



## **ROUND-UP OF THE ATELIER ON "THE ELABORATION OF A EUROPEAN CHARTER ON MULTILEVEL GOVERNANCE: A STRENGTHENED COMMITMENT TO A MULTILEVEL DEMOCRACY"**

*held on 22 June 2010*

### **I. Introduction**

This atelier of the **Committee of the Regions (CoR)**, dedicated to the topic of "The Elaboration of a European Charter on Multilevel Governance (MLG)", was held at the CoR headquarters in Brussels and had the format of a **brainstorming discussion**. It gathered together eminent policy and academic experts, as well as representatives of the Council of Europe, who debated the overall objectives, contents and implementation modalities of a prospective European Charter on MLG. This event was organised as a follow-up to the nine previous ateliers, which had explored the concept and policy implications of MLG for local and regional authorities in Europe. It is worth reminding that the first **CoR White Paper on Multilevel Governance** was adopted on 17-18 June 2009, at the 80<sup>th</sup> plenary session of the CoR.<sup>1</sup> Following this, a widespread public consultation was organised between June and December 2009, which produced the **Consultation Report on the CoR White Paper on Multilevel Governance**.<sup>2</sup>

The atelier was opened by **Mrs Béatrice Taulègne**, Head of the CoR's Forward Studies Unit. She emphasised the **opportunities** and **political momentum** created by the **Lisbon Treaty**. In particular, this treaty advances a number of democratic principles, which were initially enshrined in the **EU Charter of Fundamental Rights**. Apart from the well-know principle of **subsidiarity**, of particular interest to the CoR and its members is the principle of **diversity** – promoting a consolidated and **coherent** position of the EU institutions vis-à-vis the LRAs.

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<sup>1</sup> See CdR 89/2009, CONST-IV-020

<sup>2</sup> For more information go to [www.cor.europa.eu/governance](http://www.cor.europa.eu/governance).

Another key development appears to be the increased concern about the *legitimacy* of EU decisions, thus the *EU citizenship initiative* is a necessary first step in the right direction. *Good governance* is another crucial topic, having already been mentioned during the debates during the **Convention on the Future of Europe**. Similar to the conclusions made in the **CoR White Paper on Multilevel Governance**, it is considered an important *public good*. Alongside the many opportunities created by the *Lisbon Treaty*, the speaker recognised the **probable challenges** standing in the way of the adoption and implementation of the future Charter on MLG. Likewise, not only the economic and financial, but also the political **governance crisis** in the EU, motivates actors at all levels to act prudently and question the suitability of the Community Method in every policy domain. Possible *blockages* could also be envisaged, as the new **legal and political tools** provided by the *Lisbon Treaty* have **still not been tested**, thus they should be evoked and applied with a certain degree of caution.

## II. The Atelier Debates: Session by Session

### *Session 1: "The Political Process of Elaborating a Charter: Challenges and Opportunities"*

The first session introduced the **political and institutional aspects** of adopting and implementing a future Charter on MLG. The majority of speakers gathered around the idea that the moment of producing such a charter was opportune and that this would constitute a positive continuation of the previous efforts made by the CoR in connection with the adoption of the *White Paper on Multilevel Governance* and the subsequent *Consultation Report* on the same topic. Nonetheless, a caveat was entered regarding the institutional bottlenecks at the supranational level and the necessity to produce such a charter in a **transparent and democratic way**.

The session's chair, **Prof. Nicolas Levrat**, somewhat provocatively stated that, when referring to MLG in the academic and policy literature, writers usually had in mind the **national and supranational levels**, often forgetting the sub-national level of governance. Notwithstanding this fact, the **European Parliament** had already recognised European LRAs by producing back in 1988 a *Charter for Regionalisation*. According to Prof. Levrat, because of a host of factors – mainly linked to the economic crisis and globalisation – there was a *"window of opportunity"* for LRAs to help promote such a new Charter on MLG. The overall context was additionally positive, because of the entering into force of the Lisbon Treaty and the strengthened role of the CoR via the principle of *subsidiarity* in Europe. Regarding the elaboration of such a charter, Prof. Levrat emphasised that this should be an **open and result-oriented process** (i.e. starting from the "product" itself). Furthermore, he stressed the importance of identifying the principal **stakeholders**: the EU institutions (mainly

the Council and EP), the associations and regional offices in Brussels, the academic community and the media. The speaker concluded that the contributors to both the elaboration and implementation of the Charter on MLG should be aware of the **many challenges** of undertaking such a comprehensive project; thus, it was useful to attempt "*to falsify one's working hypotheses*" along the road of achieving one's intermediate and final goals.

