

Civil Dialogue and Participatory Democracy in the Practice of the European Union Institutions

by

Johannes W. Pichler

Stephan Hinghofer-Szalkay

Paul Pichler

Table of Contents

Summary.....	19
1. Our Concept - True Constitutionalism	19
2. Our Chief Concern - A Gap Between the Treaties' Orders and the Factual Implementation	19
3. Our Empirical Findings on What Exists – Hopeful Voices, Some Mutual Annoyance	20
4. Give Participatory Democracy a Real Chance.....	21
i. Sensitise for the New Mind-setting by the Treaties.....	21
ii. Accept the Constitutional Obligation and Take the Responsibility Pro-actively.....	22
iii. Experiment, Endeavour in Order to Bring Participatory Democracy to its Full Legitimising Potential.....	22
iv. Complete the Fragmentary Composition by Wide Opening of the Eligibility - Even to Single Citizens - And Let a Broader Partnership Principle Break Through	22
v. Resolve the Confusion on the Nature of Dialogue - Consultation, Expertise, and Communication	22
vi. Design a Serious Conflict of Interest Policy	22
vii. Clarify the Nature of a Core Dialogue Regime to be Developed.....	23
viii. Install a Reviewing and Monitoring Scheme	23
ix. Strengthen the Role of the Dialogue - Turn Dialogue Partners into Supporters and Public Multipliers	23
x. Install an Online “Eleven-Two-Tool” - Save Time and Money and Gain Broad Compliance	24
I. Fundamentals and Considerations.....	25
1. Objectives and Grounds for the Study.....	25
2. Scope	47
i. Ascertaining the Status Quo	47

ii.	The Limits in Law and Democratic Potential	48
iii.	Introductory Explanations on What Exists.....	49
3.	The Pre-Lisbon Roots of the Current Legal Regime.....	50
4.	Constitutional Dimensions of the Current Legal Regime	52
5.	The Collateral Environment - the Wider Perspective on Participatory Democracy	62
II.	Essentials for the Study and for the Questionnaire.....	63
1.	Taking into Account the Implementer's Chemistry and Climate.....	64
i.	The Need for Imagination	64
ii.	Where is it Best to Start with an Evaluation and a Disclosure?.....	65
2.	Horizontal CD and the EESC Project <i>My Europe Tomorrow</i>	66
i.	One-way Communication vs. Dialogue	66
ii.	The PD Orphan: Lack of Trust in Citizen's Benevolence	66
iii.	The EESC's "My Europe ... Tomorrow!" Project	67
iv.	The mission statement and a statement on the "customer use" indicating whether and how far the ideas, suggestions, concerns, and recommendations coming bottom up are relevant for "Brussels" policies	68
3.	The Vertical CD - The Constitutional Promise and its Perceived Reality.....	69
i.	The Coffey-Deloitte VCD Screening Model - A Solitaire Benchmark Despite Serious Misconceptions.....	69
ii.	Setting Democracy Values at Market Price.....	70
iii.	Identifying the Wrong Rule Maker.....	70
iv.	Legitimacy - A Business Case?	71
v.	Working towards the Ultimate Goal: Democracy	72
vi.	The Dialogue is either Legitimacy Leveraging – Or Superfluous.....	73
III.	The Questionnaire and its Design - Methodology for Tracing the Political and Legal Dimension and the Parameter of Article 11(2) TEU.....	75
1.	The Overall Design - Primarily Based on Open Questions.....	75
i.	Methodological Alignment.....	75

ii. Highly Homogenous Desiderations and Considerations.....	76
iii. Hidden Agenda of Open Questioning and its Worthwhile Outcomes	76
iv. Tracing Multiple Considerations.....	77
v. Tracking a Legitimacy Providing Model	77
vi. Disentangling the Mazy Commingle	79
vii. Constitutional Awareness	80
2. The Political Design and its Methodology - Closed Questions	81
i. Adopting a Green Paper Stylus	81
ii. General Aspects	82
iii. Presumed Benefit as Stimulus for the Use of Dialogue	84
iv. Methodological Implications.....	84
v. Tracing Perceptions on Assumed Winners and Losers	85
vi. Dialogue Admittance: A One-way Privilege or Source of Associated Duties?	86
3. The Legal Design of VCD and Methodological Implications - Closed Questions	87
i. General Aspects	87
ii. Dialogue: A Matter of Law or of Culture?	87
iii. Methodological Implications.....	89
4. VCD Parameters Concerning the Addressees: <i>Civil Society and Representative Associations</i>	89
i. Civil Society and Representative Associations	89
ii. Representative Associations AND Civil Society... Pleonasm or Distinction?	90
iii. Civil Society: Definitional Intricacy and Underlying Suppositions?	92
iv. Are Political Parties Part of Civil Society?.....	93
v. One Body or Two?	93
vi. Individual Citizens Eligible?	94
vii. Representative.....	96
viii. Representativity as an Admissibility Criterion	96
5. Open, Transparent and Regular as VCD Criteria	97
6. Factual Challenges to the VCD: Procedural Aspects, Effectiveness, and Relevance.....	99

