

**Joint Seminar  
BEPA - AIELP  
European Commission  
Berlaymont Building  
11th Floor, Room 11  
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***Pichler: Dialogue with Civil Society: The Way Forward***

Distinguished co-speakers, dear participants!

Our commitment for today is to not fiddle around with flattering niceties but to have an honest and frank discourse on the usually so-called vertical civil dialogue. I have nothing to fear or to lose, so I'll use very clear language, polite anyway, of course. Nevertheless I'd like to appeal to your benevolence in convincing you that whatever I say is done honestly and pro-actively solely in favour of the sustainability and resilience of our Europe.

There is a process in motion on behalf of the Parliament in the EU Commission right now on how to implement a best practice model of this 11(2) dialogue. This seems to be overdue, it's true. Whoever thinks that the dialogue **as it is** works quite sufficiently already by now - I'd like to confront with the hard facts.

(SLIDE 4) *I. Fundamentals and assumptions*

L&G, everybody, believe me, every single one of the 500 million Europeans by today, twenty years later, knows how to jeer about the alleged nonsense of making cucumbers curved by law. This episode became the most popular running gag on the poor EU. Malevolent voices satirically scoff that this is the authentic narrative of the EU. Meanwhile, the EU promised solemnly that the era of cucumber regulation stylus is over. But a couple of very recent alarming cases - the olive-oil-dispenser or the seed varieties case - indicate conclusively that the dialogue between the EU Commission and the represented European citizenry could not have worked - at least not as it was meant according to the Lisbon Treaty's concern.

The Lisbon preamble worries about decreasing EU standing, committing

(SLIDE 5) "... to enhancing efficiency and democratic legitimacy of the Union..."

This is the background of Art 11 Union Treaty. So I am stating that the Lisbon legitimacy and efficiency philosophy is the strategic frame. The operational frame is indicated by the overall cure&care of Article 11: namely, to provide the EU institutions AND the citi-

zenry, forth and back, with effective as well as efficient communication - and not just with information. A dialogue is about communication, meaning an interactive *exchange of views* as is literally addressed in Art 11(1).

(SLIDE 6)     *II. Legitimacy and EU acceptance are key*

L&G. let us keep this intrinsic beacon of interactive aims and communicative goals in mind at every moment of our dialogue/debate. I cannot find a single reason otherwise why you should waste your time to share with us if we disagree on the core premise. Of course we can support you when you file your dialogue regime, and we would be pleased to inform you about our concrete solution models and to relate to you our condensed experiences which arose as we worked for over one year with all parties involved by Article 11. But for today, the purpose is rather to confront you with philosophies and premises first - in order to let you reflect on the design panorama.

Both dialogues aim for mutual understanding by exchanging good arguments or, best case, in finding a broad mental consensus on pending EU legislation. In other words, Article 11 does not at all introduce a kind of another silent co-determination track through the backdoor and actually does not really side with the idea of direct democracy, even if the European Citizens Initiative under Paragraph 4 of Article 11 is interpreted quite often as such. No, Art 11 intends to empower and enable partners in an enriched and enhanced mutual political communication. It builds mainly upon but surpasses the deliberation idea in the Habermas sense and takes one step further and sets up the most modern philosophy of cooperative and collaborative democracy which has been significantly and explicitly addressed since President Obama's open government movement. You see, it's all about nothing less than including the citizens into the concrete policy making. And, please, L&G, don't forget - not even today, when we apparently have a peculiar topic on the table, that you've got to harmonize 11(2) with all (SLIDE 7) of the participatory instruments because there is now a holistic architecture in favour of increasing legitimacy and of enhancing EU acceptance.

(SLIDE 8)     *III. A hard touchdown*

But what about the reality of this holistic Lisbon spirit? Let me act bluntly and let us together examine Article 11's essence: Nothing really serious and substantial was done to pro-actively fill the empty words with vital life.