**Prof. Marco Mascia** concurred with the previous speaker that the adoption of a similar Charter on MLG was predominantly a political process. However, he also decided to stress the importance of **non-institutional actors**. Apart from the "usual suspects" from EU business and organised civil society, Prof. Mascia emphasised the role of **European political parties**, which seem to be increasingly recognised by the Lisbon Treaty. Moreover, the speaker referred to the post-adoption phase, when both **formal and informal education**, especially as regards the MLG method, would certainly become crucial for the Charter's implementation. Most notably, Prof. Mascia mentioned **the churches** and **the media** as possible bodies that could carry out such an educational campaign.

**Dr Lars Hoffmann** from the University of Maastricht related his experience with observing and studying the communication strategy of the **Convention on the Future of Europe**. He emphasised that EU policy makers should carefully *listen to the people*, but, nonetheless, should *set (and stipulate) the limits of the debate*. Moreover, he stressed the importance of garnishing the support of the main EU institutions and the Member States, as the drafting of the final document involved a *hands-on* approach on the part of influential political elites via the Secretariat of the Convention. Dr Hoffmann deplored the rather poor communication strategy employed by DG Communication, while underlining the importance of installing a **feedback mechanism** towards civil society and the EU citizens, preferably *online*. Finally, the speaker pointed out that the elaboration of this pan-European document benefited from the *opposition* of and *controversies* created by anti-EU politicians at the margins of the Convention.

The final comments on the presentations made during the first panel underlined the **timeliness** of initiating a debate on a future Charter on MLG and involving a good number of **stakeholders bottom-up**. Nevertheless, it was also emphasised that the current **economic crisis**, combined with a growing trend towards the **renationalisation** of EU policies and promoting of **intergovernmentalism** at the EU level, could pose certain challenges to the realisation of such an ambitious document by the CoR. Apart from involving the *citizens* in the elaboration and implementation of the Charter on MLG, it was deemed important also to get on board the **European Court of Justice** and especially its **Advocates General**, as main interpreters of the norms and standards set in a charter, as well as representatives of **local media**, who influence regional and urban politics to a large extent.

The discussion during the first session focused upon the numerous **challenges and opportunities** of elaborating a *European Charter on MLG*. All participants emphasised the **timeliness** of and **political need** for such a document. There was also a general consensus that **the publication of the CoR White Paper on MLG** and the **Public Consultation Report** paved the way for the "next stage" of the debate on MLG and the role of LRAs in this process – i.e. the elaboration of a *European Charter on MLG*. In particular, the next statements were endorsed by the majority of speakers:

- There was a substantial "**window of opportunity**" for EU local and regional authorities to effectively participate in EU decision-making and governance by endorsing MLG in a more formal way;
- The appropriate **political momentum** was achieved (mainly with the publication of the *CoR White Paper on MLG* and the *Consultation Report*) for the launch of a *European Charter on MLG*;
- Such a Charter could clearly benefit from the favourable political context and **new institutional opportunities offered by the Lisbon Treaty** to EU local and regional authorities.

Among the several challenges mentioned the principal one was to make out of it a **living and result-oriented document** that could serve a concrete purpose. Related to this, a number of speakers pointed out to the need of opening as many **communication channels** as possible and creating some kind of **feedback mechanism** (i.e. via public forums and the Internet). The necessity to **illustrate the benefits of MLG** for European LRAs and citizens was further accentuated, including through the text of the new *European Charter on MLG* and the follow-up work related to it.

In addition to this, the following points were also stressed:

- The **good governance** debate in the EU, in which the CoR actively participates, and the practical mechanisms of **implementing multilevel governance** (e.g. the *Europe 2020 Strategy* and discussions surrounding the *post-2013 Financial Frameworks*);
- The centrality of the **democratic and legitimacy principles**, enshrined in the Treaty of Lisbon and their putting into practice by the European LRAs;
- The principles of **subsidiarity, European citizenship** and **diversity** that must be taken into consideration in the future **Charter on MLG**.

