Unboxing the Conference on the Future of Europe

A Preliminary View on its Democratic Raison-d'être and Participatory Architecture

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Abstract

As the European Union undergoes a major, self-proclaimed democratic exercise – the Conference on the Future of Europe –, this article offers a preliminary assessment of the Conference's participatory architecture and, more broadly, its democratic *raison d'être*. After reconstructing the genesis of the Conference by rehearsing the standard account of this initiative, it offers an alternative account, aimed at contextualizing the Conference within past attempts at reforming the Union and framing it as potentially compensating for the lack of a genuine, pan-EU political and media space. The article then moves to unpack the Conference's participatory design by discussing its legal basis, overall architecture and governance. While it would be naïve political solutionism to expect that this ad hoc democratic innovation initiative will magically address the EU democratic malaise, the Conference's embedded experimentalism can be seen as a promising first step towards the realization of the legitimacy-enhancing potential of participation, as it was originally conceived in the Constitutional Treaty and eventually resurrected into the Treaty of Lisbon. A few concluding remarks suggest that the Conference's success should not be measured against the sole prospect of Treaty reform, but rather its ability to offer both EU institutions and its citizens a foretaste of a more intelligible, deliberative, and therefore more inclusive, transnational Europe.

Introduction

As the European Union undergoes a major, self-proclaimed democratic exercise – the Conference on the Future of Europe (hereinafter, the Conference) –, this article offers a preliminary assessment of the Conference's participatory architecture and, more broadly, democratic *raison d'être*. After situating this initiative within existing democratic discourse and EU participatory infrastructure, it unpacks the Conference's pyramid-shaped structure across its three main components: the *consultative* – catalysed by the Multilingual Digital Platform set to define the agenda of the next two levels – ; the *deliberative* – personified by Citizen's Panels entailing the participation of 800 randomly selected, demographically representative EU citizens tasked to deliberate on that agenda – ; and, lastly, the *deliberative-constituent*, embodied by the 450-member Plenary mixing institutional actors with ordinary citizens, and expected to propose a set of recommendations to the EU political level[1]. Although expert opinion has quickly dismissed the Conference as yet another top-down, perfunctory exercise set to fail[2] and public opinion barely noticed it, this initiative is instead marked by a high degree of novelty[3]. This is not only the first time since 2007 that the European Union embarks on a process of institutional reform, but it also does so by following a different logic, format and legal basis than in the past. This suggests that the Conference on the Future of Europe does not only stem from past attempts – notably the failed Constitutional Treaty–[4], but might have actually *learned* from them. If the Post-Lisbon EU has constitutionally embraced a model of democracy under which citizens participation form an additional source of legitimacy for the Union in its day-to-day decision-making[5], this is the first

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[1] See Joint Declaration on the Conference on the Future of Europe, Engaging with Citizens for European Democracy, Building a more resilient Europe, 10 May 2021.

[2] See, e.g., Ana Palacio, The EU Is Still Flying Blind, Project Syndicate, May 13, 2021; Thu Nguyen, Time to be honest: The future will not be decided by the Conference on the Future of Europe, Policy position, Jacques Delors Center, 3 April 2021 ; Andras Baneth, Just cancel the Future of Europe Conference, EU Observer, 19 April 2021; Stefan Lehne, The Conference on the Future of Europe—an Experiment in Citizens' Participation, Carnegie Europe, May 13, 2021. For a reconstruction of the debate, see Jennifer Rankin, Lack of citizens at EU's citizens' debate raises eyebrows, The Guardian, 18 June 2021.

[3] For some initial analysis highlighting the out-of-the-box nature of the exercise, see, e.g., Kalypso Nicolaïdis, A democratic panopticon as citizen involvement in EU decision-making, RSCAS, 2021, Conversations for the Future of Europe, Online lecture 1, Retrieved from Cadmus, European University Institute Research Repository; Federico Fabbrini, The Conference on the Future of Europe A New Model to Reform the EU? (January 7, 2020), DCU Brexit Institute – Working Paper N. 12 – 2019 ; Nicolai von Ondarza and Minna Ålander, The Conference on the Future of Europe, Obstacles and Opportunities to a European Reform Initiative That Goes beyond Crisis Management, SWP Comment 2021/C 19, 17.03.2021 ; A. Alemanno, Releasing Europe's democratic genie, Social Europe, July 2021.

[4] For a review of the lessons learned from the 'EU Constitutional Moment', see e.g. Renaud Dehousse. The Unmaking of a Constitution: Lessons from the European Referenda. Constellations, Wiley, 2006, 13 (2), pp.151-164; Kalypso Nicolaidïs, The EU's Constitutional Moment: A View from the Ground Up, in Nick Barber et al. (Eds): The Rise and Fall of the European Constitution, Hart Publishing, 2018.

[5] On the genesis and constitutionalisation – as well as limitations – of participation in the EU legal order, see, e.g., Stijn Smismans, The Constitutional Labelling of "the democratic life of the EU": representative and participatory democracy, in A. Follesdal and L. Dobson (eds), Political Theory and the European Constitution, London: Routledge, 122-138; Acar Kutay, Limits of Participatory Democracy in European Governance, European Law Journal 21, No. 6 November 2015, pp. 803-818, at 814.

time that it relies on popular input to shape its overall future[6]. While this can be ascribed to a broader trend aimed getting better and more legitimate policy outcomes by involving ordinary citizens in the political process – including in constitution-making –[7], this effort acquires a special meaning in the EU legal and political context where citizens have historically been relegated to the sidelines. Indeed, a counterfactual account of the Conference suggests that if the participatory model it originally embraced in 2009 – and which finds expression in its multiple channels of participation (from the European Citizens' Initiative to Commission's public consultations) – had succeeded[8], the EU would not need to artificially create the conditions for citizens to have a 'say' via such an ad hoc exercise. Still the EU participatory model remains largely underdeveloped and, as a result, failed to deliver on its original promise of enabling citizens to play a role "in the Union democratic life"[9]. While this appears immediately due to a EU participatory praxis characterised by unequal access to, limited representativeness of and disparate influence of participants in EU decision-making[10], these shortcomings are a function of a broader state of affairs. The EU lacks a pan-European 'democratic critical infrastructure'[11], that is a system helping citizens to associate with another through intermediary powers – such as genuine European political parties[12] and a pan-EU media sphere[13] –, that would render the political process visible and accessible to large audiences. In these circumstances, citizen participation alone couldn't flourish, and therefore it cannot make up for EU citizens' inability to signify their desire for change in the EU political agenda. Hence EU leaders' decision to try out

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[6] Even if the model of the intergovernmental conference (IGC), foreseen in Article 48 TEU, has gradually integrated forms of oversight such as national parliament involvement, there are are no Treaty changes unless the Member States take the initiative. See, on this point, Dermot Hodson and Imelda Maher, The Transformation of EU Treaty Making: The Rise of Parliamentary Referendums and Courts since 1950s, CUP, 2018.

[7] Since 2010, as symbolized by Iceland and Ireland - that have turned to deliberative democracy to reform their constitutions - a growing number of public authorities, in particular in the European continent, have embraced representative deliberative processes for public decision making. For an initial critical assessment of deliberative democracy as a mode for constitution-making, see, e.g., Min Reuchamps and Jane Suiter (eds.), Constitutional Deliberative Democracy in Europe, Colchester: ECPR Press, 2016. See also, OECD, Innovative Citizen Participation and New Democratic Institutions, Catching the Deliberative Wave, June 2021.

[8] For an initial assessment, Alberto Alemanno, Europe's Democracy Challenge: Citizen Participation in and Beyond Elections, *German Law Journal, 21*(1) (2020) 35 et seq.

[9] Article 10(3) TEU.

[10] See Alberto Alemanno, Leveling the EU Participatory Playing Field: A Legal and Policy Analysis of the Commission's Public Consultations in Light of the Principle of Political Equality, European Law Journal, Vol. 26, Issue1-2, March 2020, pp. 114-135.

[11] On the concept of democracy's critical infrastructure, see Jan-Werner Müller, Democracy's critical infrastructure: Rethinking intermediary powers, *Philosophy & Social Criticism*. 2021;47(3):269-282. See also J-W. Müller, Democracy Rules, Allen Lane, 2021, pp. 90-138.

[12] See on this point, e.g. Julian Priestley, European Political Parties: The Missing link, Istituto Affari Internazionali (IAI) (2011); Steven Van Hecke, Alex Andrione-Moylan et. al, Reconnecting European Political Parties with European Union Citizens International IDEA Discussion Paper 6/2018.

[13] See e.g. Michael Brüggemann, Hagen Schulz-Forberg, Towards a Pan-European Public Sphere? A Typology of Transnational Media in Europe, in Transnationalization of Public Spheres. Transformations of the State. Palgrave Macmillan, London, 2008.

something new to break "the unsustainability of the status quo"[14]. To increase the quality and quantity of citizen participation, they designed the Conference as a novel multi-layered 'device' that reproduces – in a a controlled environment – a genuine transnational space for participatory deliberation[15]. As such, the Conference emerges as qualitatively different than any other previous attempt at institutional (and constitutional) reform. Contrary to the 2003 Convention on the Future of Europe – an equally innovative institutional set-up which drafted the EU's never-ratified constitution[16] –, this Conference is not tasked to reform the Treaties, and happens outside of dedicated procedure foreseen in Article 48 TEU[17]. It is rather meant to be a preparatory process[18], which might lead inter alia to Treaty revision, and that, mirroring the nature of EU integration, has not predefined *finalité*. Except that this time the EU has made such an outcome dependent on the completion of an unprecedented process of co-creation via deliberation between institutional actors and ordinary citizens[19]. This is premised on the idea – central to deliberative democracy – that political decisions should not only integrate citizen input, but also be shaped by reasonable discussions among its citizens[20]. As a result, rather than embarking on a Treaty revision and getting entangled into highly divisive and abstract themes such as institutional reform, the Conference put substantive policy issues affecting EU citizens at its core and gave "citizens a say on what matters to them"[21]. Should those issues call for solutions the EU can't offer in the present constitutional circumstances, then a Treaty change (or other policy reforms) could suddenly be driven by citizen demand (and not as a top-down imposition). The Conference's underlying 'deliberative' logic is to not only reinforce the voice of the citizens, but also to promote the willingness of institutions to listen to – and engage with – that 'voice'[22]. The assumption being that – through deliberation – political decision-making might become, also at

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[14] Jürgen Habermas, Democracy in Europe: Why the Development of the European Union into a Transnational Democracy is Necessary and How it is Possible, ARENA Working Paper 13/2014, p. 3.

