

Codifying Deliberative Democracy within the EU in the Digital Era

María Jesus García García, Ph.D.¹

Received: 06.11.2024
Available online: 30.06.2025

Abstract

The main objective of this paper is to analyse the necessity of institutionalizing deliberative democracy processes in the framework of EU democracies. The rationale behind this paper comes from the fact that governments have been experimenting with innovative practices in the field of deliberative democracy to in order to make the public participate in decision-making. However, these experimental practices do not create citizens' entitlements, nor public power duties. The purpose of this paper is to raise awareness of the importance of coming up with a set of legal standards, based on the EU *acquis*, in order to guarantee democratic cohesion when codifying the functioning and operation of deliberative democracy, anticipating the potential impact of AI-supported deliberative methods. The hypothesis is that codification and institutionalization of deliberative democracy is necessary to preserve democratic cohesion among EU member states and also to guarantee citizens' entitlements. As for methodology, data collection and data analysis constitute the bulk of the research. Data collection relies on literature, and EU legislation. Data analysis is based on legal reasoning, mainly. The conclusion is that citizens' participation needs to be secured and guaranteed by means of a set of core principles based on the EU *acquis* in order to preserve democratic cohesion among member states. Otherwise, no rights are conferred to citizens and deliberative processes operate at the discretion of public authorities.

Keywords: Deliberative democracy, participatory democracy, digitalization, Artificial Intelligence, democratic cohesion, the EU

JEL: K10, K23, H1

¹ Full Professor at the Department of Administrative Law, University of Valencia, Spain; e-mail address: m.jesus.garcia@uv.es

Introduction

This paper² deals with codification and institutionalization of deliberative democracy among member states and EU institutions in the scope of democratic cohesion in the digital era (Gutmann and Thompson, 2004). The general approach is based on the premise that innovations in deliberative democracy triggered by digitalization and new technologies need to be institutionalized in the legal systems of member states according to a set of legal standards that stem from the EU *acquis* in order to maintain democratic cohesion.

The aim of this study is to look into innovation in governance in order to implement new models of citizen participation intended to bring democracy to the highest level of quality and commitment towards citizens (Palumbo, 2024). Governments could foster innovation in participation at a political level by using the latest tools, techniques and organizational models to help democracy to thrive in today's dramatically changing landscape, given the current challenges faced by democracy.

The reasons to introduce innovations in government-based on deliberative democracy are directly related to an attempt to enhance democratic requirements such as transparency, accountability, legitimacy and efficiency, and also to bring democracy to a new level in which citizen participation supersedes representativeness in decision making, at least in certain areas (Fung and Wright, 2003). Democratic systems of government can always benefit from civil engagement and citizen participation in public affairs. This paper focuses on the interaction between government and individuals and how the quality of democracy could be improved by implementing more effective mechanisms to strengthen the legitimacy of public authorities and engage citizens to take an active role in decision-making and government action by resorting to deliberative democracy.

In this scenario, the codification of deliberative democracy aims at creating a standardized legal framework of guaranties and safeguards capable of preserving EU democratic cohesion when introducing deliberative decision-making procedures potentially adopted by members states, or European Union institutions in the context of a digital environment.

The codification process should rely on the essential elements of deliberative democracy in the framework of EU values and democratic principles, translating these attributes into practical legal standards to be followed by all member states and European Union institutions. This functional approach aims to transcend the diversity of member states' democratic cultures, as well as the variety of methods through which deliberative democracy can be articulated.

In this regard, the Council of Europe puts forward the essential elements of deliberative democracy and its attributes need to be set out in the form of legal standards that guide member states and democratic systems of government to develop new deliberation

² This paper is published within the framework of the Jean Monnet Module Citizens' integration into EU democracy (101047164 - CitEUdem), which has been funded by the EU Erasmus +. The opinions expressed in this paper are the sole responsibility of the author and do not necessarily represent the official position of the European Union.

methods in the framework of a common democratic culture. Codification of deliberative democracy is expected to fill this gap and facilitate the process of institutionalization by diving into the EU *acquis*.