## ***Session 2: "The Elaboration of a Charter: Lessons from the Past"***

The second panel was introduced and chaired by the Secretary-General of *Notre Europe*, **Mrs Gaëtane Ricard – Nihoul**. She stressed the importance of **legitimacy** and the **democratic character** of the future Charter on MLG. Furthermore, as emanating from the CoR and its members, such a charter should have the objective of being **complementary** and offer added **value** to the EU decision-making process. In terms of practical proposals, Mrs Ricard-Nihoul suggested the endorsement of **three values** to be included in the text of this document: **proximity** (different from *subsidiarity*, which is unclear to most European citizens), **diversity** (emphasising that this is not an "elitist project", but also cares for minorities and different types of regionalism) and **solidarity** (among regions, but also within the EU as a whole – i.e. as something innate to the overall community interest, endorsed by the "Community Method"). The speaker also argued that the **proposed title** would not be attractive enough and, thus, would need **simplification** and reference to something more understandable than MLG (e.g. a **European Charter of the Regions**, while providing specifications in a subtitle). Regarding the adoption and communication of the future Charter, Mrs Ricard-Nihoul proposed the involvement of **national** and **regional parliaments**, which could eventually assure the *follow-up* and *implementation* of such a key document.

**Dr Andreas Kiefer**, Secretary-General of the Congress of Local and Regional Authorities of the Council of Europe, shared his personal experiences and that of his institution in producing the *Charter of Local Self-Government*. Most crucially, it should be made clear from the beginning a) the elements of *self-commitment* and **responsibilities of each participant** in the process, b) the **minimum standards** endorsed by such a key document, and c) whether the Charter would be *legally binding* or not. Preferably, there should be a permanent *monitoring* of the charter at the domestic level, involving a **group of independent experts** and an **established institutional structure**. Regular meetings with governmental and LRA officials, as well as representatives of the courts, the European Ombudsman and organised civil society would facilitate tremendously such a monitoring process. With respect to the proposed initiative of the CoR to draw up a Charter on MLG, Dr Kiefer submitted that "*there was no single solution*" and that in the long run it "*may not be enough*" to achieve the intended results. However, he proposed that the CoR could **establish common ground** with the charters already drawn up by the Congress and use the momentum (and original ideas) that the Council of Europe had recently accumulated, in order to elaborate its own Charter on MLG. Specifically, Dr Kiefer reiterated his recommendations that the CoR should: a) put in place a solid **monitoring mechanism** and **finance it** over a medium term, b) **responsibilise** LRAs in order to abide to the previously agreed duties, c) assure a **genuine independence** of the implementing authorities (i.e. the LRAs) vis-à-vis the state, and d) bring on board **civil**

**society** and **specialised networks** (of academics, businesses and the media) in order to keep the whole project *dynamic* and alive.

The Director of the European Centre for the Regions (ECR) in Barcelona, **Mr Javier Sánchez Cano**, related his previous experience of setting up a global association of LRAs (United Cities and Local Governments-UCLG) and the attempted promotion of a *World Charter of Local Self-Government*. The entire process took approximately 15 years (between 1992 and 2007) and it ended with the adoption of *Guidelines for Decentralisation* under the UN HABITAT programme. The practical conclusions could be summarised as follows: 1) the CoR should try to build **strong alliances** (with national bureaucracies and LRAs); 2) having **well-known political figures** (i.e. mayors of large cities) helps get visibility and achieve results; 3) adopting a charter **takes time** – be patient; 4) **technical resources** and **money** are very important, especially during the monitoring phase (but also for bringing along stakeholders); 5) **Member States** (i.e. the Council and national representations at the EU level) should always be involved; 6) **be flexible** – e.g. be prepared to modify the name and target audience of your projects (e.g. *local self-government* changed into *decentralisation* in the case of the UCLG Charter).