i. Procedural Aspects.....	99
ii. Dialogue - Intrinsic Value or Merely a Tool?	100
iii. Open to Whom and Why?.....	100
IV. Key Results of the Survey	101
I. General Objectives	101
1. CD in General.....	104
2. Art 11 para 1.....	109
3. Art 11 para 2.....	110
II. Objectives Met (C & R VII)	114
1. CD in General C & R XI.....	114
2. Art 11 para 1.....	116
3. Art 11 para 2.....	117
4. <i>Performance</i> in Meeting the Objectives C & R XII	118
III. Specific Tasks	121
1. CD in General.....	121
2. Art 11 para 1.....	124
3. Art 11 para 2.....	124
IV. Aims	125
V. The Criteria of 11 para 2 (C & R XV).....	129
1. Open C & R XII.....	129
2. Transparent	130
3. Regular.....	131
VI. Considerations ("Wish List" - General)	132
VII. Legal Nature	133
1. Hard Law	133
2. Soft Law Nature.....	134
3. Non-legal Obligation / Code of Ethics.....	134
4. Regulatory Regime (Beyond Art 11 TEU).....	134
5. Remedy	135
VIII. Performance of the Regulatory Regime	136

2. Considerations on the Legal Nature/Regulator Regime ("wish-list").....	136
IX. Selection (C & R IX.)	137
1. Notification and Criteria for Participation C & R XIII.....	137
2. Responsibility and Criteria for Selecting Members	138
4. Considerations on the Selection	139
XI. (X.) Dialogue Procedure	143
1. Structuring of Participants - General.....	143
XII. Venues for CD	144
XIII. Conflict of Interest Policy	146
1. Checking on Possible Conflicts, Consequences.....	146
2. Impact of Vertical Dialogue.....	146
XIV. Review.....	146
1. Review in Place	146
2. Considerations on Possible Review Mechanisms	147
V. Conclusions and Recommendations: The Unfinished Dialogues.....	149
1. General Objectives	149
i. Adapting to the New Mind-set by the Treaties: Constitutional Responsibility	149
ii. Internalise the Commission President's Mission Statement - Corroborating Proactively in the Dialogue Culture	151
2. Horizontal CD	152
i. An Orphan in Need of Surrogate Activity?	152
ii. Support Surrogate Motherhood from Bottom-up or from the Side "by Appropriate Means"	153
3. On the Vertical CD.....	153
i. Consensus on the Dialogue's Necessity - Dissensus on the Status Quo.....	153
ii. Possible Role Models	154
iii. Complete the Fragmentary Composition - Where are the Considerations of Average Citizens?.....	155
iv. Allow a Broader Partnership Principle to Emerge	156

v.	Reflecting on the New Wide Opening of the Dialogue(s).....	156
vi.	Choosing Quality over Quantity	157
vii.	A Two-chamber Model?.....	157
viii.	Co-designing a Reform Model	158
ix.	Resolving the Confusion on the Nature of Dialogue - Consultation, Expertise, Communication	159
x.	Designing a Serious Conflict of Interest Policy - A Case of Transparency in Action	160
xi.	The Eligibility of Religious and Philosophical and Party- political Organisations.....	161
xii.	Legal Frameworks vs. Arbitrariness vs. Culture.....	161
xiii.	A Particular Finding Process is to be Recommended as is a Commission-wide Basic Regime Model.....	162
xiv.	Standardise the Admissibility, Eligibility and Selection Regime	163
xv.	Enhance the Positive Perception of the Performance.....	164
xvi.	Consider Reviewing and Monitoring	164
xvii.	Enrich the Role of the Entire Dialogue - Of the Partners, of the Contents, of the Potential.....	165
xviii.	Install an Online "Eleven-Two-Tool" - Save Time and Money and Gain Broad Compliance	166
4.	A Final Remark.....	168
VI.	Bibliography.....	169