[15] The purpose of the Conference is, according to the March 2021 Joint Declaration, to "open a new space for debate with citizens to address Europe's challenges and priorities".

[16] See on this point Federico Fabbrini who qualifies the Conference on the Future of Europe as "out-of-the-box initiative" analogous to the Conference of Messina and the Convention on the Future of Europe. See Federico Fabbrini, supra note 3, p.3. One may also add the 1952 Ad Hoc Assembly tasked to work out the text of the never-ratified European Political Community (EPC).

[17] The Council clearly stated that "the Conference does not fall within the scope of Article 48 TEU" in order to rule out Treaty reform.

[18] The 2001-2003 Convention on the Future of Europe, being modelled on the prior successful experiment of the Convention that drafted a Charter of Fundamental Rights, was also preparatory in nature, but was constitutionally bound being institutionally tight to Treaty Reform.

[19] For a detailed scholarly account of the relationship between participatory and deliberative democracy see, e.g., Stephen Elstub, Deliberative and Participatory Democracy in Andre Bächtiger, John S. Dryzek, Jane Mansbridge, and Mark Warren, The Oxford Handbook of Deliberative Democracy, OUP, 2018.

[20] Diana Mutz, Hearing the Other Side. Deliberative versus Participatory Democracy, CUP, 2007.

[21] Joint Declaration on the Conference on the Future of Europe, supra note 1.

[22] On this point, see, e.g., Lyn Carson, Random Selection: Achieving Representation in Planning, Alison Burton Memorial Lecture, Royal Australian Planning Institute, Camberra, 1999; Claudia Chwalisz, The People's Verdict: Adding Informed Citizen Voices to Public Decision-Making, Policy Network, 2017 and Larry Patriquin, Permanent Citizens' Assemblies : A New Model for Public Deliberation, Rowman and Littlefield, 2020, p. x-xi (preface).

the EU level, more acceptable to the general public[23]. Indeed, according to Jürgen Habermas, one of the major champions of deliberative democracy, "deliberation has the power to give rise to legitimacy", insofar as rational argumentation helps a political system to demonstrate its legitimacy, thus finding support of its citizens[24]. From such a perspective, the launch of the Conference on the Future of Europe can be seen as an attempt by the EU Member States and the institutions themselves to return citizens some of the constituent power that have traditionally exercised on their behalf[25].

Yet it remains to be seen if such a 'Copernican revolution', that of bringing the citizens onboard from moment one (*rectius*, zero) of institutional reform through consultation and then deliberation, might deliver on its legitimating promise. Some empirical research suggests that deliberation-based democratic innovations involving ordinary citizens, notably citizens' assemblies, can have a positive influence on the perceived legitimacy of decision-making from the perspective of the wider public[26]. Yet can this Conference make up for EU's original democratic sin and ultimate reconcile the Union with its past ?[27] Can it alone be a remedy to the absence of a mature pan-EU critical democratic infrastructure capable of unleashing the legitimacy-enhancing potential of citizen participation? In particular, will the deliberative component of the Conference be apt to overcome the structural deficiencies surrounding the realities of EU participation by creating a new opportunity structure?

In attempt to provide some initial answers to these questions, this article is structured as follow. Section 1 reconstructs the genesis of the Conference by rehearsing the standard, largely sanitized, account of this initiative. Section 2 offers an alternative account, aimed at contextualizing the Conference within past attempts at reforming the Union and framing it as

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[23] For an introduction to deliberative democracy, see, e.g., Jürg Steiner, The Foundations of Deliberative Democracy, CUP (2012). For an extension of deliberative democracy to the EU, see, e.g. Jürgen Habermas, The Faltering Project, Polity Press, 2009.

[24] See, e.g., Jürgen Habermas, supra note 23.

[25] For a normative and future-oriented understanding of constituent power in the EU, see Markus Patberg, Constituent Power in the European Union, OUP, 2020, where he convincingly argues that EU integration builds upon a usurpation of constituent power.

[26] There is a large literature pointing to the effectiveness of deliberation on the part of those concerned with a common problem in generating solutions that are both effective and mutually acceptable. See, e.g., John S. Dryzek, Democratization as Deliberative Capacity Building, Comparative Political Studies 42 (2009), 1390; Maija Jäske, Participatory innovations and maxi-publics: The influence of participation possibilities on perceived legitimacy at the local level in Finland, European Journal of Political Research, 2018, p. 58; Shelley Boulianne, Mini-publics and public opinion: Two survey-based experiments, *Political Studies*, *66*(1), 2018, pp. 119–136; Maija Jäske & Maija Setälä (2020), A Functionalist Approach to Democratic Innovations, Representation, 56:4, 467-483; James Pow (2021) Mini-Publics and the Wider Public: The Perceived Legitimacy of Randomly Selecting Citizen Representatives, Representation, 1-20. For a critique : Chantal Mouffe, Deliberative Democracy or Agonistic Pluralism, Social Research 3 (1999), 752, 755-6

[27] From this perspective, the Conference might be understood as an incipient form of 'democratic atonement'. This term was coined by Kalypso Nicolaïdis. See, e.g., K. Nicolaïdis 'Our Democratic Atonement: Why we Need an Agora Europe' in The People's Project? New European Treaty and the Prospects for Future Negotiations (Brussels: European Policy Centre, December 2007).

potentially compensating for the lack of a genuine, pan-EU political and media space. Section 3 systematizes and analyses the Conference's participatory design by discussing its legal basis, overall architecture and governance. Section 4 focuses on the Conference's 'entry point' – the transnational multi-lingual platform – in order to examine its democratic credentials as well as structural limitations against the realities of EU participation. Section 5 offers a detailed account of the design of the Citizens' panels, by measuring it against established principles and best practices of deliberative processes and highlighting its 'EU added value'. Section 6 examines the Conference's Plenary, by discussing its hybrid composition, prerogatives, and role within the overall Conference. A few concluding remarks weighs in this initiative within the EU legal and political orders by suggesting that its success should not be measured against the sole prospect of Treaty reform, but rather its ability to create the conditions for that reform being debated within and across the Union.

1. The Genesis: the standard account

According to a well-rehearsed script, the immediate origin of the Conference on the Future of Europe dates back to the synchronous publication of an op-ed by French President Manuel Macron in several EU newspapers ahead of the 2019 EU Parliament elections. In this piece, unusually addressed to all EU citizens, he promised them:

"a Conference for Europe in order to propose all the changes our political project needs, which is open even to amending the EU treaties. This conference will need to engage with citizens' panels, and hear from academics, business and worker representatives, as well as religious and spiritual leaders. It will define a roadmap for the EU that translates these key priorities into concrete actions".

The truth is that the idea "to organize an open, free, transparent European debate" was already, at least embryonically, sketched in his Sorbonne speech, delivered on 26 September 2017, which summed up Macron's Europeanist vision[28]. This already commanded, in March 2018, 27 Member States to approve a Joint Framework on Citizens' Consultations [29]. This led to a dedicated online consultation, with questions designed for the first time ever by a transnational panel of EU citizens, and received over 75,000 contributions. Not only this exercise failed to gain public attention, but played no role in shaping the EU Parliament elections as originally envisioned[30]. Ultimately, in June 2019, then president-elect of the European Commission, Ursula von der Leyen, announced a Conference on the Future of Europe[31]. This initiative was confirmed in her

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[28] Initiative for Europe, Speech by M. Emmanuel Macron, President of the French Republic, Sorbonne University, 26 September 2017.

[29] Joint framework on citizens' consultations, Brussels, 23 April 2018, 8227/18 LIMITE INST 170.

[30] Corina Stratulat , Paul Butcher, Citizens expect: Lessons from the European Citizens' Consultations, European Policy Centre, 21 May 2019.

[31] "First, I want European citizens to play a leading and active part in building the future of our Union. I want them to have their say at a Conference on the Future of Europe, to start in 2020 and run for two years".

opening statement ('A new push for European Democracy') delivered on 16 July 2019 before her election by Parliament by expressing the wish to involve EU citizens as a part of a broader renewed boost to EU democracy. This was intended to compensate the European Parliament so as to persuade its Members to accept the fact that, with von der Leyen's election, the European Council had prevailed over the EP on the *Spitzenkandidaten* principle. This resolve was confirmed in the political guidelines for the next European Commission, in which von der Leyen pledged that citizens would 'have their say at a conference on the future of Europe, to start in 2020 and run for two years'[32]. In her mission letter to the then-Vice-President-designate for Democracy and Demography, Dubravka Šuica, von der Leyen fleshed out the idea of the conference in more detail. Ideally it should run for two years, 'bring together citizens of all ages from across our Union, as well as civil society and European institutions'; and provide for a 'wide debate, clear objectives and a tangible follow-up on what is agreed'. To that end, Šuica would work in conjunction with the Vice-President for Interinstitutional relations and Foresight (Maroš Šefčovič) and the Vice-President for Values and Transparency (Věra Jourová).

1.1 The competing blueprints of the Conference
In November 2019, in their "non-paper", French and German governments outlined their expectation of the Conference's results: "The Conference should commit itself already in the interinstitutional mandate to produce tangible and concrete results. The final document with recommendations should be presented to the EUCO [European Council] for debate and implementation"[33]. The non-paper highlighted the bottom-up approach and the twofold work stream: (i) the EU's institutional and democratic functioning, and (ii) policy-oriented priorities. Italy was one of the few member states to develop an articulated position on the possible content and outcomes of the Conference[34]. In parallel, the European Parliament set up a working group to define the Parliament's position on the structure and organization of the Conference. Based on an opinion adopted in AFCO committee, the European Parliament passed a resolution on 15 January 2020 offering not only the first but also what turned to be the most comprehensive blueprint for the Conference[35]. By building on the French recent experience of citizens' panels[36],

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[32] Political guidelines for the next European Commission, A Union that strives for more My agenda for Europe, by candidate for President of the European Commission, 9.10.2019, p. 19-20 ("The Conference should bring together citizens, including a significant role for young people, civil society and European institutions as equal partners. The Conference should be well prepared with a clear scope and clear objectives, agreed between the Parliament, the Council and the Commission. I am ready to follow up on what is agreed, including by legislative action if appropriate. I am also open to Treaty change. Should there be a Member of the European Parliament put forward to chair the Conference, I will fully support this idea").

[33] Franco-German non-paper on key questions and guidelines: Conference on the Future of Europe, 25 November 2019.

[34] This position was elaborated in a "non-paper" published on 19 February 2020. See https://www.esteri.it/mae/resource/doc/2020/03/paper_conf_futuro_europa_post_ciae_14_febbraio_-_clean.pdf

[35] For a critical assessment, A. Alemanno, The EU won't fix its democratic deficit with another top-down 'conference', The Guardian, 21 January 2020.

