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**USING REFERENDUMS IN DECISION-MAKING REGARDING EUROPEAN UNION:  
ALTERNATIVES AND RECOMMENDATIONS FOR LITHUANIAN POLICYMAKERS**

**SUMMARY.** European Union is criticized for the perceived lack of democratic legitimacy as the power of executive institutions do not derive directly from the citizens. The need to strengthen the involvement of citizens in the decision-making process is showcased by the launch of the Conference on the Future of Europe. This policy brief is dedicated to evaluating one of the possible options for the inclusion of the citizens – the use of referendums. Three possible designs are judged – referendums in the Member States, EU-wide referendums and mixed referendums requiring double majority. The goal of the evaluation of referendum design alternatives is to provide recommendations to Lithuanian policymakers on the position that would be the best to take if such reforms were to be seriously considered in Brussels. Assessment of design alternatives shows that any of the options might be worse than the current status quo as instalment of the EU-related referendums would lead to either increased risk of deadlock in the decision-making or reduction of negotiating powers for Lithuania.

**SCOPE OF THE PROBLEM**

‘Democratic deficit’ of the decision-making processes in the European Union (EU) has been an ongoing debate among scholars, politicians and citizens for decades. Some prominent scholars argued that the EU is already as democratic as it can be<sup>1 2</sup>. To summarize their arguments in the basic terms: it is a normal practice of democratically elected national governments to delegate some of the tasks to executive institutions and the institutions of the EU are no different in this regard as the tasks that they are performing are delegated to them from the Member States. As long as democratically elected national governments choose to continue their membership in the European Union, the democratic legitimacy of it is maintained.

Others, though, are not as optimistic and conclude that there is indeed a deficit of democracy in the institutions of the EU, mainly because the divisions of the political actors within those institutions do not accurately reflect the divisions in the European Union’s society at large ‘in

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<sup>1</sup>Andrew Moravcsik, “In Defence of the ‘Democratic Deficit’: Reassessing Legitimacy in the European Union.” *Journal of Common Market Studies*, 40(4), 2002, 603-624.

<sup>2</sup>Giandomenico Majone, “Europe’s ‘Democratic Deficit’: The Question of Standards.” *European Law Journal*, 4(1), 1998, 5-28.

terms of the potential winners and losers of potential policy agendas’<sup>3</sup>. In other words, there is a lack of political fighting about issues that are of the main interest for the citizens of the European Union.

To be fair, it is nothing new for scholars to disagree and debate about various topics and to present arguments that seem to be in support of their point of view. Thus, the most illustrative evidence that the ‘democratic deficit’ is more than just a talking point for scholars might be the initiative of the European Union leadership to encourage its citizens to speak up about the role they envision for the European Union – the launch of the Conference on the Future of Europe<sup>4</sup>.

There seems to be a need among the European Union elites to have their citizens more involved in the processes within the European Union and to strengthen the democratic legitimacy of its decisions. Apart from electing national governments that choose to continue the membership in the EU, the only other process that empowers citizens to have a democratic say in governing the EU is the election of the European Parliament (EP), but it is widely considered to be second-order elections<sup>5</sup>, meaning that the voters’ preferences are mainly decided by national issues rather than European ones. In light of these developments, one can raise a question: why not opt for the most basic and democratic way to involve the citizens in the decision-making process – let them vote on the most important questions by referendum? Especially, as it is already practised in some of the Member States<sup>6</sup>.

To answer the question of whether this would be viable and desirable, particularly for Lithuania, a broader evaluation must be done regarding possible alternatives. After doing so, it is then possible to provide recommendations for the Lithuanian policymakers on whether they should pursue this reform to achieve more democratic European Union while maintaining the current benefits of the membership.

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<sup>3</sup>Andreas Follesdal and Simon Hix, “Why There is a Democratic Deficit in the EU: A Response to Majone and Moravcsik.” *Journal of Common Market Studies*, 44(3), 533-562.

<sup>4</sup>European Commission, “Conference on the Future of Europe: Engaging with citizens to build a more resilient Europe.” 2021.

<sup>5</sup>Simon Hix and Michael Marsh, “Second-order effects plus pan-European political swings: An analysis of European Parliament elections across time.” *Electoral Studies*, 30, 2011, 4-15.

<sup>6</sup>Derek Beach, “Referendums in the European Union.” *Oxford Research Encyclopedias*, 2018.

## POLICY ALTERNATIVES

Options regarding the EU-wide policy reforms to include referendums in the decision-making process as a tool to increase democratic legitimacy might be numerous. There could be various choices to be made in the referendum policy design that specify the scope of questions that can be resolved, who can initiate referendums, whether they are mandatory to organize for the Member States, whether their results are binding<sup>7</sup> and so on.

