

OPEN DIALOGUE BETWEEN INSTITUTIONS AND CITIZENS - THE CHANCES AND CHALLENGES

NOTES ON THE WORKSHOPS ON THE CIVIL DIALOGUE UNDER ARTICLE 11 (2) TEU

INTRODUCTORY REMARKS:

The Austrian Institute for European Law and Policy is committed, inter alia, to conducting research on the principle of democracy at national as well as at European Union level.

For more than three years this institute has focussed on the issue of the European Citizens' Initiative (see www.legalpolicy.eu). Since the Regulation implementing Article 11 (4) TEU has now been adopted, we would like to highlight other elements of "direct democracy" in the EU, namely Article 11 (2) TEU.

Article 11 (2) TEU states:

"The institutions shall maintain an open, transparent and regular dialogue with representative associations and civil society."

This wording seems to be clear and imperative at first sight. If looked at more closely, however, it raises a lot of questions. Since we intend to elaborate on the correct answers in the workshops, we have compiled a questionnaire as a preparatory guideline for all our "senior participants" who are kindly asked to deliberate on these

questions in advance – of course, we neither require each person to answer every question nor do we in any way hinder raising additional ones.

By asking these questions, the workshops' concept aims at:

- presenting with rationality
- raising appropriate questions
- collecting reflections from all parties concerned
- preparing first results for further implementation

In sum, we are asking: *“What do institutions and stakeholders think and feel about the Lisbon dialogue-setting?”*

We are naturally not the only ones dealing with the issue. In this respect, we just point to

- the “Opinion” of the EESC¹ and a “Roadmap for Participatory Democracy” of Group III, EESC²,
- [EP]

Questionnaire:

I. Horizontal questions:

A. General questions regarding the interpretation of Article 11 (2) TEU:

1. Does the fact that the “institutions” are addressed here in general and without any differentiation mean that they all face, in principle, the same obligation, or is the nature of the obligation meant to be shaped alongside their specific tasks? If so, what does these obligation mean for the individual institutions?
2. Does this provision contain an obligation for the “institutions” only, or also one for their partners, the “representative associations and civil society”? And, if so, which ones (e.g. providing an organisational structure adept for such a dialogue with the “institutions” ...)?

¹ CESE 465/2010.

² filed on March 22th 2011, link: <http://www.eesc.europa.eu/?i=portal.en.events-and-activities-participatory-democracy-prospects>.

3. Can the “associations” and “civil society” expect significant working aid and financial support – in analogy to Article 11 (1) TEU which makes the provision that the Horizontal Civil Dialogue is to be enabled “*by appropriate means*”? Or is that interpretation excluded a contrario?
4. Who is to decide which “association” is to be considered sufficiently “representative” and which rules are in place to secure that the “representatives” indeed represent the opinions of the members of the respective “associations”? What should the criteria look like? Do we need a sort of “Representativity Catalogue”?
5. To which extent is the principle of “democracy” as enshrined in Article 2 TEU to be applied to the internal organisation of the “associations” in order to qualify them as legitimate partners in the “dialogue”?
6. What are the limits of “civil society”?
7. Given that changes in primary law fall outside the decisive competence of the “institutions” (which, by Articles 48f TEU, are accorded only a preparatory role, whereas decision-making pertains to the Member States), is the scope of the “dialogue” within the definition of Article 11 (2) TEU restricted to *questions of Union secondary law legislation*, similar to the scope of the Citizens’ Initiative (Article 11 [4] TEU)?
8. If, however, the “dialogue” might also cover at least the interpretation of primary law: might even a common understanding between partners effect at least the *autonomous* obligation of *one* of the “institutions”, the *Court of Justice*, to “ensure that *in the interpretation* and application of the Treaties the *law is observed* (Article 19 [1] TEU)”?

B. Specific questions with regard to the role of the institutions:

1. What implications arise for the role
 - a) of the EP
 - b) of the national Parliaments
 - c) of the advisory bodies EESC and COR
 since all institutions (EP included) are required to maintain a *direct* dialogue with the “representative associations and civil society”? Does that mean that the Parliaments and the Committees are released from the task of representing the specific interests of their electorate in order to focus on the “common good”?
2. What is, regarding the EC, the added value of Article 11 (2) TEU, compared with the specific obligation enshrined in Article 11 (3) TEU?
3. In contrast to paragraph 4 concerning the Citizens’ Initiative, paragraph 2 of Article 2 TEU does not explicitly require implementation by a regulation. How feasible is it, at least in the long run, to secure a “*transparent and regular* dialogue“ without clear, transparent and reliable rules? And if so, is there an alternative to a *formal act of secondary legislation*?

