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COVER NOTE

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to	The Convention
Subject :	Contribution by Mr Vytenis Povilas Andriukaitis, member of the Convention based on “the positions discussed by the Committee on European Affairs of the Seimas of the Republic of Lithuania”

The Secretary-General of the Convention has received the contribution annexed hereto from
Mr Vytenis Povilas Andriukaitis, member of the Convention.

**CONTRIBUTION BY MR VYTENIS POVILAS ANDRIUKAITIS, MEMBER OF
THE CONVENTION, BASED ON THE POSITIONS DISCUSSED BY THE COMMITTEE
ON EUROPEAN AFFAIRS OF THE SEIMAS OF THE REPUBLIC OF LITHUANIA**

The Laeken Declaration adopted by the European Council on 14-15 December 2001 identified basic issues concerning the future of the European Union to be answered by the Convention on the Future of Europe and the 2004 Intergovernmental Conference. The European Union is holding a discussion on important questions that underlie the future of the European Union, such as the objectives, competencies, institutional structure and policies of the Union. That is a very broad mandate. Therefore, my position presented below covers only some of the questions that I consider the most relevant to Lithuania, and far from all of the enumerated issues are about to be agreed upon by the Convention.

I. European values

1. The functioning of the European Union shall be founded on common European values enforced in the European Charter of Fundamental Rights. They are, first and foremost, human dignity, freedom, equality, solidarity, as well as principles of democracy and the rule of law. The European welfare state model should be mentioned here, as well, as it represents one of the greatest achievements that Europe could have a justified pride in.
2. It is necessary to create a more effective as well as more democratic and transparent European Union. With this end in view, a well thought-out reform of the European Union should be pursued.
3. The publicity, transparency and accountability of the EU institutions must be enhanced. In principle, decision-making behind closed doors should be given up overall. The public is entitled to know the position of the European institutions or every member state on specific common decisions of the European Union.

II. Legal personality of the European Union

4. Considering the increasing role of the enlarging European Union in the world, the European Union should be granted legal personality. The status of the subject of international law would enable the European Union to become a more active player in international politics, as it is expected to be, and in most cases the position of the Union would be more unified and coherent. In the most important international organisations the EU member states should “speak” in a single voice.
5. After the status of a legal person is conferred on the European Union, the current three-pillar system would have to be eliminated. On the other hand, decision-making procedures and instruments in the field of Common Foreign and Security Policy could remain different from the procedures and instruments of the Community pillar.

III. The legal status of the EU Charter of Fundamental Rights and accession of the European Union to the European Convention for the Protection of Human Rights and Fundamental Freedoms.

6. Taking into account that the aim of the EU Charter of Fundamental Rights was to ensure more effective protection of human rights in the European Union, to systemise all fundamental rights stipulated in different acts of the European Communities and the international law and consolidate them into a single instrument, to make them more comprehensible to the citizens of the European Union and to secure the trust of European citizens in the further process of European integration, I think that the declarative nature of the Charter interferes with the effective implementation of the rights provided in it.
7. Therefore, the European Charter of Fundamental Rights should be binding in itself. This power should be granted by incorporating the Charter into the Treaty on the European Union or the future constitutional Treaty as a basic integral part. Nonetheless, this process, in fact, should introduce no or only minor changes in the contents of the Charter.
8. The Charter should become a benchmark against which all decisions of the European Union, including those in the areas of the EU social economic policies, would be evaluated.

9. If the European Union were granted the status of the subject of international law *de jure*, it would have to accede to the European Convention for the Protection of Human Rights and Fundamental Freedoms. The accession of the European Union to the European Convention for the Protection of Human Rights and Fundamental Freedoms would prevent inconsistent interpretation of the provisions of the Convention in the practice of the European Court of Human Rights and the European Court of Justice.

IV. The Constitution of the European Union/ Simplification of Treaties

10. To render the Treaties of the European Union more accessible and understandable to the citizens, the existing four treaties should be merged and simplified without substantial changes in their legal value and meaning.
11. In the discussion on the text of the EU constitutional Treaty, a stand should be taken that the constitutional Treaty has to be drafted on the basis of the structure and contents of the existing treaties rather than by creating a whole new constitution of the European Union as a super-state.
12. Decision-making procedures and instruments by the EU institutions must be simplified and systematised by considerably reducing their number.