As there is no way to know what exact design would be considered viable to put forward by EU main figures and the proposal for the optimal referendum policy design would require the analysis that is beyond the scope of this paper, let us consider three basic possible alternatives of referendum policy: 1) mandatory referendums throughout all of the EU Member States with the non-binding results, where the initiative of referendum lies with the EU institutions and each Member State represent *separate electoral district* (referenced further as **Alternative One**); 2) mandatory referendums throughout all of the EU Member States with the non-binding results, where the initiative of referendum lies with the EU institutions and all Member States are considered to be *one electoral district* (referenced further as **Alternative Two**) and 3) mandatory referendums throughout all of the EU Member States with the non-binding results, where the initiative of referendum lies with the EU institutions and principle of double majority<sup>8</sup> is applied (referenced further as **Alternative Three**). The fourth option for the policy would be maintaining the **Status Quo**.

Further explanation for the selection of these alternatives might be useful before the consideration of their viability and usefulness for Lithuania as a Member State of the European Union. Each of the proposed policy alternatives consists of five elements: 1) whether it is mandatory, 2) whether all Member States participate, 3) whether they are binding, 4) the right of the initiative and 5) how votes are counted for the referendum to be passed. Four of them remain constant in all alternatives with the sole difference being in the type of distribution into electoral districts. Obligatory essence of the referendums and their use throughout all of the Member States are quite self-explanatory considering that the alternatives in the discussion are EU-wide. If the option of holding

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<sup>7</sup>Matt Qvortrup, et al. *Referendums Around the World*. Palgrave Macmillan, 2018, 22-27.

<sup>8</sup>Francis Cheneval and Monica Ferrin, “Referendums in the European Union: defective by birth?” *Journal of Common Market Study*, 56(5), 2018, 1178-1194, 1191.

referendums were to be left up to the individual Member States or if Member States were to be allowed to opt-out of EU’s referendum policy altogether it would deny equal rights to all European citizens to participate in the decision-making<sup>9</sup>. While it is not unusual for the European Union to grant exemptions for Member States (the most obvious example being Denmark’s ‘opt-out’ clause under which it does not have to enter the third stage of Economic and Monetary Union and therefore introduce the euro<sup>10</sup>), it is not possible to make an educated assessment of whether it could be considered for referendum policy as this would undermine democratic rights of the citizens and thus might be ‘all or no one’ kind of policy if it were to be implemented.

Right of the initiative in both alternatives should belong to the main institutions of the EU (European Commission (EC), European Council and European Parliament) as a safeguard to prevent populist referendums because a wide agreement between these institutions minimizes the risk that referendums are used with populist agenda in mind. It might also be viable to grant the right of the initiative to the citizens with the requirement of a certain number of signatures, but this option is not further considered in this paper. The non-binding nature of referendum results would also serve as a kind of safeguard, although it is highly unusual for parliaments (in the case of nation-states) to override the will of the people expressed in the referendum even if its results are considered non-binding (case in point: Brexit vote<sup>11</sup>) as it might lead to a decline in trust of the democratic institutions. Thus, the only difference in the proposed alternatives is whether all Member States are considered to be one electoral district, each Member State represents a separate electoral district or the principle of double majority is applied (the referendum is accepted if a majority of citizens of the EU and of Member States vote in favour). To put it in other words, it is the difference between gaining the majority of all the votes cast in the European Union for the referendum to pass *or* gaining the majority of the votes in every single Member State for the referendum to pass *or* the intermediate option of 1) gaining the majority of all the votes cast in all of the EU plus 2) gaining the majority of the votes in the majority of the Member States.

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<sup>9</sup>Ibid., 1185.

<sup>10</sup>EUR-Lex, “Denmark: EMU opt-out clause.” 2006. <<https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=LEGISSUM:l25061>> [Žiūrėta: 2021-05-27].

<sup>11</sup>Haroon Siddique, “Is the EU referendum legally binding?” *The Guardian*, 2016. <<https://www.theguardian.com/politics/2016/jun/23/eu-referendum-legally-binding-brexit-lisbon-merkel-sovereign-parliament>> [Žiūrėta: 2021-05-28].

The next section is dedicated to the brief evaluation of the referendum policy alternatives from the perspective of the interests of Lithuania. Recommendations are provided, on which of the options (Alternative One, Alternative Two, Alternative Three or Status Quo) would be the most desired.

## **POLICY RECOMMENDATIONS**

To evaluate whether the EU-wide referendum policy would be appropriate policy reform for the interests of Lithuania, a brief overview of the past experiences of referendums in this country is needed.

Since the regaining of independence, there have been 14 referendums in Lithuania, of which only 4 have succeeded in passing. Three of them were voted on within the first two years of independence, and the fourth one – the referendum on membership in the EU – passed in 2004, which means that Lithuania has experienced only one successful referendum in the last 29 years<sup>12</sup>. Three of ten that have been unsuccessful were rejected due to the insufficient amount of votes gained in favour, and the remaining failed due to the insufficient participation<sup>13</sup>.

