cooperation at the CBSS. The Baltic Sea co-operation is characterised particularly by a combination of governmental and non-governmental organisations (Williams, 2002).
- ⁷ *Output failure* implies a commitment to make new policy, which was accepted, but the regional organisation did not produce a set of policies and rules acceptable for participating parties. *Equilibrium* occurs when the area of activity is institutionalised. Rules are established, yet there is little need for new intergovernmental bargaining. Increase in scope and capacity does not occur. In terms of the system’s growth, the gains are modest.
- ⁸ Security issues are taken away from agenda or do not exist.
- ⁹ In comparison to the Euro-Mediterranean Partnership, there are no new financial programmes earmarked; the finances are again based on PHARE, TACIS and INTERREG. Only the NDEP (Northern Dimension Environmental Partnership) gained financial support from EU (Browning, Joenniemi, 2003).
- ¹⁰ Apart from the major partners, the other stakeholders are the Council of the Baltic Sea States (CBSS), the Barents Euro Arctic Council (BEAC), the Arctic Council (AC), the Nordic Council of Ministers (NCM), international financial institutions, such

as the European Bank for Reconstruction and Development (EBRD), the European Investment Bank (EIB) and the Nordic Investment Bank (NIB); NGOs, trade unions, etc. Canada and the United States perform the roles of observers.

- 11 In the last two years, debates about Lithuanian foreign policy have intensified and became divided between 'pragmatic' and 'value-laden' approaches (Lopata, 2009).
- 12 The Nordic balance was a concept of the Cold War, implying *status quo* in terms of international politics. Finland and Sweden were neutral countries, and Iceland, Norway and Denmark belonged to NATO. This post-war situation was acceptable both to the Soviets and the Western alliance (see Brundtland, 1966.)
- 13 Furthermore, Lithuania, Latvia and Estonia became shareholders of the Nordic Investment Bank in 2005.
- 14 Although the NB6 or NB8 have never formulated joint positions or spoke on behalf of a group during the EU summits in the last three years.
- 15 Neither Finland nor Germany took up the initiative to promote the BSS during their respective presidencies in 2006 and 2007 (Schymik, Krumrey, 2009).
- 16 Desecuritisation occurs when political actors push an area of "normal politics" out of the security realm by stopping using the rhetoric of threat in order to justify the adoption of "emergency" measures outside the formal and established procedures of politics (Buzan et al., 1998).
- 17 Carl Bildt admitted to the author of this study in a conversation in September 2006 that his earlier arguments did not lose relevance today.
- 18 **On the other hand, the Russian President D. Medvedev's recent statement of October 2009 stressed there could be no justification for the Soviet government's crimes against its own people, lamenting millions of deaths and "maimed destinies".** Such an attitude, if continued, might be the beginning of a new discourse on the reevaluation of the Soviet past in the Russian identity. ("Memory of National Tragedies is as Sacred as the Memory of Victories". 30 October 2009, http://eng.kremlin.ru/speeches/2009/10/30/1218_type207221_222423.shtml) [Visited 30 October, 2009]
- 19 Levada Centre, <http://www.levada.ru/eng/sborniki.html> [Visited 3 September 2009], Russia Votes, http://www.russiavotes.org/security/security_russia_place.php [Visited 3 September 2009]
- 20 Eighty flagship projects are listed in the accompanying Action Plan. 'EU Strategy for Baltic Sea Region', http://ec.europa.eu/regional_policy/cooperation/baltic/#council [Visited 4 September 2009].
- 21 Lithuania will coordinate three priority areas and eight flagship projects in areas of transport, energy, education, innovation, agriculture and the like.
- 22 Commission Staff Working Document Accompanying the Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions Concerning the European Union Strategy for the Baltic Sea Region Action Plan, http://ec.europa.eu/regional_policy/sources/docoffic/official/communic/baltic/action2009.pdf [Visited 4 September 2009].

- 23 However, areas of cooperation are three: 1) on a comprehensive regional pollution risk assessment; 2) on customs; 3) on a sustainable and environmentally friendly tourism.
- 24 The first 'Europe's Strategy for the Baltic Sea Region' has been written by the Baltic Strategy Working Group of 7 MEPs: Christopher Beazley, Michael Gahler, Satu Hassi, Toomas Hendrik Ilves, Ģirts Valdis Kristovskis, Henrik Lax and Alexander Stubb in 2005. [http://www.strategia-baltyk.ukie.gov.pl/WWW/baltyk.nsf/DB74A86AA882FABCC12574C1004D8483/\\$FILE/Europes_Strategy_for_the_Baltic_Sea_Region.pdf?open](http://www.strategia-baltyk.ukie.gov.pl/WWW/baltyk.nsf/DB74A86AA882FABCC12574C1004D8483/$FILE/Europes_Strategy_for_the_Baltic_Sea_Region.pdf?open) [Visited August 19, 2009]
- 25 Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions Concerning the European Union Strategy for the Baltic Sea Region, http://Ec.Europa.Eu/Regional_Policy/Sources/Docoffic/Official/Communic/Baltic/Com_Baltic_En.Pdf
- 26 European Council Conclusions of 14 December 2007, http://www.consilium.europa.eu/ueDocs/cms_Data/docs/pressData/en/ec/97669.pdf
- 27 BASREC (initiated in 1999) includes Denmark, Estonia, Finland, Germany, Iceland, Latvia, Lithuania, Norway, Poland, Russia and Sweden. The European Commission is represented by DG Transport and Energy. The participation in this work also involves the CBSS and the Nordic Council of Ministers.
- 28 The Northern dimension Partnership in Public Health and Social Well-being (NDPHS) is a cooperative effort of thirteen states, the European Commission and eight international organisations. It provides a forum for concerted actions to tackle challenges to health and social well-being in the Northern dimension area and foremost in north-west Russia.
- 29 Presidency Conclusions, 29–30 October 2009, http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/ec/110889.pdf [Visited 2 November 2009].
- 30 The European Commission is about to present a progress report on the BSS to the Council by June 2011.

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