[36] See, e.g., Laurence Eymard, From the French Citizens' Convention on Climate to the Conference on the Future of Europe: A participatory science and democracy perspective. *Eur Law J*. 2020; 26: 136– 140 ; Louis-Gaëtan Giraudet

it proposed that "citizens' agoras", comprising 200 to 300 randomly selected, demographically representative participants, meet across the EU to discuss policy issues defined by the union. These citizens would have no agenda-setting power, and their opinions will not bind the conference's plenary, which would be composed predominantly of members of the European Parliament and of other EU institutions.

After a few weeks, in January 2020, the European Commission made public its own blueprint for the Conference through the publication of a communication. When compared with the Parliament's, the Commission's template was less developed, but it essentially coincided with the Parliament both in terms of aims and themes to be debated. However, when it comes to method, the European Commission's proposal is significantly lighter in details and guidance. Rather than endorsing the creation of citizen's assemblies (the Parliament's agoras), it suggested instead leaning on existing, and previously tested, consultative models[37], such as 'citizens' dialogues'[38] and the 'European citizens panels on the future of Europe'. To ensure the Conference reaches the largest number of Europeans possible, the Commission suggested a multilingual platform allowing an interactive discussion within the Conference[39].

The Council was the last of the three institutions to agree on a common position. Despite discussing the file on a regular basis since December 2019, the Council reached a conclusion on 24 June 2020. While COVID-19 has certainly caused some delay, it has not been the major source of friction among the member states whose visions and political appetite on the Conference diverged[40]. The Council's is the only opinion expressly setting aside institutional reform not only among the topic of discussion – by making the Conference entirely 'policy-first' –, but also in terms of outcome[41].

1.2 The Joint Declaration
Despite not being entirely divergent, the positions of the three institutions proved difficult to reconcile. It is only on March 10, 2021 – almost a year after the Council's position – that a Joint Declaration among the three EU institutions was solemnly co-signed[42]. This marked the end of the long and contested preparatory phase. The Joint Declaration reads as a compromise text, providing limited, often tentative, guidance on the aims, format, methods and governance of the

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& al. "Deliberating on Climate Action: Insights from the French Citizens' Convention for Climate, IDEAS Working Papers, 2021.

[37] More than 1600 citizens' dialogues and citizens consultations were organized by the European Commission between 2017 and 2019 to discuss inter alia the scenarios presented in the European Commission White Paper on "The Future of Europe", 1 March 2017.

[38] European Commission, "Citizens' Dialogues and Citizens' Consultations: Key Conclusions", 30 April 2019.

[39] European Commission, Shaping the Conference on the Future of Europe, Brussels 22-1.2020, COM(2020) 27 final.

[40] Many governments showed skepticism about the Conference's format, and in particular added value, by arguing that the resources invested into this ad hoc exercised should have been invested into the ordinary operation of the EU.

[41] Council of the European Union, Conference on the Future of Europe - revised Council position, Brussels, 3 February 2021 (OR. en) 5911/21 AG 12 INST 46.

[42] Joint Declaration on the Conference on the Future of Europe, supra note 1.

Conference. Thus, for instance, the composition and structure of the plenary have been agreed – through the adoption of the Rules of Procedure – on the eve of the official launch of the Conference on May 9, 2021, in Strasbourg and were officially adopted on that very same day[43]. Many other issues remained open when the Executive Board of the Conference met for the first time in Strasbourg on June 19, 2021, and are set to be addressed all along the Conference's unfolding. As a result, a variety of guidance documents, such practical modalities governing the operation of each stage of the Conference, are expected to be adopted and adapted during the Conference.

2. **The Genesis: an alternative, contextual account of the Conference's *raison d'être***

If the immediate genesis of the Conference dates to relatively recent developments – such as the influence of the pro-integrationist political leadership of France over the Union –, its *raison d'être*, actual design and underlying new logic stretch back farther in time. As anticipated above, the launch of the Conference must be credited to – and generated from – previous contested attempts at reforming the Union, which have deeply shaped the evolution of EU integration. It is widely acknowledged that the 2007 decision to press forward with the text of the Constitutional Treaty, deprived of the statist paraphernalia, in the form of the Lisbon Treaty – despite the negative referenda in France and Netherlands[44] – might have been a necessary sin, but – as noticed it by Kalypso Nicolaïdis – "it was a sin all the same"[45]. Since then the earlier realisation that without greater and more effective involvement from its citizens the European Union is condemned to fail has continued to expand, with greater urgency. That urgency today is not only political, but also constitutional – and therefore democratic – in nature. Indeed, one of the major yet least acknowledged specificities of the post-Lisbon EU legal order lies in its unique model of democracy. Since 2009, the EU legal order relies on a twin-fold model of democracy[46], whereby the Union derives its democratic legitimacy not only from representative democracy – which remains its founding democratic principle –, but also from participatory democracy.[47] Under the former, citizens take part in the political process through their elective representatives—the European Parliament and the governments gathering in the Council—whereas under the latter, citizens participate directly via a multitude of 'instruments of participatory democracy' available in the Union's democratic life.[48] Those range from the oldest instrument of participatory

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[43] Rules of Procedure of the Conference on the Future of Europe, adopted on June 19, 2021 and amended on July 19, 2021.

[44] According to Jürgen Habermas, a Europe-wide referendum should have been called: it might have produced a 'No' vote, but a referendum would have been more honest and, in the longer run, eased integration. J. Habermas, The Faltering Project, supra note 23.

[45] Kalypso Nicolaidïs, The EU's Constitutional Moment, supra note 4.

[46] *See* Annette Schrauwen, *European Union Citizenship in the Treaty of Lisbon: Any Change at All?*, 15 MAASTRICHT J. OF EUR. & COMP. L., 55, 55 (2008); Samanta Besson & André Utzinger, Introduction: Future Challenges of European Citizenship, 13 European Law Journal, 573, 586 (2007).

[47] See Article 10 TEU.

[48] AG Bobek, C-418/18 P, *Puppinck and others v European Commission*, delivered on 29 July 2019, para 69.

democracy – the right to petition[49] – to the most recent one, the European Citizen Initiative (ECI), the first transnational participatory democracy instrument – allowing at least 7 EU citizens coming from 7 different member states to suggest new policy initiatives in any field where the EU has power to propose legislation (such as the environment, agriculture, energy, transport or trade) after collecting one million signatures[50]. They also include *input mechanisms* in policy formation, such as public consultations on new initiatives, as well as a multitude of *administrative actions*, such as requests for access to documents to the EU institutions and complaints to the EU Ombudsman, as well as *ex post review channels*, such as Lighten the Load within the Refit Platform.[51] What these participatory channels have in common is that – regardless of their immediate aims and scattered origin – they enable citizens to play a role 'in the Union's democratic life'[52]. As such, by exercising an informational, agenda-setting or oversight function, these channels all carry a potentially legitimacy-enhancing role in the Union's democratic life. The assumption being that citizen participation could make up for EU citizens' inability to signify – under the current arrangements – their desire for change in the EU political agenda and, more broadly, close the gap between power and electoral accountability in the Union[53]. Yet, ten years after the introduction of participatory democracy as one of the democratic foundations of the Union, this constitutional vision has failed to materialize. Indeed, if one fast-forward a decade and measure these ambitions against the reality of participatory democracy, it finds no major transformation in how citizens participate to the Union's democratic life (beyond elections)[54]. Most of the EU citizens' participatory channels previously mentioned remain unknown[55], scattered[56], and underused[57] by the average European citizen. While this is immediately due a participatory practice characterised by unequal access to, limited representativeness of and ultimately disparate influence of participants in EU decision-making[58], these shortcomings are a

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[49] For a study on the right of petition under EU law, see Alberto Alemanno, Strengthening the role and impact of petitions as an instrument of participatory democracy. Lessons learnt from a citizens' perspective 10 years after the entry into force of the Lisbon Treaty, European Parliament, 2021. See also CJEU, C-261/13 P, Schönberger v. European Parliament, ECLI:EU:C:2014:2423.

[50] See, e.g., James Organ, 'EU citizen participation, openness and the European Citizens Initiative: The TTIP legacy', (2017), 54, Common Market Law Review, Issue 6, pp. 1713-1747.

[51] Besides these formal mechanisms of participation, there exist more channels of communication that are available to EU citizens, such as letters and complaints that can be addressed to the EU institutions and bodies any time, and that have not been formalised under EU primary or secondary law.

[52] Article 10(3) TFEU.

[53] Paul Craig, EU Administrative Law, Oxford University Press, 2012, 295, 297-298; Cornelia Moser, How open is 'open as possible'? Three different approaches to transparency and openness in regulating access to EU documents, Institute for Advanced Studies, Vienna, 2001, pp. 5-6.

[54] Alberto Alemanno, Europe's Democracy Challenge, supra note 8, pp.35-40.

[55] Approximately 63% of EU citizens have little or no knowledge of their EU rights. *See* "Standard Eurobarometer 89, Spring 2018," European Commission, June 2018, p. 47.

[56] On the fragmented and scattered nature of the EU participatory infrastructure, see A. Alemanno, Strengthening the role and impact of petitions as an instrument of participatory democracy. Lessons learnt from a citizens' perspective 10 years after the entry into force of the Lisbon Treaty, European Parliament, 2021.

[57] For an empirical assessment of the use of EU participatory avenues, see Alberto Alemanno, in Olivier Costa and Steven Van Hecke, Europe at a turning point? The EU Political System after the 2019 European Elections, Palgrave, forthcoming.

[58] Alberto Alemanno, Leveling the EU Participatory Playing Field, supra note 10.

function of a broader set of structural features characterizing EU democracy. As previously discussed, in the absence of a "critical democratic infrastructure"[59], the participatory instruments that have been created are detached from citizens' political opinion-formation and will-formation – which solely occur at the domestic level –, and ultimately contribute very little to the legitimacy of the EU governance. Seen from this perspective, the Conference on the Future of Europe appears as yet another attempt to bring the citizen into the picture by relying – this time – on the input of citizens themselves when embarking on institutional and policy self-reflection. The newly-established Conference can therefore be seen as part of the EU's endless search for legitimacy: the source remains the same (the citizens), but the method changes (deliberation as opposed to mere participation)[60]. Yet can this Conference be a remedy to the absence of a mature pan-EU critical democratic infrastructure enabling participation and capable of generating the dynamics currently sought? Will it alone return citizens some of their own constituent power into the Union's democratic future?

In attempt to address these questions, the next section unpacks the Conference's overall architecture, and discusses it governance and legal basis.

