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Lithuania's future role in the European information society -- the challenge of the Acquis «Communautaire»

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[See also the accompanying [Powerpoint presentation](#) of the talk]

A little bit of honesty...

Lithuania is a small country and newly democratized. Lithuania is a poor country, but with a rich thousand-year-old history and culture. Nearly as long as this culture lasts Lithuania has made a special experience in the relations with their neighbors -- Russia, Poland and a long time of its history Germany.

To be honest there is not much more I know about your country. I have to

apologize for this ignorance. However, thinking about the special contribution of Lithuania to the European information society the very first answer is quite clear to me: Joining the «New Economy» and building the information society for this country is not only a matter of infrastructure, telecommunications, sophisticated hardware and software as well as skills. Every policy towards the European information society must be embedded in a foreign policy that governs the various interests of the small Baltic States and the strong neighbor of Russia. It seems to me that the leaders of Europe, probably first of all the German leaders, haven't recognized these circumstances so far. Thus Lithuania needs help in the field of foreign policy, in order to make most of the «New Economy».

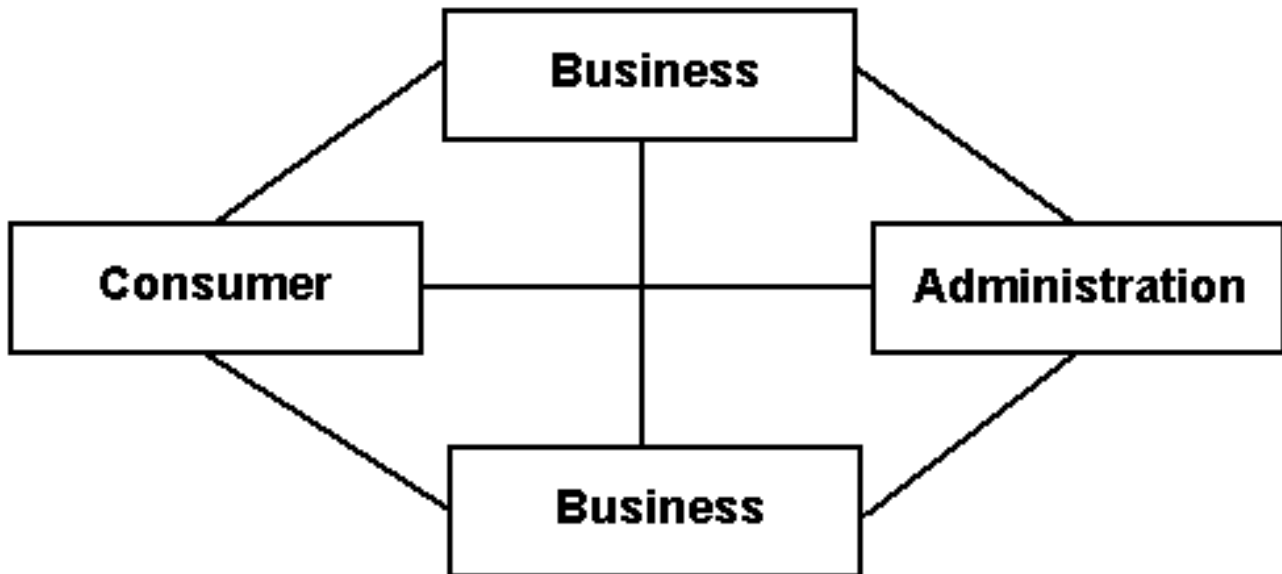
I am an academic and not a political leader. But I am teaching students from many countries all over the world. Last term they asked me: What do you think is the future of Europe? I was not prepared to answer such a deep question. After a while of silence I came up with the following answer: «I would suggest a specific spatial order to fasten the process of enlargement.» This order can not be the old-fashioned order of nation states. It is an order of Regions, for example Vilnius, the other Baltic States and the «Malmö--Copenhagen--Region», of Institutions, like the Technical University of Vilnius, of Private Enterprises, Roads, let me say between Vilnius, Moscow, Warsaw, Prague and Berlin, routes for the fast railways and ferry services, infrastructure for telecommunications and skills, and not to forget, of capital.