Research justification

As the Council of Europe (European Committee on Democracy and Governance) identified in the report January 31st, 2023, until now deliberative democracy has not been object of codification or institutionalization in a coherent, systematic and comprehensive way in the scope of the EU member states. According to this report, deliberation by the public in decision making has been put into practice by different European states from an experimental point of view, and certain methods of participatory or deliberative democracy have been regulated in fragmented laws (Bächtiger and Parkinson, 2019). Consultations, or people assemblies have been object of consideration as disconnected mechanisms of participatory democracy. However, deliberative democracy requires something else than a bunch of participatory instruments scattered throughout the legal system of any given member states. Deliberative democracy is not only to give people the opportunity to express their views sporadically. Deliberative democracy requires responding to a set of core principles and undeniable attributes. It also requires the meeting of a number of guaranties and safeguards to avoid being used to manipulate citizens. It requires continuity and commitment by public powers, a process design and also a set of methods or techniques that can be different and still respond to the requirements of a democratic system. Under these requirements the legal standards needed to codify deliberative processes within a regulatory framework should give solution to certain questions that remain unsolved. Such questions should address the topics that are more suitable for deliberation, the design of the deliberative process, how the result of such deliberative processes should be embedded in decision making, the scope of deliberation, how the recruitment of participants should be managed, what deliberative method offers the greatest potential, or the impact of the inputs in decision making. And yet, these questions remain unsolved.

Furthermore, deliberative democracy needs to address an additional challenge. Any legal considerations to deliberation by the public must take a future-oriented approach, considering not only to give solution to current unresolved problems, but also considering the lurking challenges in the context of a changing world (Fishkin, 1991). In this regard, we should consider the intersection of technology and society, which also has a reflection in deliberative processes. These new functionalities allow scaling deliberation up, making possible massive participation by the public in decision making. The next step will be to use AI to analyze these large amounts of citizens' inputs so that group decisions can be regarded as collective intelligence and also as collective will.

The use of artificial intelligence is making it technically possible to gather citizens' opinions on a great scale, allowing for massive participation by the public. European countries need to step into deliberative processes at the same footing. The EU is a community with a

democratic heritage and a similar democratic culture. When it comes to representative democracy, the values are clear. However, when it comes to deliberative democracy this is not the case. We lack a common legal framework of principles in this regard. We need to define the safeguards and warranties to make sure that decisions made by using deliberative democracy meet the democratic standards that we share as EU community.

The main objective of this paper is to raise awareness of the importance of codifying deliberative democracy among member states and EU institutions in the context of democratic cohesion in the digital era. Our hypothesis is that deliberative practices need be institutionalized in the legal systems of member states and EU institutions according to a set of legal standards that stem from the EU *acquis* in order to maintain democratic cohesion in the digital era.

Literature overview

Disaffection toward politicians has attributed citizens a more active role in policymaking. The so-called deliberative democracy has been one of the ways of giving citizens a more active role in decision making. Up to now, deliberative democracy is more of a concept than an articulated and comprehensive set of rules governing deliberative methods of decision making. Different conceptual frameworks dealing with deliberative democracy have been elaborated and also there is an agreement about some of the principles that have to be considered in any given deliberative process. This includes principles such as transparency, inclusiveness and openness.

Literature on deliberative democracy is varied and diverse and includes theoretical foundations and practical applications. Key authors such as Habermas (1994), Rawls (1993), Fishkin and Laslett (2003), Cohen (1997), or Gutmann and Thompson (2004) have set the ground for contemporary research. There is a general agreement on the importance of deliberation, inclusion, and public reasoning in the theory of deliberative democracy. However, subject matters as the nature of consensus, the breadth of public reason, the convenience of large-scale deliberation, or how to address structural inequalities in deliberative processes have been subject to discussion and controversy.

Such debates show the complexity of this area of research and also trigger further development of theories. Studies and theories about deliberative democracy are in a constant process of evolution, facing new political circumstances, internal revisions, empirical research, interdisciplinary approaches, methodological and technical innovations and global challenges, such as climate change (Smith, 2022), mass migration, and pandemics (Bächtiger and Dryzek, 2024). Deliberative democracy should be adaptable to these new challenges in order to maintain its relevance and effectiveness in promoting higher standards of democracy. And so should be the theories underpinning deliberative processes (Blockmans and Russack, 2020).

Legal research on deliberative democracy has also been conducted with a view to exploring how deliberative processes can be intertwined with decision making to achieve real and relevant effectiveness. Cohen's contribution (1997) illustrates this assumption.

Studies on deliberative democracy in the scope of the EU have been focused on introducing deliberation in the framework of EU institutions with a view to improving EU legitimacy. Their work focuses on the dynamics of deliberation within the European Parliament and its impact on decision making. Alemanno and Nicolaïdis (2021) address the functioning of citizens' assemblies in various member states and their potential for implementation at the EU level. Other research has analysed the benefits of deliberative democracy in terms of countering populism (Blockmans and Russack, 2020). Deliberative democracy in the scope of the EU has been approached from a partial point of view, focusing on specific methods of deliberative democracy, such as citizens' assemblies (Smith, 2021), or addressing specific cases, such as the Conference for the future of Europe (Alemanno, 2022). Previous research on the topic of deliberative democracy has explored how deliberative principles can be integrated into legal systems to enhance democratic legitimation, participation by the public and equal opportunities to participate in decision making (Cohen, 1997; Gutmann and Thompson, 2004).