3. Unpacking the Conference participatory architecture

When one compares the original blueprints of the Conference with the final template agreed by the three institutions in their Joint Declaration[61], it seems that each of them succeeded in leaving its mark on the latter. The Parliament succeed in carrying within the "citizens' agoras", although these were re-labelled as "European Citizens' panels" and also found expression through locally organized "national panels". The Commission was able to get a transnational digital platform, as entry gate into the Conference. As for the Council, it succeeded in barring the option of Treaty change, despite this being the original *raison d'être* of the Conference when it was embryonically sketched out by the then designated President of the EU Commission, Ursula von der Leyen. It also managed to confine the scope of the Conference to the Strategic Agenda of the European Council, thus essentially limiting it to the topics already set on the EU's agenda by the heads of state and government. The resulting participatory architecture is characterized by an unprecedented combination of institutional sites populated by highly diversified actors that, together, define the opportunity structure and dynamics of the entire Conference. This hybrid of

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[59] On this concept, see J-W, Müller, Democracy Rules, supra note 11.

[60] As Carole Pateman said, "Deliberative democracy is a form of citizen participation". See Carole Pateman, Participatory democracy revisited. Perspectives on Politics, CUP, 2012. For detailed account of the relationship between participatory and deliberative democracy see, e.g., Floridia, From Participation to Deliberation: A Critical Genealogy of Deliberative Democracy, ECPR Press, 2017; Stephen Elstub, Deliberative and Participatory Democracy in Andre Bächtiger, John S. Dryzek, Jane Mansbridge, and Mark Warren, The Oxford Handbook of Deliberative Democracy, 2018.

[61] For an initial analysis of the three institutional blueprints, see Silvia Kotanidis, Conference on the Future of Europe, EPRS – European Parliament Research Service, PE 690.590, May 2021.

interinstitutional negotiations and citizens consultations[62] evokes what Jacques Delors defined *in tempore non suspecto* as "an unidentified political object."

3.1 The Conference as a pyramid-shape device

The ensuing Conference's arrangement can be visualized as a pyramid, organised upon three, mutually interlinked, levels. At the bottom, the first-ever transnational platform (the Multilingual Digital Platform) is open to anyone willing to share and send contributions and set to define — through a system moderated by artificial intelligence—the agenda of the next two levels. This is essentially the consultative dimension of the Conference's participatory architecture, a mega EU public consultation, in terms of scope, ambitions and format, feeding the entire exercise. Right above it, the European Citizens' Panels are transnational fora—composed of randomly selected and demographically representative EU citizens—tasked to deliberate *inter alia* on issues previously identified and defined through the Platform. These Panels represent – and are designed as – the privileged deliberative space within the overall Conference's infrastructure. They mark the first embrace, albeit on ad-hoc basis, of deliberative democracy by the EU and its experimentation in its legal order[63]. Last, but not least, at the top, there is a plenary of 450 representatives, including not only members of the European (108) and national parliaments (108), the European Economic and Social Committee (18) and Committee of the Regions (18), and Council (54, 2 per Member State), but also ordinary citizens (108) from the European panels (80), national panels and events (27) as well as a few social partners' representatives (12), civil society organisations (8), local and regional representatives (12) and the President of the Youth Forum (1). This specially convened assembly, due to its positioning and the role it has been entrusted to play, acts as a sort of 'pre-constituent' body within the Conference[64]. It is indeed tasked to review, consider, and wrap up the input originally emerging from the multilingual Platform and then re-elaborated via deliberation by the Citizens' Panels, and ultimately propose a set of recommendations[65]. Indeed, as further discussed below, it is up to the Executive Board, gathering representatives of the three main EU institutions and acting as the commissioning authority of the Panels, "to draw and publish the conclusions of the Plenary"[66], before presenting the latter "in a report to the Joint Presidency and their three institutions"[67]. This suggests that

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[62] Nicolai von Ondarza and Minna Ålander, The Conference on the Future of Europe, Obstacles and Opportunities to a European Reform Initiative That Goes beyond Crisis Management, SWP Comment 2021/C 19, 17.03.2021, 8 Seiten.

[63] Deliberative processes take different forms, such as deliberative polls, citizens' assemblies, planning cells, consensus conferences, and citizens' juries. For an overview see Stephen Elstub, 'Mini-Publics: Issues and Cases' in Stephen Elstub and Peter McLaverty (eds), Deliberative Democracy: Issues and Cases (Edinburgh University Press, 2014) 166-88.

[64] For an introduction to this concept across legal orders, see Richard S. Kay, Constituent Authority, *The American Journal of Comparative Law*, Volume 59, Issue 3, Summer 2011, Pages 715–761. For an EU perspective, see Markus Patberg, supra note 25.

[65] Article 17 of the Rules of Procedure (Tasks and working modalities).

[66] Joint Declaration, let. a) (How), as operationalized by Article 18 of the Rules of Procedure (Conclusions of the Plenary). See also Article 7 of the Rules of Procedure (Tasks and working modalities of the Executive Board).

[67] Article 7 of the Rules of Procedure (Tasks and working modalities of the Executive Board).

after the consultative, and purely deliberative moments, a political one is foreseen to not only to define the follow-up on the recommendations (Joint Presidency), but also to finalise these recommendations (Executive Board).

Through the Joint Declaration, the presidents of the institutions solemnly committed to follow up on those politically revised conclusions, and to do so by acting within the EU constitutional constraints represented by the principles of subsidiarity, proportionality and respective competences. As the adoption of the recommendations within the Executive Board is governed by consensus (as opposed to unanimity), this suggests that a large majority of support within the Plenary may suffice to move ahead. This is noteworthy insofar as Member States, which represent only 1/3 of the Board, have historically been reticent in formally accepting any reform, not even a proposal of it, without their expressed agreement[68]. Yet, it remains that to translate any initiative conceived within the Conference into reality demands the support of the Member States, be it through ordinary legislation or the form of Treaty revision (for which also national parliaments' consent is required)[69].

3.2 The Governance

When it comes to its governance, in the absence of an agreement around one personality, the whole conference is set to operate under the rather unusual tripartite authority of the Presidents of the European Parliament, European Commission and Council of the EU (Joint Presidency)[70]. It is managed by the Executive Board, made of three representatives from each of the three institutions[71] plus some observers (so that each party group in the EU Parliament have a seat)[72] and organized through thematic groups[73]. The Executive Board operates under the logic and permanent negotiating dynamics of a trilogue, thus inevitably smuggling the institutional struggles into the leadership of the Conference[74]. The Board is then assisted by a Common

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[68] The Convention on the Future of Europe also operated under the principle of consensus (See Article 6(4) of the Rules of Procedure of the Convention on the Future of Europe.

[69] Article 48 TEU conditions changes to the EU treaties to the approval by all the member states meeting in an intergovernmental conference (IGC) and unanimous ratification at the national level. To know more, see e.g. Steve Peers, The Future of EU Treaty Amendments, 31 Yearbook of European Law 17 (2012).

[70] Joint Declaration ("The Conference is placed under the authority of the three institutions, represented by the President of the European Parliament, the President of the Council and the President of the European Commission, acting as its Joint Presidency").

[71] Mr Guy Verhofstadt, Member of the European Parliament, Ms Ana Paula Zacarias, Secretary of State for EU Affairs for the Portuguese Council Presidency and Ms Dubravka Šuica, Vice-President of the European Commission in charge of Democracy and Demography.

[72] In addition to Verhofsdat (Renew, Be), co-chair, Manfred Weber (EPP, De) And Iratxe García Pérez (S&D, Es) –As Members – There Are Gerolf Annemans (ID, Be), Daniel Freund (Greens/Efa, De), Zdzisław Krasnodębski (ECR, Pl), Helmut Scholz (The Left, DE) as observers.

[73] The Executive Board reports on a regular basis to the Joint Presidency.

[74] For a broader analysis of the political dynamics governing the Conference, see Sergio Fabbrini, et al., The Conference on the Future of Europe: vehicle for reform versus forum for reflection? EU 3 D, Policy Brief N. 1, May 2021.

Secretariat composed of an equal number of staff of the three EU institutions, notably in the organization of both the Conference plenary and the European Citizens' Panels.

3.3 Legal foundations

When it comes to its legal foundations and governing principles, the Conference on the Future of Europe is legally established by a Joint Declaration[75], by nature a rather ambiguous and open-textured text[76]. This is operationalized by the Rules of Procedure, which in turn refer to the Conference Charter, a set of common principles and criteria, reflecting EU values, to which organisers of events shall subscribe and to which Conference participants must adhere to[77]. The Rules of Procedure delegate the Co-Chairs of the Executive Board the authority to establish guidance documents, such as the Practical Modalities for the Organisation of the Conference Citizens' Panels[78].

Contrary to the original timeline of 2 years (May 2020-May 2022), the Conference is set to wind down in Spring 2022 for a total duration of approximately nine months, with its conclusions being approved by then.

Against this backdrop, the next sections intend to identify the democratic credentials of each component of the Conference's participatory infrastructure as well as their legitimating potential.

4. The Multilingual Digital Platform : the place of consultation

Contrary to initial appearance, the Conference's platform stands out when compared with the conventional, static EU-supported webpage, such as those generally employed by the Commission's public consultations, and aimed at vertically gathering citizens' and other stakeholders' input. The Multilingual Digital Platform was designed as an interactive tool enabling citizens and other stakeholders to horizontally share, via automatic translation, their ideas on Europe's future, as well as to host and attend event. Acting as the Conference's "main hub"[79], it is first and foremost meant as an innovative, peer-to-peer communication tool, fostering the production of ideas, collected based on a common matrix of pre-determined yet no exhaustive themes ("platform topics pages")[80] and generated both online and offline (via local events, European citizens' panels and Conference plenaries). As such, the platform also acts as an overall repository of contributions and documents of the entire Conference as well as a dedicated, safe

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[75] For an initial analysis of the document, see Federico Fabbrini, supra note 3.

[76] The Joint Declaration is an Inter-Institutional Agreement (IIA). For a legal analysis of IIAs under EU law, see Waldemar Hummer, From "Interinstitutional Agreements" to "Interinstitutional Agencies/Offices"? For an initial analysis, European Law Journal, Vol. 1e, No. 1, January 2007, pp. 47-74.

[77] Article 1(7) of the Rules of Procedure.

[78] Article 5(5) of the Rules of Procedure

[79] Article 3 of the Rules of Procedure.