\* Insiders here know that the 11 (4) regulation was designed in an overly anxious and overly careful way to make the Citizens' Initiative a shelf warmer and, little wonder, since self-fulfilling prophecies usually come to pass, it has turned out to be a shelf warmer, nearby stillborn law. Except for one all other around two dozens of ECIs are flagging. Only the Right to Water Initiative: "Water is a Human Right" had a good issue (with an even better underlying message: we are fed up with a Union that privatizes every winst niche and socializes any loss) and got its content as appreciated and implemented before being closed. But it takes more than one swallow to make a summer. For that matter is this example proof of my theory, that also the ECI gets better used as tool for political communication, when the attendant Commissioner accepted the call upon the Commission long before the time out of R2W initiative. Respect and applause for this extraordinary political acumen and brilliant case management, Commissioner Barnier.

\* Article 11(3), the consultation mechanism was denounced as Disenchanted Participatory Democracy, which is the book title by Beate Kohler-Koch (2012). Hard talk. True or false, however? Well, the Commission may gain expertise by the consultations, I don't know, but when seen in the light of the legitimacy aspect, Kohler-Kochs&Quitka's empirical research could not summarize that Article 11(3) generates any significant public pan European awareness that the citizens could have a real and factual influence on EU legislation.

\* Article 11(2) is something we will hopefully evaluate today amicably but one thing we can already proclaim in light of the enhancing desire for legitimacy: this instrument is the perfect alien to the Union's citizenry.

\* Article 11(1), the broad, European-wide stance on horizontal dialogue is wisely placed above the other instruments and for me is therefore the capstone of the entire Article 11. L&G, Article 11(1) is not stillborn. It isn't born at all. And no one, not a single one here in the heart of the Union has spent even a pro-active second on the summons stating that the institutions (SLIDE 9) "shall"(!) support the increase of horizontal dialogue among Europeans. Some of you argue that there is no specific implementation order similar to what is foreseen in Article 11(4) and therefore there is nothing to do. L&G this is a provocation in a constitution, which Dr. Baltasar will reflect on in depth. At a glance: First, there are common, fundamental law principles and that means that a constitution is not a tattling&twattling fairy-tale teller. Secondly, there is an expressive command that says that the institutions have to show up supportively "by appropriate means". Full stop. Okay, we lawyers are best in pettifoggery about what might be appropriate. Right, but there is just one truth: "appropriate means", even if turned upside down, never means "no means".

Why do I so strongly stress the lack of a living Article 11(1) on the day we celebrate the 11(2)? Well, L&G, this manner of ignoring the chances that Paragraph 1 could provide you with makes you lose by your own omission a democratic filter, a self-evaluation tool for a horizontal pre-selection of the participation qualifications of dialogue applicants amongst themselves. In the scheme which is likely to come, which you invite by a call, you are the ones who must make the case to designate your own dialogue partners and you must also take the whole liability burden for this decision - and you can be easily overruled by the Courts afterwards. If you would have motivated your decision inter alia with a self-assessing preliminary process among civil society's and representative organisations' bodies, then you could have enhanced your procedural standing in the courts significantly by arguing with civil society's own internal ranking.

(SLIDE 10) *IV: The dialogue(s) philosophy and the institutions' winning options*

This example of incurring a clear asset leads me to give you a further snapshot of the multiple benefits of the silent and underlying (SLIDE 11) **innovative dialogue principles and values**, without incurring any downside. In particular amongst them:

First, the rule of an underlying **inclusion principle is evident**. No need to search for the pros of that. Inclusion is an intrinsic societal dogma for any democracy in order to respect every citizen as is the literal intent of Article 15(3) Functioning Treaty, Article 10(3) Union Treaty, and most prominently in Article 11(1).

Moreover, the dialogue by way of its criteria of open, transparent and regular aims is to offer a channel for fair bargaining, disclosing interest (as far as it is an honest interest), addressing considerations, generating rationality and getting feedback from bottom up so we can rightly talk of a concluding **partnership principle**. This per se on the other hand promises a **consensus democracy principle**. Not so bad.

The Commission and your President in particular call for proposals on innovative policy making – as in Horizon 2020 and in several research tenders. L&G, the most challenging innovative policy making concepts are already enshrined under Article 11 Union Treaty. You need only make them reality. And support it ultimately with the best ICT tools.