**Prof. Jean-François Akandji-Kombé** of the University of Caen in France made a convincing case for the challenges and opportunities facing one of the oldest European charters – *The European Social Charter*. In terms of **content**, he argued that charters are usually rather *complex instruments*. One should envisage the inclusion of several parts, of which the ones related to the **principles/values** and **implementing measures** appeared to be indispensable. Referring to the future Charter on MLG, Prof. Akandji-Kombé raised several important points that needed to be discussed in advance. Firstly, because of the relative *opacity of the term MLG*, he suggested that its principles (or values) should be **announced in a clear and succinct manner**. However, the question was put forward whether the main principles enunciated by the Charter were **substantive** or **normative** (i.e. linked to a certain ideational form of governance or ideal, such as *democracy*). In the case that the Charter announced **certain rights** to which MLG actors had to adhere and benefit from – it seemed worth asking whether a) those rights were referring more to the *bottom-up*, i.e. citizens' prerogatives or to the *top-down*, i.e. government dimension. In addition, Prof. Akandji-Kombé warned against the possibility that the new charter would **only reorganise the rights and principles**, without offering added value in terms of novel rights and obligations. The *articulation* and *implementation* of those (MLG) principles in practice was apparently a complicated process: the CoR and LRA should probably **foresee additional stages** of implementation and monitoring of the outcomes of this charter. In the end, the speaker agreed with the rest of the participants that "actorness" within such European charters should carefully be studied. In particular, **Member States, civil society and trade unions** should necessarily be involved in the processes of elaboration and promotion of the future Charter on

MLG. Parallel to this, a **permanent mechanism of reaction** ("*activisation*" - FR) should also be established, in order to carry on the debate on MLG and the role of LRAs and update the document if necessary.

**Mr Alfonso Zardi** from the Council of Europe spent time recounting the experience of his organisation in adopting charters and other similar documents in a predominantly **intergovernmental decision-making context**. He also told the audience about the difficulties of **ratifying charters** on *local autonomy* and *decentralisation* at the European level, because of the frequent **blocking minorities** among the participating Member States and **the increased heterogeneity** of LRA units within an expanded Council of Europe after the end of the Cold War. Mr Zardi drew the attention of the participants that certain *updates*, but also *politically sensitive issues* could be placed in **additional protocols** to any charter. Basing himself on the recent work done by his organisation in the field of "innovation and **good governance**", Mr Zardi proposed *several principles* that could be stipulated in the *preamble* to the future Charter on MLG: **democracy, accountability, accessibility, pluralism, adequate financing, ethical standards, etc.** Furthermore, he stated that, in order to achieve a relative (longer-term) success with a similar charter, one should try to ensure: a) **leadership** for the project, b) **alliances** and *partnerships* with relevant stakeholders, c) a **receptive public** that could benefit from d) a **tangible output**, while the *sustainability* could be further enhanced by adopting a **specific label** (i.e. of *quality governance* as the CoE) and get the support of a **well-known public figure or politician** (e.g. a regional governor or mayor in the case of the CoR).

The debate during the second session brought forward several useful recommendations, based on the **past experience of elaborating different European and international charters**. The following "**lessons from the past**" were given particular consideration and managed to achieve a tentative consensus among the speakers:

- Specific efforts should be made to clarify a) **the meaning of MLG** and b) establish the **principles/values** that the Charter endorses (those might be included in a *preamble* or *protocol*);
- There should be a *lively* and *continuous monitoring mechanism*. Technical resources, time and money are also needed for this;
- **Partnerships** with *relevant stakeholders* should be built, including with the *Member States*;
- The Charter should aim for *clarity* and *succinctness*, as well as for some *tangible outputs* and a **receptive audience**;
- Particular attention should be paid to the *title* of the Charter, as well as to the possibility of inviting a well-known **public figure** to present it and endorse it.

Overall, the discussants concluded that **four broad concerns should be addressed simultaneously**, in order for the future Charter on MLG to be a success: **1) the process of drawing up the charter, 2) the format of the document, 3) its readability and 4) the future ownership and usage of the Charter.**

### *Session 3: "Significance and content of a Charter on MLG"*

The goal of the third session was to focalise the comments and advice given during the previous two sessions, thus making concrete proposals regarding the possible contents and modalities of adoption and implementation of the CoR Charter on MLG. The chairperson, **Prof. Nicolas Levrat** initiated the discussion by pointing out that the concept of MLG is *inherently ambiguous* and, hence, might create confusion for some of the addressees of this important political document. He also referred to the positive experience with the elaboration of the *EU Charter of Fundamental Rights*, where legal experts were extremely independent during the drafting phase (i.e. their *political mandate* had been clarified in advance), whilst national politicians took over much later on and approved the text.