V. Subsidiarity

13. The application and monitoring of the principle of subsidiarity has to be improved. The application of the principle shall be monitored not only by the European Commission, the European Parliament and the Council of the European Union (hereinafter referred to as the Council of Ministers, the Council), but by national parliaments, as well. It is only by common action that the effectiveness of the subsidiarity principle can be ensured. New mechanisms of the subsidiarity monitoring should not make decision-making more cumbersome or lengthier.
14. The *ex ante* political monitoring of the principle of subsidiarity should be strengthened, and it should involve, in the first place, national parliaments. The earliest possible involvement of national parliaments, which at a later stage transpose the European Union law into the systems of national law, in the process of co-ordinating the concept of a legislative act on the level of the

European Union should be encouraged. National parliaments should be given the right to monitor compliance with the principle of subsidiarity at later stages of the drafting of a legislative act.

15. A means of *ex ante* control could be a debate on the European Commission's annual legislative programme in the European Parliament and in national parliaments. This, however, is not a sufficient means; thus, an effective *ex ante* monitoring mechanism has to be developed which should not, most importantly, make the European legislative procedure more cumbersome. For instance, at an early stage of the consideration of a legislative act, a certain number of national parliaments would be entitled to express their collective disagreement with a proposal of the Commission, and the Commission, having examined the concerns of the parliaments, would consider whether the proposal should be left as it is, changed or dismissed. With such a mechanism in place, information and documents from the European Commission should reach national parliaments through national governments and directly in the shortest possible time. I believe that no additional subsidiarity monitoring body is needed, as it would make the already complex institutional system of the European Union yet more cumbersome.
16. The "early warning system" proposed for the improvement of the application of the subsidiarity principle could operate by the following principle:
 - a) The European Commission presents its annual legislative programme (and subsequently individual drafts of legislative acts) directly to national parliaments.
 - b) If more than 1/3 of national parliaments have concerns about the compliance of the Commission's proposals with the principle of subsidiarity, an *ad hoc* COSAC meeting can be convened to listen to the positions of the member states and to forward relevant information to the European Parliament and the European Commission. For that, national parliaments shall authorise representatives of the European Affairs Committees to convey the opinion of their parliament.
 - c) Though collective opinion of national parliaments should have no legal value in the European Parliament and the European Commission, it would naturally be heeded in the process of decision-making.
 - d) In case the *ex ante* subsidiarity monitoring mechanism was not effective, there would be a possibility of recourse to *ex post* judicial proceedings in the European Court of Justice.
17. The *ex post* judicial review concerning compliance with the principle of subsidiarity should be

carried out by the European Court of Justice. A limited timeframe should be set for the scrutiny of subsidiarity. The Court should assess the legislative act referred to it only in terms of its compliance with the subsidiarity principle. This would save time and money, as no new European bodies would be needed.

VI. Distribution of competencies

18. The principle of subsidiarity is closely linked with the division of competencies between the European Union and member states. To compile a rigid and finite inventory of competencies is neither possible nor desirable, though a certain degree of certainty in this field is needed.
19. The wording of the provisions concerning the division of competencies should not hinder the future dynamics of the European Union. A clear-cut definition of the exclusive competencies of the European Union is expedient, while the delineation of the exclusive competencies of the member states would be a mistake as it would be inconsistent with the sovereignty of the member states, moreover, it would limit the states' freedom of action.
20. In the area of shared competencies, the position held presently must be retained, i.e. all the EU institutions involved in the decision-making process shall assess the proposed initiatives on the basis of the provision of Article 6(3) of the EU Treaty stating that "*The Union shall respect the national identities of its Member States*". The Commission, often described as "the engine of integration", should retain the exclusive right of legislation. That is the essential feature of the Community method that I am in favour of.
21. To specify the competencies of the EU institutions, the new constitutional Treaty of the European Union should define the following types of competencies of the European Union: exclusive competencies (or the EU competencies), shared competencies, complementary competencies (or supplementary measures). At the same time, the general principle shall be preserved stating that the European Union shall act in the spheres in which it is authorised to act by the Constitutional Treaty.
22. Attribution of new competencies to the European Union will be possible only by amending the EU Constitutional Treaty in accordance with the principles of subsidiarity and proportionality, while the issue of the distribution of competencies must be dealt with in line with the principle

of solidarity.