[80] In addition to the nine pre-determine policy areas, an open-box category was foreseen ("other ideas").

space for the members of the citizens' panels[81]. When examined together, these features make this device an unmatched EU citizens' participation format within the EU digital ecosystem, with some democratizing potential. In particular, this platform marks a departure from the EU current digital consultative practice, which remains dominated by a top-down, managerial,[82] non-deliberative, mono-lingual, questionnaire-based survey and static online format[83], and shifts it to a new bottom-up, co-creative, deliberative, multilingual, open, interactive and moderated consultative approach. As such, these innovative and experimental features suggest that the platform's life might transcend the Conference, and some of them might be institutionalized within the existing EU digital participatory apparatus and do so across all EU institutions and bodies[84]. However, while the potential interactive nature of the platform, powered by the automatic translation functionality, adds an unprecedented horizontal dynamic to the whole exercise, the latter remains fundamentally vertical, as it remains – in its current usability – a tool of evidence-collection, not necessarily deliberation, of "input from the multitude of events taking place under the umbrella of the Conference"[85]. By putting a premium on new ideas that might (or not) be endorsed by other users, the current design does not ensure that citizens can discuss with one another on an equal footing. As a result, its current design rewards knowledgeable, technocratic input by citizen experts over non-expert advice. While design-thinking and gamification have recently caught the attention of the EU Commission and Parliament[86], those approaches have not found their way into the Conference's Platform. In addition, no facilitation is foreseen to epistemically equalize the sought-after deliberation among citizens and other stakeholders present on the platform. More critically, the platform does not seem apt – by design – to overcome the major structural limitations characterizing the operation of other EU participatory channels. These include:

- limited awareness of the participatory opportunity (the 'visibility challenge');
- unequal access to the opportunity structure; and,
- lack of representativeness of the input gathered.

4.1 Limited awareness and publicity

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[81] These citizens are set to use it for their exchanges and deliberations, and receive newsletters and ad hoc email from it.

[82] Acar Kutay, supra note 5, pp. 816.

[83] Kaisa Koskinen, 'Social media and the institutional illusions of EU communication', (2013) 23 *International Journal of Applied Linguistics* 1.

[84] See on this point, Alberto Alemanno & James Organ, The Case for Citizen Participation in the European Union: A Theoretical Perspective on EU Participatory Democracy, in Alberto Alemanno & James Organ, Citizen Participation in Democratic Europe: What next for the EU?, ECPR Press /Rowman & Littlefield, 2021.

[85] Article 3 of the Rules of Procedure.

[86] For an initial evaluation, see Gianluca Sgueo, 'Regulatory Gaming: A look into the European Union's attempts to engage citizens with playful design' in A. Alemanno & J. Organ, Citizen Participation in Democratic Europe, supra note 85.

First, due to the absence of EU-sponsored publicity plan and corresponding media neglect, the Conference has not been set up to attract public attention. Like other EU participatory channels[87], the possibility to "make your voice heard" remains largely unknown[88], and little used, as epitomised by the rate of participants who have registered in the first three months since its official launch (26,000).

Second, the unique level of openness guaranteed by the Platform on paper to each individual interested in making her/his voice "heard" does not translate into an equivalent level of publicity of and accessibility to this instrument. As of today, the public is not in the position to find the web link access to the Multilingual Digital Platform directly from the Home page of any EU institution or national authority, nor to gain easy access to a list of all contributions filed, and documents and information generated and exchanged on the platform. Even among those who reached the platform, the login requirement inherently acts as a source of dissuasion from contributing to it[89], not to mention ex ante obstacles such access to hardware, IT literacy and skills as well as the 'online fatigue' brought about the COVID-19 pandemic.

Third, while the EU seems to privilege a decentralized – as opposed to a centralized and direct – communication effort, its national and local representation and information offices struggle to promote the Conference.

To overcome the publicity problem, it has been proposed to introduce a support threshold for ideas aimed at collectivizing them as to afford a special treatment to the most popular[90]. This might indeed incentivize their authors to promote them within their own communities within and beyond the platform, what may in turn result in greater awareness about the Platform. Ultimately, the Platform not being a self-standing participatory instrument – insofar as it is connected with both the Citizens'Panels and the Plenary –, the ideas submitted are supposed to feed into the Citizens'Panels by means of interim reports.

4.2 Unequal access to the opportunity structure

Upon decades of consultation practice, the institutional design of the platform endures on the working assumption that EU citizens and residents are all equally able and likely to "to have their say on what they expect from the European Union". Thus, Article 1 of the Rules of Procedure of the Conference on the Future of Europe (Common Principles) states:

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[87] Evidence suggests that most of the EU citizens' participatory channels mentioned remain unknown, scattered, and underused by the average European citizen. The Conference on the Future of Europe is no exception.

[88] For an initial assessment, Bertelsmann Stiftung, The Digital Way to EU Citizen Participation: The Conference on the Future of Europe and Beyond, May 21 2021, p. 3-4.

[89] The EU should have data capturing the percentage of users who visit the webpage but end up not registering.

[90] Bertelsmann Stiftung, supra note 89, p. 3.

"European citizens from all walks of life and corners of the Union will be able to participate, with young Europeans playing a central role in shaping the future of the European project".

Yet, the practice gained through the main EU participatory channels, such as the EU Commission public consultations, the right of petition to the EU Parliament or the very same ECIs, questions such an assumption. [91] Indeed, any evaluation of democratic institutions – including the Conference on the Future of Europe – requires reviewing their substantive effects on the organization of power in society and not just their formal structure[92]. Although socio-economic data of individuals engaging with the EU institutions are very limited across the various avenues of participation, it can be safely assumed that individuals that rely on them tends to be more informed and educated than those who don't[93]. This is backed up by the general literature on citizen participation, which constantly shows how participatory infrastructure tends to be skewed towards the well-educated[94].

The overall legal and policy framework of participatory avenues, including that of the Conference's Platform, notably their publicity, design, format, and feedback policy, as well as their overall participatory environment, suggest unequal access among potential participants[95]. It remains unclear whether and how the Platform, due to its different multilingual format[96], might overcome this structural issue by becoming more inclusive and unexpectedly drawing a different audience[97]. Given the structural disparities of access and resources, participation to and engagement with the EU has become a prerogative of those who are not only epistemically but also financially better placed and therefore can afford to contribute to an essentially technocratic

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[91] For an early analysis of the issue of equal access to public consultations, see Christine Quittkat, 'The European Commission's Online Consultations: A Success Story?' (2001) 49 *Journal of Common Market Studies* 653, 655.

[92] For a 'democratic power approach' as opposed to 'liberal proceduralism', see Steven Klein, Democracy Requires Organised Collective Power, The Journal of Political Philosophy, 2021, pp. 1-22.

[93] See, e.g., Diana Mutz, Hearing the Other Side. Deliberative versus Participatory Democracy, CUP, 2007, p. 135. See also Scott Wright, 'E-petitions' in Stephen Coleman and Deen Freelon (eds) *Handbook of Digital Politics* (Edward Elgar 2015) 136-144. More specifically in relation to the right of petition to the European Parliament, see, Tiago Tiburcio, The Role of Ombudsmen and petitions committees in detecting breaches of EU law, Policy Department for Citizens' Rights and Constitutional Affairs Directorate-General for Internal Policies, European Parliament, November 2018, pp. 4-5.

[94] For a review of the literature on this point, e.g., Alberto Alemanno, Leveling the EU Participatory Playing Field, supra note 10.

[95] While greater resources do not automatically equate with disproportionate influence over EU policy,[95] policymakers tend to afford disproportionate attention – and therefore greater access – to the most vocal stakeholders. See, e.g., See, e.g., Justin Greenwood, 'Organized Civil Society and Democratic Legitimacy in the European Union', (2007) 37 *British Journal of Political Science* 2, 333-357 and, more broadly, Pamela Pansardi, 'Democracy, Domination and the Distribution of Power', *Revue Internationale de Philosophie*, March 2016, at 99-100 ('it is reasonable…to assume a certain degree of correlation between the possession of certain resources and the potential for exercising power of those who possess them.')

[96] Joint declaration, on the Conference on the Future of Europe, supra note 1.

[97] The sole exception is the European Citizens' Assemblies, which are set to gather randomly selected citizens who will be debating and deliberating upon a set of themes and offer recommendations to the conference plenary. This is unprecedented in EU policy-making and might potentially lead to some institutionalisation within the EU institutional architecture.

form of participation. The Executive Board seems to show some awareness about the role socio-economics play in the operation of the Conference, when it provided "A guide for making your event more inclusive"[98]. Yet this guidance document is exclusively addressed to event organisers, and therefore does not foresee the application of the same principles of proactive inclusivity to the platform itself. While a Charter governing the participants' behaviour has been foreseen, this – being inherently applicable only to those who already decided to participate – falls short to address the inequality of access to the Conference itself, starting from the Platform to a Charter. As argued elsewhere, a substantive understanding of the principle of political equality, as enshrined in Article 9 TEU, requires the EU institutions to *procedurally* ensure that everyone will effectively be given access to, therefore a voice, and – in so doing – be treated equally in the policy process[99]. While not all inequalities can be offset by positive measures due to the lack of experience in consultative processes and substantive policy issues, the advocacy capacity of any relevant stakeholder can (and should) be enhanced so as to equalise opportunities of access over time, and well beyond the Conference.

4.3 Limited representativeness

The current unequal opportunities of access to the Conference's Platform translate into the limited representativeness of its user base and corresponding input. Yet ensuring diversity in participation was presented as one of the major objectives (and challenges) for the entire Conference[100]. The demographic profile of the first 20,000 users of the Platform shows that men and individuals from Western EU dominate the contributions. It also suggests that the Platform has mobilized those stakeholders already active in EU politics and affairs[101], and ultimately those with either a pro- or anti-EU stance. Those are definitely not "European citizens from all walks of life and corners of the Union"[102].

While preliminary in nature, these data confirm the overall participatory pattern existing within the overall EU participatory infrastructure. Thus, statistics – coming from both the use of petitions and participation to public consultations – typically show a geographical imbalance, with a gradient of participation between the Member States in the north and western Europe and those in the south and east[103]. This suggests the importance of relying on offline participation opportunities, such as local events, to somehow offset the limited representativeness of the input gathered at the entry level of the Conference.

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[98] Conference on the Future of Europe: A guide for making your event more inclusive, 2021.

[99] For a first attempt at theorising the normative value of the principle of political equality under EU law through a series of recommendations aimed at operationalising it, see Alberto Alemanno, Leveling the EU Participatory Playing Field, supra note 10.

[100] See, e.g. Joint Declaration on the Conference on the Future of Europe, supra note 1.

[101] Bertelsmann Stiftung, supra note 89, p. 8.

[102] Joint Declaration, supra note 1.