Research considering the impact of new technologies on the deployment of deliberative methods is wide and varied. Although this is a field in constant evolution, new technologies have been incorporated as long as they are at the service of representativeness (Bernholz et al., 2021; Besson et al., 2007; Allen and Light, 2015). This works as a limit, since the understanding of democracy in terms of representativeness constrains the potential of new technologies. AI and new technologies are considered in democratic terms as long as they match existing forms of exercising democracy. In other words, new technologies are seen as tools to enable an extended version of democracy, not as a way of reformulating democracy and its functioning in new ways. Even though some research has focused on digital advances on deliberative democracy, representativeness remains at the core of this form of democratic participation.

Research funded by the EU has explored subject matters related to deliberative democracy, as for instance revealed by the Horizon 2020 DEMOTEC project (*Democratizing territorial cohesion: experimenting with deliberative citizen engagement and participatory budgeting in European regional and urban policies*)³. Similar research is conducted within the research projects *Cities as arenas of political innovation in the strengthening of deliberative and participatory democracy* and *EUComMeet Deliberative Spaces for Democracy*.⁴

Most of the research and studies developed so far adopt a today-perspective, analyzing how the introduction of deliberative democracy processes can enhance democracy and create higher legal standards. However, it is necessary to analyze the impact of AI-deliberative democracy in the evolution of democracy from a long-term future-oriented

³ About the Project see <https://cordis.europa.eu/project/id/962553/es>

⁴ See more about the two research projects at <https://cordis.europa.eu/project/id/959420> and at <https://www.eucommeet.eu/> respectively.

approach. Democracy must be considered as a living creature that evolves over time. From this perspective, prospective research aimed to foresee and anticipate future effects on democracy becomes necessary if we are to codify deliberative practices in the context of the EU.

Deliberative democracy in the context of representativeness

Representative democracy is in crisis at this moment in time. Citizens have a feeling of disaffection towards politicians and feel that the decisions taken by their representatives are not always the most accurate ones. This triggers a crisis of legitimacy. The development of new technologies provides citizens with quicker and easier access to information and, therefore, they can analyze public decisions and draw their own conclusions. They have the feeling that their representatives do not always fulfill their expectations. Trust in government has been eroded as a consequence of a growing inequality, which has been exacerbated as a consequence of the economic crisis. Deliberative democracy could reduce the rising disaffection towards politicians. Governments would feel a greater sense of accountability to their citizens with no grey lines between what citizens want and what governments provide and this would enhance legitimacy and efficiency at the same time.

Representative democracy is undergoing a process of adaptation and faces challenges that demand the involvement of new actors. By carefully granting decision-making authority to private entities and citizens, governments can achieve considerable gains in both efficiency and consent. New government systems make use of networks to ensure more effective deliberation and democratic legitimacy, which makes it necessary to involve the public and also private actors. Legislation should aim at a more equitable participation of the people in formal and societal governance in accordance with principles of justice and individual rights. This should be a requirement not only to meet the needs of a changing world, but also as an imperative resulting from the development of new technologies, which make it possible for individuals to have an active role in government activity. Citizens must have a more active role in government, both as individuals and also as part of organizations and networks, and in this regard, the role of new technologies is an important tool to empower citizens.

Governments play an important role when it comes to the making of decisions, the formulation of policies and the delivery of public services across a wide range of areas (Podgórska-Rykała, 2024). Governmental action covers the particular needs of localities and citizens. The proximity of governments to the electorate and to the needs and interests of citizens makes it clear that citizens should be given the opportunity to shape public policies and intervene in the decision-making process. It is necessary to look into new ways of citizens' participation (Alemanno and Organ, 2021) and to go deeper into participatory democracy.

Innovation in government is needed. Technologies are accelerating at an exponential rate, yet most government organizational structures and processes remain linear. Yesterday's

best practices are no longer sufficient to succeed in today's fast-paced, tech-driven, disruptive world. Instead, new mindsets and skill sets are required for leaders to envision the future. We are 21st century citizens under 18th century government structures and procedures. The aim is to empower citizens by reducing the gap between them and their political leaders, and in this regard the use of technological tools plays an important role. New technologies bring citizens closer to the decision-making process by giving them the opportunity to take a more active role in the process. Likewise, the exercise of democracy can be transformed and reformulated in the light of new technologies. This implies exploring the opportunities offered by new technologies, challenging existing preconceptions. Technological innovations have a great potential and as a logical consequence, democracy cannot be based on the principle of representativeness exclusively.