23. The special procedure laid down in Article 308 of the existing Treaty Establishing the European Community should not be given up. This Article enables the Council of the European Union to adopt acts unanimously if that is necessary to attain the objectives of the Community, while the necessary powers are not stipulated in the Treaty Establishing the European Community. This procedure is particularly significant for flexible implementation of the competencies and specification of their scope. The constitutional value of such a provision will become evident if the Constitutional Treaty defines competencies only in broad terms. On the other hand, the application of this procedure increases the likelihood that the principles of subsidiarity and proportionality will be violated. Therefore, a relevant provision of the Treaty should set a requirement that national parliaments must be consulted.

VII. Co-operation in the areas of Common Foreign and Security Policy and Police and Judicial Co-operation in Criminal Matters.

24. In the face of new threats and challenges, more consistent co-operation in the areas of Common Foreign and Security Policy and Police and Judicial Co-operation in criminal matters should be encouraged.
25. Common Foreign and Security Policy and the European Security and Defence Policy represent a part of the EU intergovernmental pillar, the second pillar with a rather limited role of the European Parliament. Differently from other organisations, such as NATO or the Western European Union, no parliamentary control is exercised over the European Security and Defence Policy. Therefore, I support the proposal that regular meetings of members of national parliamentary committees on defence, foreign affairs and European affairs should be convened to conduct political scrutiny of the European Security and Defence Policy.

VIII. The role of national parliaments

26. The reinforced role of national parliaments is a key precondition to reduce the “democratic deficit” in the European Union and to increase the legitimacy and transparency of its decision-making. The necessity to enhance the role of national parliaments is explained by the fact that national parliaments are closer to citizens – the more active national parliamentarians are in

European policies, the more involved their electorate will feel in the European project.

27. While discussing the consolidation of the role of national parliaments in the context of the legitimacy problem, account should be taken of the need to prevent the interference of the elimination of the democratic deficit and enhancement of legitimacy with effective decision-making, therefore, an adequate balance for the solution of these problems should be found. National parliaments should not replace or duplicate the representation of governments in the Union mechanism, therefore, their role should be more active in the scrutiny of the EU policies and ensuring of publicity and transparency rather than in the decision-making mechanism itself.
28. Discussions on the role of national parliaments should support the strengthening of national parliaments with respect to the scrutiny of their governments' actions in the Council of the European Union. As meetings of the Council of Ministers are closed, special attention should be given to proposals aimed at greater transparency and publicity of the meetings of the Council of Ministers. Moreover, the best practices of national parliaments in controlling European decision-making should be assessed and taken over, i.e. some national parliaments (usually their European Affairs Committees) authorise their government representatives to represent national interests in the proceedings of the Council of Ministers, and upon returning from Brussels, they have to report back to their parliaments on the decisions taken by the Council.
29. The Protocol on the role of national parliaments in the European Union should be supplemented with a provision that not only national governments, but also the European Commission should directly inform national parliaments about all new legislative proposals.
30. The enhanced involvement of national parliaments should also concern regular monitoring of the activities of the EU institutions. That could, first of all, be achieved by intensified contacts and direct exchange of information and documents between members of national parliaments and the European Commission.
31. National parliaments should perform a more active role in the enforcement of EU policies. The role of national parliaments in transposing the EU legislation into the national law would increase if a more flexible approach were taken towards the implementation of the EU requirements.

32. National parliaments should take part in the political monitoring of the subsidiarity principle yet before decisions are made in the EU institutions. The opinion of national parliaments on a proposal of the Commission could be forwarded to the Commission and the European Parliament via COSAC. The Commission, respectively, upon receiving COSAC opinion, could amend its proposal, and the European Parliament, while drafting its position concerning the proposal of the Commission, should consider the opinions of national parliaments. After decisions are made in the European institutions, the scrutiny of compliance with the principles of subsidiarity and proportionality should belong to the competence of the European Court of Justice.