Regarding the content of the future Charter on MLG, it was proposed to have **four parts: 1) Definition of MLG, 2) Principles, 3) Processes and good practices and 4) Implementing mechanism.** Regarding the elements to be included in Part I, Prof. Levrat argued that such a *definition* was absolutely necessary; however, it had to be both short and clear/readable. He also admitted that certain **values, minimum standards and best practices** might be mentioned in this first part of the Charter. With respect to the **exact principles** to be listed in Part II, Prof. Levrat suggested *six such principles*: a) **democracy/participation**, b) **respect for the rule of law**, c) **openness/transparency/access to rulers**, d) **proximity/subsidiarity**, e) **diversity** and f) **solidarity**. Part III, albeit not indispensable in the speaker's mind, could include, for instance, *"good faith" principles, labelling* in the sense of setting some universal standards (like the ISO Convention), etc. Part IV, referring to the **implementing** or, even, **enhancing mechanisms**, could also develop the *minimum standards* and the *ultimate goal* of such a charter. This part should also specify who should be involved: e.g. **experts, judges, politicians and ordinary citizens**. In conclusion, Prof. Levrat hypothesised that the **principles** of the future Charter on MLG could be its *real strength*, but only the future could reveal the actual utility and sustainability of such a project.

The next speaker, **Prof. Antonio Papisca** from the University of Padua drew a parallel between the work of the CoR (via its *White Paper on MLG*, to the preparation of which he had contributed) and that of UNESCO, the Council of Europe and other international organisations in **building partnerships** and **promoting** their own charters. He also argued

that the CoR's role in the field of *human rights* and *training/education* should further be strengthened, not least via the principle of *subsidiarity*. He also suggested that LRAs across Europe should adopt a **declaration on 'good MLG'**, thus providing a sort of **renewal** (*aggiornamento*) of the *Community Method*. Regarding the specific contents of the future Charter on MLG, Prof. Papisca insisted on the inclusion of certain precise texts in a **preamble** and **'principles' part** of such a charter. He also agreed on the adoption of a permanent *follow-up mechanism*, responsible for monitoring the implementation and visibility of the Charter on MLG.

The main line of Dr Arjan Schakel's presentation was that the *sociological (and de facto) diversity among EU regions* was growing, thus MLG was presumably quite appropriate to **accommodate this type of diversity**. His proposal towards the majority of European institutions and decision makers was to **extend the vertical dimension of MLG**, by including the largest possible number of LRAs. Embracing *diversity* and *different administrative traditions* was a critical issue for EU LRAs and the CoR in particular. Dr Schakel empirically demonstrated the opportunities of adopting a similar Charter on MLG, by attempting to achieve a *"scale effect"* across quiet variegated *demographically, ethnically* and *socio-economically regions* in the EU.

Similar to previous speakers, Prof. Dr. Hans-Peter Schneider from the University of Hannover suggested that **the title** of the Charter needed certain adaptation and modification via the inclusion of *'European'* in it and probably excluding MLG as a direct concept. He proposed to limit the composite parts of the Charter to **three** - by necessarily including a section on the 'monitoring' of the Charter itself. The latter, Prof. Schneider proposed, could feature some kind of *measurement tool* which could evaluate the **compatibility of EU decisions** with the principles and rights laid down in the Charter. As regards the exact principles to be mentioned in this *political* document, the speaker limited himself to **six principles: 1) diversity, 2) unity** (in the sense of preserving the unity and *cohesion* within a MLG system), **3) equality** (meaning both a formal and real equality among *levels of authority* – suggesting, may be, a process of *"moving hierarchies"* in the EU), **4) liberty** (and a right of 'statehood' – sovereignty), **5) solidarity** (in the sense of *loyalty* and *mutual respect*), **6) subsidiarity** (however, different and more comprehensive than the definition provided in Article 3 of the Lisbon Treaty).