The change in policy via referendum in Lithuania is very difficult to achieve due to the high barrier for passing. This fact alone puts the viability of Alternative One in doubt as it seems to indicate that Lithuania could block most of the EU-related decisions that are put to referendum due to inactive voting or the tendency of Lithuanian voters to stick with the status quo unless the law regarding referendums is amended. Of course, it could be argued that the choice to reject change is still democratic, but to wield power over the lives of 450 million people by rejecting change with the veto power of a single country is not necessarily a positive thing. After the defeat of the EU Constitutional Treaty via referendums in the Netherlands and France in 2005, the general feeling towards the use of referendums in countries was that they only promoted disruption and deadlock of the integration process<sup>14</sup>. Given the historic difficulty of ensuring successful referendums in Lithuania and painful past experiences of the EU when one (or a couple of) Member State could derail the whole process of policy change, it is then concluded that Alternative One might not be a viable option for empowering citizens as the costs seem to outweigh the

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<sup>12</sup>The Central Electoral Commission of the Republic of Lithuania, “Previous referendums.” 2021 <<https://www.vrk.lt/en/ankstesni>> [Žiūrėta: 2021 05 31].

<sup>13</sup>Ibid.

<sup>14</sup>Francis Cheneval and Monica Ferrin, 1190.

possible benefits. The recommendation would be to not pursue referendum policy reform that would propose such a design. Let us consider if other options could be more desirable.

Alternative Two would seem to be a more attractive option in contrast with Alternative One for the European Union as a whole. First, the existence of a single constituent unit would take away the veto power out of the hands of any single Member State and thus would prevent the ‘tyranny of the minority’ regarding the decisions of the path forward for the EU. Secondly, EU-wide referendums would serve as an amplifier of the ‘citizen of Europe’ idea because it would give fully equal weight to each and every vote cast regardless of the country, which is not the case in the election of the European Parliament<sup>15</sup>. While this is a seemingly appealing idea for the EU (criticisms of the use of referendums in general notwithstanding), from the perspective of Lithuanian policymakers, this alternative should seem quite disastrous in regards to losing considerable decision-making power. Citizens of Lithuania constitute just over 0.5 per cent of the population eligible to vote, so in case of transferring some decision-making powers from the European Council, the European Parliament and the European Commission towards the citizens in the form of EU-wide referendum with single constituent unit would mean transferring more power than would be received back in the case of Lithuania because right now citizens of smaller nations are overrepresented in the Council and the EC (as well as in the EP on a smaller scale). It is then obvious that Alternative Two would not be viable for Lithuania at all as the ceding of decision-making powers means fewer instruments to influence decisions within the EU to reflect the interests of Lithuania. Thus, the recommendation would be to oppose the initiative of such referendum policy reforms as the strengthening of the voices of the European citizens might come at the expense of Lithuania’s ability to protect its interests.

The assessment of Alternative Three is in order as it is worth considering whether two negatives indeed equal a positive in this case as the Alternative Three can be regarded as a mixture of previously evaluated options. From the perspective of the EU as a whole, this might be the best of two worlds because this alternative prevents the use of veto from the minority of Member States while putting safeguards in place of the dominance of the voice of the most populous Member States and also gives importance to the equal voting power of every single citizen<sup>16</sup>. The use of

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<sup>15</sup>Silvia Fedeli and Francesco Forte, “The Distribution of Voting Powers in the European Parliament.” *Il Politico*, 70(1), 2005, 5-34, 33-34.

<sup>16</sup>Fernando Mendez and Mario Mendez, *Referendums On Eu Matters*. 2017, 71.

such principle would not be entirely out of ordinary for the EU, as it is similar to the principle of qualified majority voting in the Council, where some of the decisions are made when they are voted in favour by 55 per cent of member states, representing at least 65 per cent of the EU population<sup>17</sup>. Let us consider how viable this option would be for Lithuania. In this case, one of the requirements for the referendum to pass is the same as in Alternative Two – the majority of the citizens of the European Union must vote in favour. The reasons why that kind of popular decision-making would be unacceptable for the interests of Lithuania were stated in the last paragraph and they stand the same here. The additional requirement of the favourable vote of the majority of the voting population in the majority of the Member States brings more power back to Lithuania in comparison to Alternative Two. Removing the potential for the minority veto should also be viewed as a positive feature of the design as it is undoubtedly favourable for Lithuania to limit the potential of deadlock in the decision-making regarding the future of the European Union. Nonetheless, this option would weaken the power of Lithuania in the decision-making though not as severely as Alternative Two. Whether it is worth it to relinquish some of the powers of the state to empower the citizens of the EU is a normative one as this depends on the opinion of the decision-maker of the ability of referendums to contribute to the strengthening of the democratic backbone of the EU as well as the many other factors. If the choice must be made between three alternatives, then Alternative Three would seem like the most viable option but considering the inevitable loss of some powers to defend its interests within the EU and ineffective use of referendums for decision-making in Lithuania for now the Status Quo looks like the safest and the most desirable option regarding the referendum policy.

This does not mean that the instalment of the EU-wide referendum policy should not be welcomed by Lithuanian policymakers. It only goes to show that the design of such referendums is of extreme importance and the potential of referendums to stall the process of the EU policy evolution, as well as the potential loss of the decision-making powers, must be carefully considered by Lithuanian policymakers if the introduction of the EU-wide referendums were to become the desired option for the most powerful decision-makers within the European Union.

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<sup>17</sup>General Secretariat of the Council, “Voting system.” 2020. <<https://www.consilium.europa.eu/en/council-eu/voting-system/>> [Žiūrėta: 2021 06 01].

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