[103] See, e.g., Report on the deliberation of the Committee on Petitions during the year 2017 (2018/2104(INI)), Committee on Petitions, Cecilia Wikström, 27 November 2018.

Ultimately, the whole Conference may fail to capture the richness of social, cultural and scientific knowledge, and that despite the activation of the most sophisticated, potentially inclusive, consultation process ever run by the EU. Yet, as argued by Niccolo Milanese on behalf of dozens civil society organisations, "including EU citizens & residents who are actually representative of its population's diversity is the first and necessary step towards a public dialogue that not only resonates with the majority but also helps (re-)connect the population with its EU institutions"[104].

4.4.   *Conclusions on the Multilingual Digital Platform*

The Multilingual Digital Platform marks a promising, yet overdue, effort by the EU to shift its digital participatory infrastructure from a top-down, uni-directional and vertical format to a bottom-up, iterative, horizontal approach. Yet a closer look suggests that it might fall short of matching its declared goals of inclusiveness, and may ultimately fail to alter the existing EU digital participatory opportunity structure. Amid self-selection of participants, the unequal access to and limited representativeness of stakeholders' participation in it, the Platform is set to make the Conference less exposed to different types of preferences and substantive interests than what was originally envisioned. As such its agenda-setting function might be frustrated, as it might produce a biased themes' selection solely reflecting the intensity of a limited set of preferences expressed. Absent robust, inclusive and representative forms of ex ante mobilization and engagement aimed at diversifying the voices gathered and heard, the overall input by the citizens' contributions to the Platform might be flawed. This might in turn lead to distortive effect over the whole Conference's deliberations, as those might be prompted and based on mistaken assumptions about their context, users and preferences.

Another risk lies ahead. As the Platform remains active during the entire process, the ideas herewith submitted are supposed to continuously feed into the Citizens' Panels (through interim reports by thematic clusters), and indirectly the work of the Plenary. This raises the prospect of having the Platform being mobilized during the Conference by a variety of stakeholders in order to influence not only the other two levels of the Conference – the Panels and the Plenary – by reacting to their own deliberations from the outside, but also ongoing EU decision-making. In other words, what if citizens or other stakeholders will be relying on the Platform to voice their concerns or preferences on an ongoing legislative (or not legislative) initiative? This unintended use of the Platform may render the Conference an initiative impacting more the present than the future[105].

The AI-supported software that will help the identification of ideas and themes ahead and during the Citizens' Panel won't per se be able to overcome this. Rather – in the absence of full

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[104] Open letter to Executive Board: civil society organisations call for Conference to include marginalised communities, June 18, 2021, led by Citizens Take Over Europe and co-signed by other 62 civil society organisations.
[105] I am grateful to Benjamin Bodson for early conversation regarding the prospect of a Conference focusing on the present as opposed to the future of Europe.

transparency of how algorithms are set to operate – it could make this even worse. Ultimately, the synthesis process aimed at dealing with the results of the digital participation so as to feed into the Citizens'Panels requires to be transparently defined, as well as all interface processes between the Panels and the Platform, as well as the Panels and the plenary[106], and other key governance actors, such as the executive board, joint presidency and potentially other processes of day-to-day decision-making. Indeed, what if the Conference in its final report should express a clear opposition (or support) towards a pending EU proposal or initiative? Ultimately, if the declared goal of the platform is to draw new voices to the debate about Europe's future, its current design, and initial results, might frustrate such objective.

5. The European Citizens' Panels: the place of deliberation

The establishment of four European Citizens' Panels, entailing the participation of a total of 800 randomly selected citizens from all across the EU[107], indisputably represents the most innovative feature of the participatory design of the entire Conference. The introduction of these panels is a testament of the "deliberative wave" that is occurring across countries, with public authorities from all levels of government increasingly turning to deliberative mini-publics, such as Citizens' Assemblies, Juries, Panels and other representative deliberative processes – to tackle complex policy problems ranging from climate change to infrastructure investment decisions[108]. While they vary in in the size, duration and output, mini-publics typically convene randomly selected citizens representing a wide cross-section of society for at least one day – and often much longer – to learn, deliberate, and develop collective recommendations that consider the complexities and compromises required for solving multifaceted public issues. These democratic innovations present two core features. First, they are *deliberative* in that participants reach recommendations or conclusions on a particular issue 'after receiving information and engaging in a careful and open discussion'[109]. Second, they are *representative*, being composed as "mini-publics" whose participants broadly constitute "a representative subset of the wider population", delivered through random selection[110]. As such, mini-publics - such as the European

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[106] See on this point, Practical modalities of the European Citizens' Panels of the Conference on the Future of Europe, 26 May 2021, part 4(2).

[107] The concept of ordinary citizens being randomly selected to make decisions on behalf of the wider public is one that is quite familiar to most people, but only in one form: the courtroom jury. The concept has gradually been extended to the political sphere through the use of so called deliberative mini-publics. See, e.g., Graham Smith, Democratic innovations: Designing institutions for citizen participation, Cambridge University Press, 2010; Nadia Urbinati & Mark Warren, The concept of representation in contemporary democratic theory. *Annual Review of Political Science*, *11*, 2008, 387–412.

[108] A 2021 OECD report identified and examined 300 representative deliberative practices to explore trends in such processes, identify different models, and analyse the trade-offs among different design choices as well as the benefits and limits of public deliberation. See, OECD, Innovative Citizen Participation and New Democratic Institutions, Catching the Deliberative Wave, June 2021.

[109] See, e.g. David M. Farrell, et al., Deliberative Mini-Publics: Core Design Features. Centre for Deliberative Democracy and Global Governance working paper 2019/5. Canberra, Australia: Centre for Deliberative Democracy and Global Governance, p. 5.

[110] Ibid.

Citizens' Panels - emerge as a more realistic alternative to involve the grassroots level in deliberation on political issues[111].

While it might be premature to evaluate the role deliberative processes might have within EU governance[112], this section intends to identify the major features of the first, ever-conceived European Citizens' Panels. It does so by measuring the design of the European Citizen's Panels against other deliberative experiences as distilled into the OECD Good practice principles for deliberative processes[113].

When compared with other deliberative experiences, the European panels stand out for at least two, closely entwined, additional features: their transnational and multilingual nature (entailing the use of 24 official languages)[114]. Another, yet largely unnoticed, feature has to do with their commissioning authority, which – contrary to common practice – does not correspond to a single institutional actor – generally a government –, but to a multiplicity of institutions, notably the three main EU institutions as gathered within the Executive Board.

5.1 Selection
The selection of panelists foresees the participation of randomly selected citizens, with the aim of constituting panels "representative of EU sociological diversity"[115]. This objective is pursued by considering the entirety of the population (but limited to EU citizens)[116] – through random generation of phone numbers (fixed and mobile) in several rounds – and is based on five criteria: nationality[117], urban/rural, socio-economic background[118], age and gender[119]. Noticeably, no weight is given to political orientation or attitude vis-à-vis the EU. A major corrective in the selection process is a quota of 1/3 of panelists that has been reserved to citizens between 16 and 25 years old[120]. Yet no effort was made to include marginalized communities, with the risk

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[111] For a lengthy and original scholarly treatment of this democratic innovation, see Hélène Landemore, *Open Democracy*, Princeton: Princeton University Press, 2020.

[112] For a preliminary assessment, see A. Alemanno, The challenges of Institutionalizing Citizens Assemblies in the EU, Bertelsmann, forthcoming.

[113] If over the last decade there has been a growing trend for public authorities to use representative deliberative processes for public decision making, Europe is the region with the largest variety of models of representative deliberative processes used by public authorities for public decision making (both amongst OECD Member countries and overall). See, OECD, Innovative Citizen Participation and New Democratic Institutions, Catching the Deliberative Wave, June 2021.

[114] Article 21(3) TEU grants "Every citizen of the Union" the right "to write to any of the institutions or bodies…in one of the official languages … and have an answer in the same language".

[115] Article 5 of the Rules of Procedure (European Citizens' Panels).

[116] Practical Modalities, supra note 106, part 1(1).

[117] Article 5 of the Rules of Procedure foresees that the number of participants in each panel "…shall tak into account the degressive proportionality principle applied to the composition of the European Parliament".

[118] This covers also the level of education. See Article 5 of the Rules of Procedure.

[119] Article 5 of the Rules of Procedure foresees that "each panel shall consist of a number of citizens in order to ensure at least one female and one male citizen per Member State".

[120] Article 5(1) of the Rules of Procedure.

of further ostracizing citizens and residents that are already sidelined in their daily lives and interactions with public authorities[121].

To facilitate the acceptance of the "mandate letter", participants are offered "professional support and guidance throughout the process" as well as a "clear narrative…to understand what would be the purpose of their participation and commitment" [122]. Contrary to the OECD best practice principle on deliberative processes[123], no reference is made to the possibility of providing the selected panelists with remuneration, covering expenses, and/or providing/paying for childcare or eldercare[124].

5.2 Design and task
When it comes to the design, each of the four panel has been assigned a "thematic cluster", that is : European democracy (including values, rights, rule of law and security), Climate change (including environment and health), Stronger economy (including social justice, jobs/education, youth, culture, sport and digital transformation), and the EU in the world (including migration). These clusters strive to regroup the nine "platform topics" into 4 instead. The departing point for each panel is indeed offered by the contributions gathered on a rolling basis on the Platform, as well as those produced by the National Citizens' Panels. Based on those input and internal deliberation, the ultimate task is to formulate a set of "collectively designed and owned" recommendations for the Union which will then be debated in the Conference Plenary[125]. Each panel is expected to meet during "at least" three "deliberative sessions of minimum two days, including a two in-person sessions if the health context allows"[126], and a final event is foreseen to "give feedback to the panels on the follow-up". As these deliberative sessions don't take place at the same time, each panel presents its conclusions to different meetings of the Plenary.