In the final discussion that ensued, different aspects of the process of drawing up and implementation of the future Charter on MLG were reviewed. For instance, it was suggested that **the quality of partners** mattered much more than the **quantity of actors involved** at any stage of the process. Moreover, it was pointed out that MLG **had an international dimension**, thus international partners (IOs and global civil society and media) had to be equally involved. Certain participants expressed a preference for **elected authorities** to

implement the Charter, as they could be **politically accountable and make binding commitments**. Regarding the principles to be endorsed by such a Charter, several proposals were made. Firstly, it was suggested that **citizens** should be the main addressees of such a Charter. Next, it was stated that *democratic principles and procedures "at risk"* should particularly be given consideration, i.e. **proximity, accountability, diversity and European citizenship** – the main idea being to find a 'target audience' that could *tangibly* benefit from the adoption of such a charter. Overall, it was estimated that a **certain boldness** and even **contradictoriness** could benefit the future Charter on MLG. It was also mentioned that, through it, a) **an added value for the rest of the EU institutions** should be sought, while b) **LRAs** should be **the main protagonists** at *each* stage of the whole process. The proposal to conduct the initial 'elaboration' discussions in a **restrained (expert and political) circle**, and then to open up a **public consultation** (post-adoption), was welcomed by most participants in the atelier. Finally, the *speed* of proceeding further with this document was mentioned, as a number of serious risks – both concrete and contextual – could *play against* the adoption and implementation of such a charter. **Three principal challenges** were identified as a consequence: 1) **a normative one**, having to do with *principles and values (static challenge)*, 2) **a substantive one**, reflecting the *life of the charter (dynamic challenge)*, and 3) **'targeting'**, attempting to catch the attention of *stakeholders* and use the *political momentum* at different levels of governance (**political cycle challenge**).

During the third session, the discussion focused on a number of issues, among which those of the **component parts (chapters)** of the future Charter on MLG, as well as the necessary **principles** to be included in it. Overall, it was proposed that the following **key elements** should be given serious consideration:

- **Definition of MLG and the general scope of the charter;**
- **Principles and values;**
- **Processes and good practices;**
- **Implementing mechanisms;**
- A **preamble** and **explanatory protocols** could also be foreseen.

In addition to the above points, the speakers also mentioned the following points:

- The **principles** endorsed by the Charter should be **its real strength**;
- The **quality** (and not the *quantity*) **of partners** counts;
- MLG has **an international dimension** too;
- Predominantly **elected authorities should implement the Charter** and be held **accountable** for it;
- **The Charter** should first be discussed and elaborated **among experts**, and then submitted to **public consultation** and scrutiny;

- One should be acutely aware of the *political cycle* and the practical feasibility of such a project;
- Post-adoption **monitoring** and even the creation of a *measurement tool* to evaluate the **compatibility of EU legislation with the Charter**, as well as the latter's widest possible impact, need to be established.

### **Participants:**

- **Prof. Nicolas Levrat**, University of Geneva, Switzerland
- **Prof. Marco Mascia**, Jean Monnet Chair, Jean Monnet European Centre of Excellence “Intercultural Dialogue, Human Rights and Multilevel Governance”, University of Padua
- **Dr Lars Hoffmann**, Lecturer, University of Maastricht
- **Mrs Gaëtane Ricard – Nihoul**, Secretary-General, *Notre Europe*, Paris
- **Dr Andreas Kiefer**, Secretary-General of the Congress of Local and Regional Authorities
- **Mr Javier Sánchez Cano**, Director, European Centre for the Regions (ECR), Barcelona
- **Prof. Jean-François Akandji-Kombé**, University of Caen and Coordinator of the Academic Network on the European Social Charter
- **Mr Alfonso Zardi**, Head of the Department of Local and Regional Democracy and Good Governance, Council of Europe
- **Prof. Antonio Papisca**, Jean Monnet Chair Ad Honorem, Jean Monnet European Centre of Excellence “Intercultural Dialogue, Human Rights Multilevel Governance”, University of Padua
- **Dr. Arjan Schakel**, Newton International Fellow, Politics and International Relations Department, University of Edinburgh
- **Prof. Dr. h. c. Hans-Peter Schneider**, Director of the "Deutsches Institut für Föderalismusforschung", University of Hannover
- **Mrs Béatrice Taulègne**, Head of the CoR's Forward Studies Unit