This prospective approach allows challenging existing preconceptions about democracy, such as that of representativeness. The usage of AI-supported deliberation can serve as a catalyst for a new era of democratic government. AI will redefine and transform the idea of democracy and the way in which sovereignty is exercised. For this reason, any legal considerations of deliberative processes should take a future-oriented approach, considering not only present handicaps, but also the lurking challenges in the context of a changing world and codification should be approached from this perspective.

Democracy evolves over time and adapts itself to a given place and time. In ancient Greece, democracy was exercised in the way of direct democracy. Thousands of years later, the best expression of democracy is that of representativeness, given the impossibility of the direct and personal intervention of individuals in public life. However, new technologies will make it possible to express opinions in a massive way and AI offers the tools to have massive amount of information processed and analyzed. As AI will allow transforming people's opinions into a kind of new collective will, democracy may not be bound to representativeness as the main form of exercising power. Our assumption is that the introduction of AI in deliberative processes will allow for a new form of direct democracy in the adoption of certain decisions, bringing back the concept of Greek agora. A shift from a democratic system based on representative democracy to a new one in which AI-assisted deliberative democracy will coexist with representative democracy at an equal footing is already technically possible. The idea of polydemocracy implies that different forms of democracy will be able to coexist at an equal footing and representative democracy may not be the paradigm of democracy anymore.

The idea of citizens' assemblies comprised by randomly selected citizens who work under the principle of representativeness shows that even if public powers want to introduce innovations in government, they are stuck on the idea of representativeness (Smith, 2024). New technologies will make it possible to resort to large-scale participation without the constraints of representativeness. What do we need these representativeness-based citizens' assemblies for, if we already have representative institutions directly elected by the electorate?

Deliberative democracy as an experimental practice

Currently, deliberative methods and processes are still experimental. The role and purpose of deliberative democracy in the context of a representative democracy needs to be the object of study and analysis. A theory of deliberative democracy still needs to be put in place, as it remains legally undetermined how deliberative democracy should be introduced in decision-making processes. Many experiments have been conducted in this regard, mainly in the public sector, but also by private companies.

In the scope of the European Union, deliberative processes have been experimental attempts to involve citizens in decision making. The last of these attempts is the Conference for the future of Europe (Alemanno, 2022). However, in spite of the popularity of these new forms of exercising democracy, deliberative processes have not been institutionalized or codified in the scope of the European Union up to now⁵.

Experimental attempts in the field of deliberative democracy have been conducted by the private sector too. In this sense, Meta carried out an experiment in which technology users were invited to participate in Community Forms, where participants had the opportunity to have a say on generative AI. The experiment was conducted with the collaboration of Stanford Deliberative Democracy Lab. The aim was collecting public input on issues concerning Meta's products. This experiment driven by the tech industry was based on the so-called deliberative democracy model. Meta made use of AI to moderate Community Forum discussions. The experiment put forward the lack of standards in the field of deliberative democracy, whether in the private sector or in the public one. The experiment also showed that the result was dependent of the company commitment to follow up the inputs gathered by the public and this is a conclusion that can be easily extrapolated to the public sector, making clear the existence of a democratic gap, which should be closed in the future. Following on the steps of Meta, OpenAI has also held its own AI-supported deliberative processes.

Other experiments in the area of collective intelligence have been run by The Collective Intelligence Project, with the aim of aligning progress, safety and participation in the context of new technologies. Some companies, such as Go Vocal have also developed AI-supported functionalities to enable deliberation, which have been put into practice by several governments providing a field for research.

Experimental research in AI deliberative democracy is also being conducted by different institutions and organizations. The Global Citizens' Assembly is conducting research on the role of citizens' assemblies in agenda setting at a transnational level. The Stanford Deliberative Democracy Lab is devoted to research dealing with democracy and public opinion obtained through Deliberative Polling and related democratic processes. Along

⁵ The online platform BePART set up by the Council of Europe allows practitioners from public institutions and civil society to share different examples of participatory initiatives (see <https://www.bepart.bg/>). The study "Mapping deliberative democracy in Council of Europe Member States", published in 2022 also shows some of the deliberative practices that have been adopted in the European framework.

with the Stanford's Crowdsourced Democracy Team, they developed an AI-assisted online deliberation platform intended for massively scale deliberation, which allowed for Meta to conduct the experimental approach to deliberative democracy.

Experimental approaches to deliberative democracy based on the method of citizen assemblies have been conducted by FIDE, Federation for Innovation in Democracy – Europe. This research focuses on citizens' assemblies as a form of exercising deliberative democracy, and the facilities to gather selected citizens fostered by digital platforms. However, turning these pilot programs into sustained governmental practices remains a challenge.