IX. COSAC reform

33. Since the potential of COSAC (Conference of European Affairs Committees), as defined in Protocol No. 9 on the role of national parliaments in the European Union attached to the Amsterdam Treaty, has not been fully realised yet, I support the proposal to reform COSAC activities. The reform should facilitate more active involvement of national parliaments in the EU decision-making process by enhancing their role in European policies and ensuring close co-operation between national parliaments and the European Parliament. Another particularly important task for COSAC is to assist national parliaments in improving the scrutiny of their government's actions in the European Union. COSAC should work on behalf of national parliaments, as their strategic body. It should serve as more than a body of inter-parliamentary co-operation providing a forum to exchange parliamentary experience, best practices and information, but also as a go-between between national parliaments and the EU institutions. COSAC should also contribute to the monitoring of the subsidiarity and proportionality principles.

34. To enhance the effectiveness of COSAC, the traditional COSAC troika should be replaced by COSAC leadership of 5 to 7 persons. To make COSAC more effective, the period of presidency in COSAC should be prolonged from 6 months to 1 or 2 years. As, anyway, COSAC would first and foremost play the role of a co-operation institution, I suggest that we abolish the requirement of unanimity in COSAC decision-making. Moreover, while drafting COSAC agendas, priority should be given to issues directly linked to the role of national parliaments.

35. Thus, I support proposals to set up a small permanent secretariat of COSAC in Brussels.

Through close contacts with national parliaments and, primarily, representatives of national parliaments working in Brussels, the secretariat would arrange the work of COSAC, facilitate information exchange, monitor the observance of, for instance, the Protocol on the role of national parliaments in the European Union by the Council of the European Union, arrange joint committee meetings of national parliaments and the European Parliament, and co-ordinate relations between parliaments and other EU institutions.

X. Institutions of the European Union

36. Creation of new institutions could hardly contribute to the effectiveness of the European Union. The existing institutional architecture and the Community method have proven their effectiveness, thus a radical reform would be a too risky step.

37. *The Council of the European Union.* Special attention should be given to proposals aimed at increasing the publicity of the meetings of the Council of Ministers. In general, Council meetings that adopt legal acts must be open. Minutes of the Council meetings should be made available to the public, too, as they enable citizens to assess the effectiveness and transparency of the activities of this European institution. Exceptions to the rules should be defined in a clear manner. The rule of six-month presidency should be changed, however, any new system of the EU presidency has to be underpinned by the principle of equality of all member states.

38. *The European Commission.* The European Commission should retain its exclusive right of legislative initiative. The President of the Commission should be elected, though the question of who will elect him/her is open: the European Parliament, citizens of the European Union directly, representatives of national parliaments and the European Parliament, or maybe in another way. We prefer two alternatives: the President of the Commission should be elected either by representatives of national parliaments and the European Parliament, or by the European Parliament voting by secret ballot for one of the candidates nominated by the governments of the member states. The comitology process should be as transparent as possible, and the public should be enabled to assess the effectiveness of these committees.

39. *The European Parliament.* The powers of the European Parliament should be strengthened, while the unicameral structure has to be preserved. The founding of the second chamber would be purposeless. I agree with the proposals that, as a general rule, the legislation of the European

Union in all spheres should be adopted by co-decision procedure.

XI. Economic growth

40. Debates on the creation of a single EU market and the future EU economic growth, should focus on the following:

- Priority should be given to policies promoting social and economic cohesion and sustainable development of the EU member states and reducing their economic and social disparities.
- The cohesion policy and solidarity should be the basic preconditions for the competitiveness of the European Union as a single entity on the internal and global market.
- The principles of cohesion and solidarity should be followed in drawing up and allocating the budget of the European Union.
- The economic and business competitiveness should be promoted by more active European research and technological development policies that would create knowledge-based European economy, ensure its balanced growth, sustainable economic development and protect the identity of each country.

41. The strategy of sustainable development of Europe should take into consideration the economic, social and political situation in the member states and candidate states, the administrative capacities of the European Union and possible economic benefit.

42. The effectiveness of the existing EU economic and financial system must be stepped up.

43. The compatibility of the financial sector in the field of taxes must be improved and the prospects of creating a single budgetary system must be considered.

44. It is expedient to draft an agreement on sustainable development covering long-term commitments in the economic, social, cultural and environmental fields.

45. Common Agricultural Policy should make up an important part of regional policy.