The duration and frequency of the panel's meeting match the OECD principles for deliberative democracy processes[127]. However, given the breath of the thematic clusters, panels are expected

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[121] Open letter to Executive Board: civil society organisations call for Conference to include marginalised communities, June 18, 2021, led by Citizens Take Over Europe and co-signed by other 62 civil society organisations.
[122] Practical modalities, supra note 106, part 1.
[123] See, OECD, Innovative Citizen Participation and New Democratic Institutions, Catching the Deliberative Wave, June 2021.
[124] As highlighted by Jan-Werner Müller, Athenians already realized that it was ok to pay people for participating. In Democracy Rules, supra note 11, p. 145, citing M. H. Hansen, Athenian Democracy in the Age of Demosthenes, University of Oklahoma Press, 1991.
[125] Practical modalities of the European Citizens' Panels of the Conference on the Future of Europe, supra note 106.
[126] After the initial sessions in Strasbourg, the second sessions are held in remote format, and the third and fourth take place in-person in the following education institutions: Panel 1, Dublin, Ireland, (Institute of International and European Affairs and partners); Panel 2 "European democracy/values and rights, rule of law, security" on 10-12 December 2021 in Florence, Italy (European University Institute); Panel 3 "Climate change, environment/health" on 7-9 January 2022 in Natolin (Warsaw), Poland (College of Europe); Panel 4 "EU in the world/migration" on 14-16 January 2022 in Maastricht, the Netherlands (European Institute for Public Administration and partners).
[127] See, OECD, Innovative Citizen Participation and New Democratic Institutions, Catching the Deliberative Wave, June 2021 ("For high-quality processes that result in informed recommendations, participants should meet for at

to frame the topics in a way that strikes the right balance between the efficacy of the process (attaining quality deliberations and recommendation within the allotted time) and the need to leave room for a genuine bottom-up, citizen-driven deliberations. Given the applicable multilingual regime, this challenge is rendered even more complex to attain. If multilingualism ensures to each participant the right to express herself - and be understood (via interpretation) - by all other participants, it might also delay or limit socialization processes that might be more conducive to effective deliberation through self-managed communication[128].

5.3 Panels' recommendations: deliberative, not aggregative, output

As Panels are expected to take on board contributions gathered in the framework of the Conference through the digital Platform, the Conference Plenary must take as a departing point the Panels' recommendations, with its 450 members called upon to discuss and deliberate[129]. As such, the Panels' recommendations are set to feed into the final Conference report and "constitute a part of the Conference output on which basis EU institutions will organize the follow-up"[130]. In particular, each Panel is tasked to prepare a report "based on the original citizens' ideas as expressed during the Panels"[131]. This report must contain both the "final recommendations" and a "detailed account of the content of the Panels' discussions"[132], including the argumentations and debates as well as the different deliberative steps that led to these.

It is worth observing that no voting rules are foreseen for the adoption of the recommendations by the Panels. This is due to the giving-reason nature of their deliberative processes, which reflect itself into the final outcome. While deliberation does not automatically lead to consensus, it aims at broad majorities and therefore responds to a different logic than aggregating votes in Parliament or government. Therefore the recommendations are not supposed to emerge as the result of a vote, opposing a given solution or idea, but rather a detailed account of the content of the Panels' discussions capable of informing decision-makers (and the public) about the underlying pros and cons. From this perspective, the panels' output must be seen as "public forum that allows all those who have preferred alternative outcomes to see for themselves that their views have been argued and reasons given for setting them aside'.[133] As a result, it should

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least four full days in person, as deliberation requires adequate time for participants to learn, weigh evidence, and develop collective recommendations").

[128] I owe this point to Antoine Vergne (*Mission Publique*).

[129] Article 5(4) of the Rules of Procedure.

[130] Practical modalities of the European Citizens' Panels of the Conference on the Future of Europe, supra note 106, part 4(1).

[131] These reports, to be merged into one, are prepared by the service provider in charge of the methodology, design and facilitation before being endorsed by the respective Panels.

[132] Practical modalities of the European Citizens' Panels of the Conference on the Future of Europe, supra note 106, part 4(4).

[133] P. Pettit, Republicanism. A Theory of Freedom and Government (Oxford: Oxford University press, 1997).

not come as a surprise that these recommendations are merely consultative, as "rarely does the mini-public itself share sovereignty over the decision at hand"[134].

All along the process, panelists are informed about the progress and gather within the digital platform. Before and after the panel's experience, they are invited to respond to a questionnaire aimed assessing the "diversity of the panels, the degree of satisfaction with the process, and the learning curve" they may have experienced due to the deliberative methods of the panels[135]. Contrary to the OECD best practice principle of deliberative processes, no specific provisions have been foreseen to protect participants from unwanted attention and preserve their independence. This might however be needed given the potential public attention panelists might gain, in particular those who also sit in the Plenary as full members.

As no third-party observer – or guarantor – of the deliberative has formally been foreseen, identified or named by the EU, a constant monitoring by civil society and academia appears warranted and might require multiple review mechanisms to insure independency.

5.4 *Conclusions on the Citizens' Panels and their democratic credentials*

What deliberation in citizens' panels mean for the EU legal order? How can this affect the overall Conference's decision-making? Will it give a taste for deliberation and at home engage other citizens? Will panelists turn in opinion leaders affecting their communities?

While it remains premature to gauge its impact, the deliberative model offered by deliberative processes seems particularly fitting for the EU. First, the EU, unlike the nation state, lacks a narrative structure which makes the political process visible and accessible to large audiences. In particular, only few citizens are directly, or at least fully aware of being, exposed to the work of the EU, and therefore only seldom deliberate about EU politics in their daily lives. In other words, while some political talking is embedded in the national norm system, the same can't be said for the EU. Yet thanks to the citizens' panels both political parties and media commentators may be encouraged to position themselves, by engaging with the incipient pan-EU conversation. As such, while "it is impossible to give everyone a 'say' in the literal sense of having one's individual voice hears by all other members of the polity"[136], the deliberative moment is apt to compensate for the lack of a genuine, pan-EU political and media space. This suggests that – as it occurred in

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[134] Stephen Elstub, 'Mini-Publics: Issues and Cases' in Stephen Elstub and Peter McLaverty (eds), Deliberative Democracy: Issues and Cases (Edinburgh University Press, 2014) 166-88.

[135] Practical modalities of the European Citizens' Panels of the Conference on the Future of Europe, supra note 106, part 4(5). This task is set to be conferred upon to an external supplier by the European Commission.

[136] Jane Mansbridge, et al., The Place of Self-Interest and the Role of Power in Deliberative Democracy, Journal of Political Philosophy, 18, 2010, pp. 64-100, at 23.

Ireland after the abortion and same-sex marriage referenda[137] – the previous deliberative experiences may unleash a virtuous cycle of political engagement[138].

Second, deliberative processes entailing the participation of randomly selected citizens may help the Union to overcome the structural inequalities of access to EU decision-making. As such, should they get institutionalized within the Union[139], citizens' panels could get the EU as close as it can to an ideal of equal access (and potentially influence). This prospect, however, must consider that no democratic innovation, notably mini-publics, operates in a political vacuum. Whatever rational solution randomly selected citizens have put forward, this might be torpedoed and killed by professional actors who prefer a different outcome[140].

Third, deliberative processes appear particularly apt to focus on institutional reform issues, such as electoral reform, appointment methods or the size of the legislature, insofar as their modification tends to affect the political representatives by putting them in a situation of conflict of interest[141]. That is where the deliberative added value of sortition plays out: randomly selected citizens could be presented with various courses of action and then issue a recommendation presenting the pros and cons of each option.

Ultimately, when it comes to the overall Conference's design, insofar as the Panels' input are by design more representative than those gathered on the Platform, deliberation offers a welcome correction to the overall course of the Conference, and does so ahead of the Plenary's 'deliberative constituent' moment. From this perspective, the European Citizens' Panels can be seen as the most articulated effort at constructing a transnational deliberative space still inexistent after seventy years of EU integration. Should they become institutionalized upon the Conference's conclusion, deliberative panels might offer a new rhythm – and therefore dynamic – to European democracy beyond elections[142]. As Jurgen Habermas put it, to strive for deliberation in political praxis is not "utopian exuberance"[143].

6. The Plenary: the 'deliberative constituent' place

At the top of the Conference's participatory infrastructure lies a mammoth, 450-member plenary. Its composition partly reminds prima facie the Convention model foreseen by Article

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[137] See, e.g., Jane Suiter, David Farrell, Eoin O'Malley, When do deliberative citizens change their opinions? Evidence from the Irish Citizens' Assembly. *International Political Science Review*, 37(2), 2016, pp. 198-212.

[138] John Matsuaka, Let the People Rule: How Direct Democracy Can Meet the Populist Challenge, Princeton University Press, 2020.

[139] For a preliminary perspective, A. Alemanno, The challenges of Institutionalizing Citizens Assemblies in the EU, supra note 112.

[140] Larry Lessig, They Don't Represent Us, Reclaiming Our Democracy, 2019.

[141] According to Jon Elster, "deliberation is more important in constitution making than in ordinary legislation ». See Jon Elster, 'Deliberation and Constitution Making' in J. Elster (ed), Deliberative Democracy (Cambridge University Press, 1998) 97-122.

[142] Alemanno, Europe's Democracy Challenge, supra note 8, 35 et seq.

[143] Jürgen Habermas, The Faltering Project, supra note 23.

48(3) TEU to revise the Treaties[144], but it departs from it insofar as it unprecedently mixes representatives of the European Commission (3), the Council (54 representing the 27 EU governments), Members of the European (108) and national (108) parliaments with ordinary citizens (108), coming from both the European Citizens' Panels (80) - of which 1/3 should be younger than 25 - and national (27) ones, as well as other individuals representatives of public local interests (Committee of the Regions, 18), private and public interests (European Economic and Social Committee, 18), as well as social partners (12), civil society organisations (8), and local and regional representatives (12), and the President of the Youth Forum (1)[145]. The Plenary's task is to "debate and discuss the recommendations from the national and European Citizens' Panels" as well as "the input gathered from the Multilingual Digital Platform, grouped by themes, in full respect of the EU's basic principles and the Conference Charter"[146].

6.1 Citizens as Panels' representatives or decision-makers?
This setting contrasts with the classical design of deliberative processes in which the citizen deliberative moment is generally both functionally and institutionally separated from the political one, and run by one, not multiple, commissioning authority. The Conference's Plenary instead brings together – at least partly – these two moments as well as their respective actors by merging them within one, ad hoc body. It does so by enabling a delegation of Panels' members, which – together with the national panels' representatives – roughly represent a quarter of the total of the Plenary, to not only present the outcome of their work to the decision-makers[147], but also to become full members of such a hybrid assembly. This suddenly leads ordinary citizens to act not only as randomly selected panelists, but also to wear an additional hat, that of Plenary's member[148]. This raises novel questions regarding the status these individuals enjoy in this body, and what role should they play within it. Unlike other Plenary's members, they already have a stake in process, having contributed to the deliberations leading to the recommendations submitted to the Plenary itself. From such perspective, they act as connectors between the Citizens' panels (to which are members and therefore originators of the Plenary's debate) and the Plenary itself (to which they are full deliberating members). What then to expect from these panelists? How are they supposed to show up in the Plenary? Should they merely represent their

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[144] Article 48(3) TEU foresees "a Convention composed of representatives of the national Parliaments, of the Heads of State or Government of the Member States, of the European Parliament and of the Commission".