Democratic cohesion as the reason behind codification

Governments and also private companies have been experimenting with innovative practices in the field of deliberative democracy to make the public participate in decision making. Citizens' assemblies and mainstream participation are good examples of this. However, these experimental practices do not create citizens' entitlements, nor public power duties. Citizens' participation needs to be secured and guaranteed through codification and institutionalization. Otherwise, no rights are conferred to citizens and deliberative processes operate at the discretion of public authorities. Experimental practices, without a legal framework supporting them, are likely to bring about harmful effects on democracy. Citizens may perceive that their participation is useless if their opinions are not taken into account in decision making because not legal framework makes it compulsory for public authorities to integrate these inputs into the process.

Member states and even EU institutions are reluctant to introduce codified methods of citizens' participation in their legal systems. However, institutionalization of deliberative democracy is the key to secure citizens' rights and also to provide deliberative processes with a set of guarantees and safeguards, such as regular monitoring, transparent reporting, or fruitful feedback.

And yet, there are no common legal standards that could guide the process, as it has been stated by the Council of Europe in a recent report. Having common legal standards to codify deliberative democracy becomes particularly important in a time when governments have to face new challenges, as they need to integrate digitalization and new technologies in the design of deliberative forms of participation. These new technologies have the power to enhance democratic life, but also have the potential to transform democracy and the way in which is exercised. The common democratic heritage of member states and also the integration in a political community demands a common approach to these new challenges.

The EU treaties assume that social and territorial cohesion must be promoted. The arrival of digitalization and their impact on democratic participation makes it also necessary to promote democratic cohesion among member states. Democracy is in the process of being reformulated according to the new possibilities offered by new technologies. Legal standards to codify deliberative processes are more necessary than ever to bring unity when facing such challenges. EU member states need to step into deliberative processes

at the same footing. When it comes to representative democracy, the principles are clear (Craig, 2010). However, when it comes to deliberative democracy, we lack common legal standards in this regard. We need to define the legal safeguards and guaranties to make sure that decisions made following deliberative methods meet the democratic standards that we share as the EU community, especially with the introduction of new technologies. Indeed, the consequences of lacking common legal standards are exacerbated by the potential impact of AI-supported deliberative procedures on the exercise of democracy. So far member states had a common heritage and shared common democratic traditions that revolved around the idea of representative democracy. However, the future implementation of AI in democratic practices can make democracy evolve in different ways in different EU member states. Likewise, member states may find different forms of implementing AI and also different forms of exercising democratic power (Habermas, 1994) disaggregating the common democratic heritage as democracy evolves. This makes it necessary for member states to follow certain standards to keep democracy on common grounds.

Deliberative processes assisted by chat boxes, digital platforms and the usage of AI to select participants in citizens' assemblies, are just the first approaches to AI, which have already been implemented in certain countries. Technology has also been of use to determine the level of participation required to undertake a deliberative process. Data collection and its analysis by means of AI are future possibilities. This will make it possible to scale deliberation up, allowing for massive and large-scale participation in decision making. The next step may be to use AI to analyze these large amounts of citizens' inputs so that group decisions can be considered as collective intelligence and also as collective will.

In this future scenario, maintaining democratic cohesion in the exercise of democracy among member states and EU institutions will be a requirement. As a polyhedron, democracy also has many faces. Balance and ponderation among them will have to be struck according to certain standards that will have to be anticipated.

Democratic cohesion will have to be assured by means of a set of rules and legal standards intended to preserve the essential elements and attributes of EU democracy when codifying deliberative democracy, especially when introducing new technologies and AI.

Of course, there are not just one-size-fits-all ways of regulating deliberative decision making. Each member state will have to pass effective legislation to this end, according to their legal traditions and democratic culture. However, there should be some legal standards intended to safeguard legitimacy of decision making adopted by following these methods, and also citizens' rights must be guaranteed when resorting to deliberate processes. Even considering the diversity of democratic cultures, there is a need for standards to underpin deliberative processes in the scope of the EU and their member states. In this sense, the first standardized rule in a democratic environment should be the institutionalization of deliberative democracy.

A standardized regulatory framework of AI-deliberative democracy in the scope of the EU should:

- 1) be consistent with the Treaties;

- 2) respect EU values and democratic principles;
- 3) be respectful with citizens' fundamental rights, such as data protection, privacy, or minorities' rights;
- 4) respond to the principle of good administration, so that the design process is oriented to effectiveness and has an impact on decision making, allowing for citizens to receive feedback.