Off the record: Equip the dialogue with the most modern, open government ICT. Create a core platform, a basic role model for adaptation for sector use by any DG, an e-tool that offers all the state of the art functions of collaborative democracy for whomever wants to participate, wanting to address whatsoever to you. Copy Obama and his White House Open Government. Get yourselves an overview of every possible argument, even those you would never adopt. Let all the self-reporting parties concerned prepare their internal opinion building at any time, free of any limitation. You as DGs can in that way reduce, condense and better prepare face-to-face meetings - and save a lot of money, for that matter. Call me if you need assistance or advice. In not only Europe wide but worldwide terms, I have the most ambitious citizens participatory e-tool "eleven-one" (you can hear it, it is about Article 11(1)TEU) under evaluation by DG Connect at the moment. You can rest assured that you are talking with the right person. If you want to get an impression, go to the visualization SLIDES 15-19). Back to the core messages.

Beginning with Lisbon, all efforts should be about to keeping productive and pro-active participation alive. Keep in mind, Article 11 is in favour of healing the legitimacy gap and making the Union a Citizen' Union. Just one last word on the beneficial value of legitimacy, which is not merely an academic hobbyhorse. Legitimacy is nothing but another word for the acceptance of a political system that expresses the mind-set, a mentally internalized willingness to hold on even in critical times through rough seas. This self-evidently demands, to insure the political efficiency of the dialogues, that there must be an outreach for citizens in their masses everywhere in Europe. So, make sure that your accredited dialogue partners have a pan European clientele or in case of single intellectuals. that they have an overwhelming idea or a significant audience. Due to the crucial acceptance factor, there is no sense at all in having a dialogue behind drawn curtains and with unknown functionaries. That's why the dialogue is repeatedly referred to as "open".

And another notion. In your internal terminology, those vis-a-vis from you are usually called experts and advisors. (Balthasar will confirm that you are right.) The first they could well be, the second, certainly not, since an open dialogue is not an advisory board meeting. But above all, Art 11(2) has the potential to provide you with an intermediary channel to the citizens.

(SLIDE 12) *V. Apparent side effects could (should) become intended core effects*

Let me present you with other complementary reasons for going after the citizens - this time for very pragmatic reasons.

(SLIDE 13)

First: Far greater than the already mentioned functional and technical expertise, the Commission needs its own **channel for political consensus** preparation. Expertise is fairly easily to be had in other professional ways. What you seriously lack is a kind of direct popular legitimation which any wise executive seeks for with utmost efforts. In the case where the Commission were to show that a house bill has found broad consent by a significant part of the citizenry, then the standing vis-a-vis, the Parliament, would increase considerably and would prevent the Commission from breakdowns. Commissioners would be saved from awkward turns and recalls like we saw them suffer in the oil-bottle&seed disaster. L&G, no reason for mischievousness. This is not a particular problem of a single commissioner or a single DG; this harms the reputation of the Commission in general and of the entire EU, as well. And it makes things only worse if one of the dialogue partners, thus showing its real face as a pure lobbyist, stubbornly and obstinately defends the olive-oil-bottle pact as a very good solution and calls the Commissioner a (coward?) for surrendering to the mob. Episodes like these are dark moments for the democratic standing of the Union, and I don't understand why muscles are not flexed and such "partners" kicked out for felony. So use the Article 11(2) for broad pre-confirmation on what the European citizens really think about this one or other of your projects.

Secondly: Use the reform to amend **the nature of the dialogue** and change the role of your dialogue partners. Dialogue intrinsically means not a one-way model in letting the Commission know what it is supposed to come up with but a **two-way model**. In turn, utilise the dialogue partners to act as your postillions and make them reliable in carrying out the communication dissemination process to their clientele. That is what Article 11(2) means to me: building a bridge between the isolated executive bodies and the European citizenry, a channel for communicating interactively with citizen considerations from Haparanda all the way to Gozo. Article 11(2) actually installs a subtle communication system through intermediary powers that has only one goal: to be effective! Look, if the Commission proposes a draft model that supposedly was consented upon within the civil dialogue, for example, on seeds and oil dispensers, and then surprisingly faces a European-wide storm of dissent from the consumers, then logically, the action must not have been serving the Lisbon aims. Bargaining per se is not the goal, no, the goal is the goal and only in case of a European-wide majority's compliance may we conclude that the dialogue has fulfilled its intrinsic expectations.