This is a utopian dream of course. But it serves as a reminder that one should not substitute technical means with the order that fits human interests best.

The concept of the European information society

You all may be acquainted with the following model of E-Commerce. It seems to be the most natural thing in the world, so that we even use the model only by the abbreviations B2B, B2C etc.

Categories of E-Commerce



Source: Commission of the European Communities 1997

This model defines and structures most communication within our societies. At least in market driven economies it is rather an appropriate model of communication in the society as a whole. It describes a process rather than a static state of affairs. One should have this model in mind in order to understand the landmark commitments made by the member states of the European Union on the Lisbon Summit in February 2000:

- Access for all: Easy and affordable access to the Internet
There is direct link between access costs and Internet use. So access costs must come down. The solution is to open up competition in the telecommunication sector.
Thus access is not only a social objective -- it is also an economic imperative
- All schools to be connected to the Internet by 2001.
- Create a digitally literate and entrepreneurial Europe.
- Legal framework for e-commerce

The driving force behind these commitments is the recognition of the Internet as the key factor for growth, competitiveness and employment. In this view the Internet is a wholly new medium for social communication.

The second driving force is that the Internet is understood as a market driven medium. The role of the European Union as well as of the nation-states is then defined as enabling private interactions and giving legal protection to them. This is undisputed within the Commission and in most of the member states; some other member states, notably Germany and France though, still have difficulties with such a market driven approach,

This is in short what one can understand as the concept of the European information society.

[Please see my [Powerpoint presentation](#) with slides and figures concerning the European information society. Most of the figures are taken from presentations of Erki Liikanen, Europe's Commissioner for the information society. The presentation is part of my talk]

Exporting goods may be easy, exporting laws and statutes is hard work

«One important message from Lisbon is about Governance. It is about completing the Internal Market whilst simplifying the regulatory environment and about creating a clear and predictable legal framework to ensure that businesses can thrive and operate effectively on a level playing field in the internal market.» For Commissioner Erki Liikanen this means a framework consisting of «an innovative mix of legislation and self-regulation», best adapted to address the unique new challenges that technological change involves.

It is one of the prerequisites of the process of enlargement that new members must adopt the «Aquis Communautaire» of the European Union. Given that Lithuania's policy makers would apply this Aquis as a whole, the questions then are:

- How do one know which law to apply when?
- How shall the various directives been implemented? How will they come into practice?
- How shall the new European approach for co-regulation be adopted in Lithuania?
- And finally: will Lithuania's solution meet the «Copenhagen criteria»?

It is difficult even for experts to answer the first question. If you search the official server of the Commission you will hardly find an overview: You must search the server for the internal market, for competition, for the information society, health care and consumer protection and research. What you get may be complete -- may be. An unofficial compilation could come up with the following picture:

Legislation (selection)

- Various Directives for the regulation of the Telekom Markets in Europe
- E-Commerce Directive
- Electronic Signature Directive
- Copyright Directives on the legal protection of databases and programs
- Data Protection Directive
- Directive on the protection of consumers in respect of distance contracts

Pending legislation

- Telecoms regulatory package
- Copyright
- Illegal and harmful content on the Internet
- eContent
- Jurisdiction and enforcement of judgments
- Distance marketing of financial services
- VAT on E-Commerce

Pending policy issues

- eEurope initiative
- Modernisation of the rules implementing Articles 85 and 86 of the European Treaty
- Review of Merger Regulation
- Domain names
- Public sector information

[For more details see the [PowerPoint presentation](#)]

By and large this is the European information law which builds the legal framework for the above mentioned model. But modern policy makers know that the speed of change in technologies and markets presents an unprecedented challenge for governments. Technologies and markets move faster than law-making. Laws can be obsolete even before they are enacted.

«The risks are well documented. Confronted with a reality they cannot control, governments may be pressed to strike pre-emptively, which often results in fragmentation of markets. In this fast moving environment, self-regulation has been advocated by industry as increasing speed and scope. A tool to better deliver solutions in the fast-changing, global economy. Contrary to the reputation as « trigger-happy » regulators, the Commission has advocated self-regulation as a flexible, efficient and cost-effective alternative to regulation in many areas.