Deliberative democracy requires it to be codified and institutionalized in a coherent and comprehensive way to respond to the challenges, limits and barriers that governments will have to face, but also to create effective legislation. Of course, there is not just one way to regulate deliberative democracy, but there must be some legal standards intended to safeguard legitimacy of decision making adopted by following these methods. What is more, citizens' rights should be guaranteed when resorting to deliberative processes. Even considering the diversity of democratic cultures, there is a need for standards to underpin deliberative processes. Such standards should be intended to avoid a harmful impact on democracy and also to create a link between policy making and people's opinions. These limits will allow to control the actions of governments when they adopt decisions using these procedures.

Member states must meet some common democratic grounds in their governmental practices and deliberative processes. Experimental practices in this regard, without a legal framework to support them, are likely to bring about harmful effects for democracy. Citizens could perceive that their intervention in policy making is useless if their opinions are not taken account of in the final decision because no legal framework makes it compulsory for public authorities to integrate their input into the decision-making process. Some examples can illustrate this in the field of participatory democracy. Consultations, for instance, are open to the public (Fishkin, 2011). However, discretion runs the process, as public powers are not bound to send any feedback to participants, who often feel that they have not been heard in the process. This discourages citizens from participating in future processes eroding democracy and trust in politicians. When talking about deliberative democracy we risk the same consequences. For these reasons codification and institutionalization of participatory and deliberative democracy is a mandatory consequence if we are to prevent democracy from weakening.

Up to now, member states have had a common heritage, and shared democratic traditions that revolved around the idea of representative democracy. However, new technologies and particularly the implementation of AI in democratic practices can make democracy evolve in different ways in each one of the EU member states. Likewise, member states may find different forms of implementing AI and also different solutions to the exercise of democracy, disaggregating the idea of democracy and the common heritage as democracy evolves. Likewise, democracy may evolve differently in different countries, even if they share a common democratic background.

This makes it more necessary than ever for member states to follow certain standards to keep democracy on common grounds. EU treaties assume that social and territorial

cohesion must be promoted. The arrival of new technologies makes it also necessary to promote democratic cohesion among member states. Democracy risks being reformulated according to the new opportunities offered by new technologies. From this perspective, democratic cohesion among different member states and EU institutions is more necessary than ever. We are facing a time of reformulation of democracy. Legal standards to codify deliberative processes are more necessary than ever to bring unity when facing such challenges.

Digitalization of democracy will bring about different patterns of democracy and therefore, democratic systems of government will not be bound to rely on just representative democracy as the foundation of a democratic government. More than a given legal architectural structure, democracy will manifest itself through different forms. The concept of polydemocracy implies that different forms of exercising democracy will be possible. As AI will allow to transform people's opinions into a kind of new collective will, democracy may not be bound to representativeness as main form of exercising democracy. Consequently, many forms of democracy will be possible, because different forms of democracy will merge in the same democratic environment. In this context, it will be necessary to create legal standards intended for member states and EU institutions to codify AI-deliberative democracy on common grounds in order to maintain democratic cohesion.

The idea of polydemocracy implies not just one paradigm of democracy underpinned by the idea of representativeness. In such context, keeping democratic coherence among member states and EU institutions becomes crucial in order to preserve political integration. Such democratic cohesion will have to be assured by means of a set of rules or legal standards intended to preserve the essential elements and attributes of democracy when codifying the introduction of new technologies in democratic practices as it is the case with deliberative democracy.

In this scenario, democratic cohesion will need to be guaranteed in order to avoid desegregation. This is more important than ever, because democracy will be recognizable for the limits and respect of democratic rights, principles and values regardless of the way in which it is exercised. And such things will have to take into consideration the specificities of the EU.

Effects of codification on deliberative democracy

Codification will contribute to taking practices on deliberative democracy a step further, as follows:

- 1) By considering deliberative democracy from a EU-oriented perspective, codification will contribute to creating a common deliberative democratic culture and facilitate deeper political integration into the EU community.
- 2) By considering deliberative democracy not only as a concept or theoretical framework, but also as a form of exercising democracy, codification will imply analyzing the legal

technicalities and legislative requirements needed to preserve citizens' fundamental rights and common principles and values.

3) By adopting an integrative and comprehensive perspective that goes beyond the regulatory framework of a specific method of deliberation, codification will contribute to building a thorough picture of deliberative democracy in the scope of the EU.

4) By taking a functional approach, codification and institutionalization will fill an existing gap in EU democratic practices.

5) By creating legal standards to institutionalize deliberative democracy among EU member states, codification will create novel legal knowledge in the subject.

6) By adopting a future-oriented vision, which anticipates future effects on democracy, codification will contribute to the creating legal standards for the functioning of EU democracies in the long term, maintaining democratic cohesion.