4. If every institution is responsible for its own dialogue: will there at least be some *political coordination* among the main institutions in order to guarantee coherency? If so, which institution should take the lead?
5. Which *technical supportive structures* are to be provided? An office? An online tool? What else?

C. Specific questions with regard to the concept of democracy:

1. Is Article 11 (2) TEU, according to the heading used in the draft Treaty of the Constitution, still to be considered a tool of “*participatory*” democracy or is it important that this heading has been removed in the present Treaty so that this instrument could now also be considered to be more “*deliberative*” in character?
2. If “*participatory*”: how feasible is maintaining a meaningful dialogue which secures a minimum of participation for each participant in a space of more than 500 million inhabitants? Or, more specifically: Does this necessarily imply a strict restriction of issues treated at the European level, according to what the *principles of subsidiarity and proportionality* require?
3. If “*deliberative*”: how to effectively single out those issues, arguments and ideas which are really capable of moving Europe forward? And:
4. To which extent *may* the institutions *rely on the information* they get from their partners of the “dialogue”?
5. Is there any link between the horizontal dialogue mentioned in Article 11 (1) TEU and the vertical dialogue provided for in Article 11 (2) TEU, in particular in respect to preparing and thus enhancing the quality of the latter?

II. Questions related in particular to the respective workshops:

A. Ws 1:

1. To which extent does the current relation between
 - a) each of the two Committees
 - b) the “representative associations”, including bodies of public law representing interests covered by the two Committees
 with the institutions *already fulfil* the requirements of an “open, transparent and regular dialogue”?
2. Or, pose question 1 the other way round: to which extent or in which respect should the status quo be *improved*?

3. To which extent could “associations”/“bodies” within the meaning of point 1/b discharge Union (and national) legislation by effectively providing for *autonomous self-regulation* on a regional level/in a specific professional sector?
4. Of which kind should the sharing of tasks and amount of efficient cooperation be between the two Committees and the related “representative associations”?
5. In particular: to which extent are the two Committees able (or should be), in cooperation with their related “associations”, to furnish and discuss with the institutions the *factual elements* (in *all the diversity* protected by Article 4 (2) TEU) needed by the Union legislator to meet the requirements in Article 296 (2) TFEU “to state the reasons”?

B. Ws 2:

1. Are non-governmental organisations “representative” by quantity or quality of members or by the issues for which they stand?
2. If it is membership: could the criteria required by Article 11 (4) TEU (read in conjunction with the implementing regulation) for the admission of a citizens’ initiative (one million of signatories of a quarter of the Member States) serve as a guideline for this quantitative criteria?
3. If it is issue: who is to decide on the representativeness of the issue: the institutions, the media, the claim of the NGO concerned to address a relevant issue, the conviction of the community of NGOs?
4. Given that primary law already commands a fully fledged system of highest values (cf. Article 2 TEU; EUCFR) which is hardly likely to be changed in the near future: what could possibly be the use of the “open, transparent and regular dialogue” which the Union is, according to Article 17 (3) TFEU, bound “to maintain ... with a) “churches and religious associations or communities” (paragraph 1) and b) “philosophical and non-confessional organisations” (paragraph 2)?
5. Does the reference to “national law” in Article 17 (2) TFEU imply that it is the national law of the respective Member States which may decide which “church”, “association”, “community” or “organisation” is admissible to the “dialogue” at the Union level?

3. Ws 3:

1. Does Article 11 (2) TEU also cover the “dialogue” with the “unrepresented”, i.e. the “ordinary” citizen?
2. If so: which specific tools (e.g. of electronic communication) are needed to make a dialogue with a multitude of unconnected individuals feasible?
3. If not: how “representative” can a dialogue with a “civil society” be which excludes the majority of the citizens of the Union?
4. Does the dialogue with the individual citizen need in particular interaction not so much with the Union institutions as a whole, but with specific (and specialised) parts of them, including cooperation with national and subnational

institutions (network of ombudsmen, contacts of the individual members of parliaments with their constituencies...)?

5. Should the political parties focus more on the contact with the individual citizens, thus serving as an intermediary between the electorate and the institutions? Are there any viable alternatives?