Of course, self-regulation is not a panacea. Nationally based self-regulation initiatives may, in fact, add barriers to the free circulation of services. But in most cases results without cumbersome lawmaking. However, certain conditions must be met. Self-regulation does not mean self-enforcement. It must be in conformity with, and backed by law. It must be enforceable, verifiable, auditable. It must also be effective».

The European Commission now favours a concept of «Co-Regulation». To quote Liikanen again: «Co-regulation implies taking self-regulation one step further. Rather than mere coexistence of self-regulation and regulation, it implies sharing of responsibilities through negotiated agreements between public and private partners. It implies empowering self-regulation by placing it in a wider but clear framework. It implies regulation working together, so that they can mutually reinforce each other. The key challenge of co-regulation is to define, maintain and preserve policy goals, while allowing for flexibility in the drawing up and implementation of these policy goals.»

This new concept is hard to understand for example in a country like Germany. Policymakers and lawyers are used to believe in the regulating power of statutes and law. Now they have to act upon policy goals in the shadow of law. The ability to govern reality with law is restricted. So the main task is to define policy goals in a consensus-based structure where private and public actors work together.

Thus the challenge for a country like Lithuania is threefold:

First it has to adopt the «Aquis Communautaire» which is not as transparent and clear as it could be. Secondly it has to find an administrative solution for the implementation of the European goals. And thirdly, roughly spoken, Lithuania has to forget about it and build a framework for Co-Regulation, where private actors should lead.

It would be arrogant, to say the least, to claim that there is an easy solution. It needs a long process of learning and I guess that even most of the Western countries are not able to fulfill the idea of Co-Regulation right now. In a recently finished project on digital signatures in West and East-Europe I learned from colleagues from the Czech Republic and Poland a lesson about law and cultural context in the newly democratized countries. This lesson might be useful for Lithuania's policy as well. I quote from our report:

«It is recommended that the East European countries once introducing electronic signatures should orient on the given EU-directives, specially the E-

Commerce Directive and the Electronic Signature Directive -- without giving up their national and cultural identity.

They recommend to define national requirements and building upon these requirements a national policy, which governs electronic signatures according to the national characteristics of for example Lithuania:

- It might be useful to put together the necessary measures in a systematic order, for example linguistic problems with the implementation of electronic signatures.
- The advantage for the candidates might be twofold: They can take over the «Acquis Communautaire» while having a «Signature-policy» for their own to use in the negotiations with the European institutions.

Single-handed efforts have not any chance in the field of information technology. On the other hand, up to now our experiences in the process of transformation tell us that the worst solution is to force the rules of a foreign legal culture onto a newly democratized country. This most certainly leads to rejections. Therefore a proper solution must be found between these two extremes. It seems to me that the specific process of legislation which took place in the Czech Republic could be a model for Lithuania, too. The decisive experience in the law enforcement process of the Electronic Signature Act in this country was that all institutions -- enterprises as well as several governments and the members of parliament - have learned a specific lesson: All interests have to look for a consensus - notwithstanding that a consensus might hardly be found. This model of consensus is recommended to shape cultural breaks in advance. Once again one has to learn that the most difficult problems of the implementation of such a rule are not in the field of technical means nor the cooperation of the institutionalized interests. The real challenge is that one has to find a true basis for motivation the public in using the new means.

Once again: The challenge is cultural rather than technical.

The challenge for Lithuania: Policy mix might be the answer

This might be the solution: Lithuania has to find a procedure where all interests - the parties, the Parliament, the Government, and private Enterprises try to find a consensus for adopting the new E-Commerce rules into Lithuanian law. This challenge is great enough, because Lithuania has yet some difficulties to meet the Copenhagen Criteria. However, all efforts will be in vain if the «Acquis

Communautaire» is not understood as a specific cultural tradition of the Western European countries. This tradition had time to develop for about 50 years. Lithuania and the other »baltic tigers» should have this in mind once they discuss and develop and contribute to the European information society.

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