Institutionalization will provide a set of legal standards, based on the EU *acquis*, capable of promoting democratic cohesion and political integration when codifying the functioning and operation of deliberative processes and the role of new technologies. Also, it will anticipate the impact of AI-supported deliberative practices on democracy and will contribute to elaborating a core set of legal standards capable of foreseeing upcoming challenges in a context of polydemocracy. Finally, codification will create common legal knowledge on deliberative democracy, which will contribute to building a common democratic culture in this regard.

Developing a set of common legal standards based on EU principles, values and rights will set the stage for governments to codify and institutionalize deliberative democracy in a meaningful and effective way, making it possible for citizens to influence decision making at a national and transnational level. Also, this will provide member states and EU institutions with legal standards to face the challenges created by the introduction of digitalization and AI. Codification will contribute to the implementation of AI-supported deliberative democracy in the context of European government systems, helping member states to pass effective and efficient legislation in line with the European Union *acquis*.

Additionally, creating legal standards to institutionalize deliberative democracy among EU member states will transform deliberative democracy from an experimental practice into an institutionalized form of exercising democracy. This will bring democracy to a higher level by integrating deliberative methods into the common practices of member states.

Moreover, the effects are expected to transcend the national level. The EU-centered approach intended to build a common culture on deliberative democracy is expected to facilitate deeper political integration into the EU, as member states enter digital democracy at the same footing by following legal standards in line with EU democratic values and principles. The process of codification will also provide legal grounds to escalate deliberative democracy to a EU level, not just as an experimental practice, as happened with the Conference on the Future of Europe, but also from an institutionalized perspective. Codification is aimed to bring EU democracy to a higher level by integrating deliberative democracy in the common practices of member states in the framework of common EU

principles and values and citizens' fundamental rights. It also aims at helping the EU enter into digital democracy on the same footing by following legal standards which are in line with EU democratic values and principles.

Finally, even if this is not the purpose of the project, the findings will pave the way to escalate deliberative democracy to an international level, considering that EU democratic standards can be taken as an example of the highest democratic practices in the world.

Conclusion

Codification of deliberative democracy addresses a political, technological and societal challenge, as it aims to develop common legal standards to institutionalize deliberative participation in the framework of EU present and future member states and EU institutions, according to common values, and democratic principles and spread such principles to other countries. This is an outstanding question, since the lack of legal standards to codify deliberative democracy in the scope of the EU member states needs to be tackled from a common perspective. Many questions related to the functioning and operation of deliberative decision making still remain unanswered and the introduction of new technologies exacerbates the process.

Currently, deliberative decision making remains experimental. The role and purpose of deliberative democracy in the context of representative democracy needs to be object of study and analysis as it still remains unanswered how deliberative democracy should be introduced in decision-making processes. The lack of a normative approach in the elaboration of a theory on deliberative democracy makes it difficult to codify this participatory model, as there is a lack of legal standards to guide the development and institutionalization of deliberative processes in the scope of the EU and its member states. The Council of Europe envisages that the essential elements of deliberative democracy and the attributes that make it recognizable need to be set out in the form of legal standards that guide member states and democratic systems of government to develop new deliberative methods in the framework of a common democratic culture. However, any step taken towards deliberative democracy should take into consideration the specificities of the EU and its member states. It is essential for democracy to create a set of common standards to help countries to codify and institutionalize deliberative democracy in an integrative way and to face the digital challenges precipitated by the introduction of AI.

It is conclusive that the development of common principles for the sake of political integration is an unavoidable necessity. The transforming power of new technologies put at the service of deliberative democracy will give rise to different forms of exercising democracy. If this transformation is not incorporated in the framework of a common set of rules provided by common democratic values and principles, democracy risks being disaggregated in many different forms and European countries risk ignoring their common democratic heritage, also creating inequalities among citizens.

Codification aims to transcend the diversity of democratic cultures, as well as the variety of methods through which deliberative democracy can be articulated. The goal is to come up with its essential elements in the framework of EU values and democratic principles and translate these attributes into practical legal standards to be followed by all present and future member states, EU institutions and third countries.

It is substantial to promote the institutionalization and codification of deliberative democracy in European systems of government in the context of the possibilities open by new technologies and AI, preserving EU democratic cohesion in this future scenario. The general purpose of codification aims at creating a standardized legal framework of guarantees and safeguards capable of preserving EU democratic cohesion when introducing deliberative decision-making procedures potentially adopted by member states or EU institutions in the context of a digital environment. The EU-centered approach aims to build a common deliberative culture on deliberative democracy, which has the potential to facilitate deeper integration into the EU. Codification is aimed to bring EU democracy to a higher level by integrating deliberative decision making into the common practices of members states in the framework of EU principles and values, while preserving citizens' fundamental rights.

The challenge beyond codification and institutionalization of deliberative democracy is to maintain democratic cohesion while facing present and future challenges brought about by digitalization and new technologies.