Thirdly: The real chance that vertical dialogue offers for an executive entity like the Commission is to build up a **standing argumentative cordonne sanitaire** that enforces the position vis-a-vis the Parliament. If the dialogue were broadly and correctly carried out (and not assumed fatal as in the cases mentioned in the introduction), you could save yourself from the allegation of living in a citizen-free space and in professional seclusion and not having a clue to what the people out there think and require. For example, if a silent consensus prevails with DG Agra or DG Trade or DG Industry that the real and genuine and core stakeholders are the representatives of the producers, be it farmers, retailers or the industries and on the other hand the unions, then you have lost the nature of a civil dialogue. Because civil comes from cives and not from the term "interest". Article 11(2) calls predominantly for the citizens' view. Don't expel them from the sector dialogues and send them all exclusively to their supposed genuine representation in the DG SANCO. This would be a fatal mistake. The genuine and final partner of DG Agri are the 500 million gourmets and gourmands, as the 500 millions of buyers of products,

in general, are the partners in the DG Trade and DG Industry's and any other DG's segmentary dialogue.

Position yourselves therefore clearly with the citizens and do it with empathy. Respect the Lisbon considerations. **Contact the 500 million Europeans and do not** be satisfied with just a comfortable handful of **new bureaucrats**. Don't even think about how it's impossible to contact a continent's citizenry. It simply must succeed!

(SLIDE 14) Four: **Side with quality and side with new horizons**. However you design your applicants' approbation model, (we will assist you if you want us to do so) don't take the comfy way of merely re-installing the existing family of old-established members. Furthermore, you should not primarily focus on the numeric dimension. Better to put it on the quality, even if it is hard to define what quality is all about in a concrete interpretation, actually. You have to go after a representation of the political spectrums in the widest scope. Be political, act political. Don't close any door, don't hesitate to invite anyone, whomever, if he or she represents a serious political movement. This is not a recommendation to entertain block-up representatives, but look for those aspirants who have creative intelligent ideas, providing they have a pro-European touch. Go for diversity of the represented interests. Only in this way can you counter-direct and disqualify power concentrations and lobbying.

Five: Put a strong emphasis on a well-integrated **representation of the common welfare aspects** and concerns related to Art 2 TEU values. Design the regulation provisions so openly and flexibly that you can plant new representations of the public, societal and common welfare at any time. I do not intend to reframe the civil dialogue into a devout acolyte's service event, no. But get this: neither a civil society qualification nor a representative association's – in any way – prevention necessarily against separatist and fragmented interests. But the Commission as the European Commission is bound to the best interest of all Europeans. That is exactly the point where you face your credibility implications. Rumour says that you have a hanky-panky with the big capital and the industries. If you honestly want to avoid this slander, then use the Article 11(2) dialogue to get yourself a diverse and multiple and totally transparent cordonne sanitaire, pegged as broad as possible. Yes, I am not shy to confess openly that this could be seen as a divide and conquer recommendation, a tricky "the end justifies the means" philosophy. But I can face it.

Six: Welcome and instrumentalise the EP's call for **designing a win-win model**. Use the reform command also in regards to your existing dialogue participants to make a change in the approach and to provide yourself with openness and with rotation options. Reinstall the new dialogue as a channel of mutual understanding in particular with new dialogue participants groups who in turn foresee addressing their concerns to the attention of a new public audience. Make the one objective of the accreditation decision how qualitative and pan European the network of an applicant is, meaning how fully European his or her outreach really is. Make sure to get the dialogue away from the in-house Brussels model to reach to the farthest peripheries of the Union, make it a real **multilevel and thus a networked governance instrument**.

Alexander Balthasar will bring us now down back to earth.