Codification is expected to have a scientific, political and societal impact, whether at a national, or at a transnational level. Developing a set of common legal standards will set the stage for governments to codify and institutionalize deliberative democracy in a meaningful and effective way, making it possible for citizens to influence decision making at a national level and transnational level.

References

- Alemanno, A. (2022). "Unboxing the Conference on the Future of Europe and its democratic raison d'être." In: *European Law Journal*, Vol. 26, Issue 5-6, pp 484-508. DOI: <https://doi.org/10.1111/eulj.12413>
- Alemanno, A. and Nicolaïdis, K. (2021). "Citizen Power Europe." In: *The Groundwork of European Power*, *Revue Européenne du Droit*, Issue 3, Paris: Groupe d'études géopolitiques.
- Alemanno, A. and Organ, J. (eds.) (2021). *Citizen Participation in Democratic Europe: What next for the EU?* London: ECPR Press.
- Allen, D. and Light, J. (2015). *From Voice to Influence. Understanding Citizenship in a Digital Age*. Chicago: The University of Chicago Press.
- Bächtiger, A. and Dryzek, J. S. (2024). *Deliberative Democracy for Diabolical Times: Confronting Populism, Extremism, Denial, and Authoritarianism*. Cambridge: Cambridge University Press. DOI: <https://doi.org/10.1017/9781009261845>

- Bächtiger, A. and Parkinson, J. (2019). *Mapping and Measuring Deliberation: Towards a New Deliberative Quality*. Oxford: Oxford University Press. DOI: <https://doi.org/10.1093/oso/9780199672196.001.0001>
- Bernholz, L., Lindemore, H., Reich R.(2021). *Digital Technology and Democratic Theory*, The University of Chicago Press.
- Besson, S. and Utzinger, A. (2007). "Introduction: Future Challenges of European Citizenship – Facing a WideOpen Pandora's Box." In: *European Law Journal*, Vol. 13, Issue 5, pp. 573-590.
- Blockmans, S. and Russack, S. (eds.) (2020). *Deliberative Democracy in the EU: Countering Populism with Participation and Debate*. CEPS. London: Rowman & Littlefield.
- Craig, P. (2010). *The Lisbon Treaty: Law, Politics and Treaty Reform*. Oxford, UK: Oxford University Press. DOI: <https://doi.org/10.1093/acprof:oso/9780199595013.001.0001>
- Fishkin, J. (1991). *Democracy and Deliberation: New Directions for Democratic Reform*. New Haven and London: Yale University Press.
- Fishkin, J. (2011). *When the People Speak: Deliberative Democracy and Public Consultation*. Oxford, UK: Oxford University Press. DOI: <https://doi.org/10.1093/acprof:osobl/9780199604432.001.0001>
- Fishkin, J. and Laslett, P. (eds.) (2003). *Debating Deliberative Democracy*. Oxford, UK: Blackwell Publishing. DOI: <https://onlinelibrary.wiley.com/doi/book/10.1002/9780470690734>
- Fung, A. and Wright, E.O. (2003). *Deepening Democracy. Institutional innovations in Empowered Participatory Governance*. The Real Utopias Project IV. New York: Verso.
- Gohen, J. (1997). "Deliberation and Democratic Legitimacy." In: Bohman, J. and Rehg, W. *Deliberative Democracy: Essays on Reason and Politics*. Cambridge, MA: MIT Press. DOI: <https://doi.org/10.7551/mitpress/2324.003.0006>
- Gutmann, A. and Thompson, D. (2004). *Why Deliberative Democracy?* Princeton, NJ: Princeton University Press.
- Habermas, J. (1994). "Three Normative Models of Democracy." In: *Constellations*, Vol. 1, Issue 1, pp. 1-10. DOI: <https://doi.org/10.1111/j.1467-8675.1994.tb00001.x>
- Palumbo, A. (2024). *The Deliberative Turn in Democratic Theory: Models, Methods, Misconceptions*. London: Palgrave Macmillan.
- Podgórska-Rykała, J. (2024). *Deliberative Democracy, Public Policy, and Local Government*. New York: Routledge.
- Rawls, J. (1993). *Political Liberalism*. New York: Columbia University Press.
- Smith, G. (2021). "The European Citizens' Assembly." In: Alemanno and Organ. *Citizen Participation in Democratic Europe: What next for the EU?* London: ECPR Press.
- Smith, G. (2022). „Designing for impact: the next stage for climate assemblies.“ Foundation for Democracy and Sustainable Development. [Online]. Available at: <https://fdsd.org/wp-content/uploads/2022/01/the-next-stage-for-climate-assemblies.pdf> (last visited December, 2024).