[145] In addition, the plenary can invite "key stakeholders", whereas the High Representative of the Union for Foreign Affairs and Security Policy "shall be invited when the international role of the EU is discussed". See Article 16 (Composition) of the Rules of Procedure.

[146] Article 17 of the Rule of Procedure (Tasks and working modalities).

[147] These presentations by the Panels to the Plenary are already foresee in the operation of the Citizens' Panels themselves, with two panels presenting in December 2021 and the other two in January. See Practical Modalities, para 3(3).

[148] A new, mixed member and in-house model for blended citizen and parlamentarians' deliberation has been pioneered and recently been institutionalized by the Brussels Regional Parliament and the French-speaking Brussels Parliament (FBR). However, contrary to what it occurs in the Conference on the Future of Europe's plenary, citizens do not enjoy the status of full members of the deliberative parliamentary committee, being mere 'guests'. See, Julien Vrydagh et al., Les Commissions délibératives entre parlementaires et citoyens tirés au sort su sein des assemblées bruxelloises, Courrier hebdomadaire n° 2492, 2021, p. 65.

fellow citizen-panelists and defend their recommendations within the Plenary? Or rather go beyond this 'representative' role and further deliberate and decide with their fellow plenary members as equals? To respond this set of questions is imperative in order to define the type of support needed by these citizens' panels representatives while sitting in the plenary and confronting career-politicians with their professional experience and staff. While "professional support and guidance throughout the process"[149] is foreseen, as well as the possibility to be assisted by "independent Advisory groups"[150] during the citizens' Panels, it is less clear whether further, dedicated support is envisaged for them in the Plenary. To ensure that these panelists may engage with the other plenary members on an equal footing, some supporting staff, and more broadly, capacity might therefore be needed.

6.2 Political elected: who they represent?

The mixing of political representatives with ordinary citizens also affects the cohort of elected. As a result of the deliberative, as opposed to aggregative, setting, the latter are suddenly exposed to preferences they are generally not exposed to, as those are generally "filtered" through the activists (e.g. NGOs and grassroots movements), the media, and the people who contact them (e.g. corporate lobbyists). In the absence of a pan-EU electoral and media space, this dynamic carries a particular powerful meaning: both national and EU parliamentarians are suddenly confronted to preferences of citizens coming from other jurisdictions, as well as other government representatives both from national and local level. While the Members of the European Parliament are supposed to represent all EU citizens, being typically elected at the national level they tend to be uniquely exposed – and accountable – to their domestic constituencies.

6.3 The plenary's proposal : out of arguing or bargaining?
After having heard and discussed the panelists' recommendations, both from the European and national Panels, the Plenary is supposed to "put forward its proposal" to the Executive Board. This entails to embark not only upon some work of synthesis of the various input, but also on further deliberation, which must be conducted "without a predetermined outcome"[151]. This suggests that also the Plenary – not only the Panels – is expected to embrace deliberation, resulting in "institutions giving up, albeit in part and temporarily, …their power to decide according to the standard procedures of representative democracy"[152]. In so doing, institutional representatives may choose to play a different role, "that of promoters of a discussion and guarantors of its fairness"[153]. Yet it remains to see whether the Plenary will be orientated towards the arguing, rather than bargaining, end of this continuum. Moreover, the plenary should embark on this process "without limiting the scope to pre-defined policy areas". This suggests that not only the Platform and the Panels, but also the Plenary may transcend the pre-

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[149] Practical modalities, part 1.
[150] Ibid.
[151] Article 17 of the Rule of Procedure.
[152] Luigi Bobbio, La democrazia deliberative nella pratica, Stato e Mercato, n. 73, April 2005, pp. 67-88
[153] *Ibidem*.

defined themes. This implies the conferral of significant scoping autonomy to each and every layer of the Conference's pyramid, with the possibility for each of them, notably the Citizen's Panels and ultimately the Plenary to expand or narrow down its focus. While this embedded flexibility may facilitate the work of the Panels, it might allow the Plenary to surreptitiously depart from their recommendations.

Ultimately, the adoption of the Plenary's proposal must occur "on a consensual basis", but that consensus is not required among all its members, but only those institutional actors recognized as 'constituent' by Article 48 TEU. So much for von der Leyen's promise that the "Conference should bring together citizens….and European institutions as *equal* partners". The Plenary's consensus requirement applies only to the representatives of the European Parliament, the Council and the Commission as well as the national parliaments, who must converge. While the position of all other actors, from the EU advisory institutions to social partners and civil society, does not count and should not be formally registered, it has been expressly foreseen that of the representatives of national and European Panels "should be expressed in the report", but only if "there is a clear diverging position"[154]. In other words, the right to a 'dissenting opinion' has been recognized solely to the representatives of the citizens' Panels.

The document containing the Plenary's proposal (with or without "dissenting opinion" by the citizens' Panels) offers the basis for the 9-member Executive Board, acting on a consensus basis, to draw up, a report[155]. This preparation must occur "in full collaboration and in full transparency with the Conference Plenary", before being published on the Multilingual Digital Platform. This indicates that it is up to three main EU institutions to converge on a common position in order to approve the Plenary's proposal, and that a possible "dissenting opinion" by the citizens' panel will have to be addressed and potentially be reconciled within the final report. Once adopted, this report is set to qualify as "final outcome" of the Conference - within the meaning of the Joint Declaration - and be presented to the Joint Presidency[156]. Having reached the Conference's final stage, each of the three EU institutions is expected "to examine swiftly how to follow up effectively" to this report, within the sphere of competences and in accordance to the Treaty[157]. This rather byzantine process strives to strike a balance between the autonomy enjoyed by the three institutions and national parliamentarians when acting within their constituent authority and the newly acquired relevance of citizens' input. Indeed, ultimately, it is up to the European Council alone to decide, upon the request of "the Government of any Member State, the European Parliament or the Commission", whether to amend the Treaties[158]. Should the recommendations not entail Treaty changes, the EU institutions – notably the EU Commission – may decide to accommodate those into the Commission's Annual Working Programme, or alternative follow-up initiatives.

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[154] Footnote 7 of Article 17 of the Rule of Procedure
[155] Article 18 of the Conference on the Future of Europe.
[156] Joint Declaration, under letter a) and Article 23 of the Rules of Procedure.
[157] Article 23 of the Conference on the Future of Europe.
[158] Article 48 TEU.

6.4 Conclusions on the Plenary

If the Citizens' Panels represent the most innovative component of the Conference's participatory infrastructure, the Plenary – due to its unprecedented composition and ambitious mandate – is a world first. The idea of turning a multi-stakeholder format into a pre-constituent, deliberative structure mixing ordinary citizens with elected representatives coming from multiple level of governance – from the local to the pan-EU – remains unparalleled. Moreover, while deliberative fora are generally not part of the formal decision-making process, the Conference's Plenary accommodates a delegation from the Panels, and – as such – it is set to operate as a deliberative pre-constituent power. True : the ultimate decision-making power has been reserved to the three main institutions plus the national parliamentarians (at the stage of the Plenary's preparation of the proposal), and ultimately to the three main institutions alone (at the stage of the adoption of that proposal by the Executive Board). Yet it remains that all other stakeholders – including and especially ordinary citizens through their 'dissenting opinion' – are closely associated to it, and operate in public. It follows that the public may pressurize, by leveraging on the significant level of transparency guaranteed by the Conference, those political actors not only when adopting the final report, but also afterwards, when they will be expected to follow-up on it. In other words, should the report not capture the spirit of the recommendations emerging from the Citizens' Panels, or should the follow-up by the three EU institutions not reflect the final report, the whole public – not only the citizen panelists – will be in the position to notice it. This in turn is set to force each and every EU institution to position itself and justify its possible departure from the demands generated through the process, thus enlarging the agenda of reform and turn an elite affair into a pan-EU enterprise. This unprecedented level of political accountability might promote not only novel conversations between the people and public institutions – both EU and national –, but also among the people themselves. This might ultimately pave the way to new power dynamics between the elected and non-elected, and their corresponding different sources of legitimacy, in a way never experienced before within the EU and national legal orders. Yet to fully grasp its effects requires a consistent and constant oversight of the process and outcomes, that – at the time of writing – has not be foreseen nor established.

Conclusions

This article situates the Conference on the Future of Europe within a broader, global and historically contingent effort at getting better and more legitimate policy outcomes by involving ordinary citizens in a fuller and more systematic way in the political process, including constitution-making. As demonstrated, the EU continues to evolve through processes that marginalize the role of citizens – such as intergovernmental negotiations and integration through law – and that despite the participatory efforts undertaken in post-Lisbon Europe. Seen from this perspective, the Conference can be understood as yet another attempt to bring the citizen into the picture by relying, this time, on their input – through the creation of an otherwise inexistent transnational space for deliberation – when embarking on institutional, possibly ontological, self-reflection. Therefore, its very launch inherently acknowledges the limits of the post-Lisbon EU participatory model and its underlying expectation that citizens' participation per

se could, as a result, magically close the gap between power and electoral accountability in the Union[159]. It turns out that in the absence of pan-EU democratic infrastructure and related narrative that render the political process visible and accessible to large audiences, citizen participation alone cannot make up for EU citizens' inability to signify their desire for change in the EU political agenda. Hence the need to go beyond mere participation, by artificially establishing a deliberative transnational space, in the hope that this might be conducive to new power dynamics that might eventually help fill that gap. From such a perspective, the EU is set to become – albeit temporarily – a remarkable 'laboratory' for empirically testing the validity of deliberative participation not only in the real world, but also at a transnational scale as it has never been done before. From such a perspective, the Conference can be seen as the ultimate testing ground for Habermas's normative concept of deliberative democracy in a transnational context[160]. The German philosopher has over the last decades insisted on the necessity of the construction of a transnational space for deliberation to bring the idea of democracy at the European level to the next level[161]. This is exactly what this Conference strives to offer. Its participatory architecture establishes, albeit on ad hoc basis, a transnational space for deliberation without which neither its citizens nor elected representatives would be exposed – and pay attention – to the viewpoints that are expressed in other parts of the Union. The Conference can therefore be seen as providing a new, experimental and temporary opportunity structure, that might enable both institutional actors and citizens to gain an entirely unprecedented exposure to transnational, bottom-up preferences. The ensuing citizen-to-citizen pan-EU discourse could potentially make them aware of the histories, contributions, anxieties, aspirations of others, deepening understandings that are so critical to developing a sense of self-direction. This alone might alter the political dynamics of interstate bargaining through new methods and that may in turn reconfigure the political, and more broadly, public debate across the Union[162]. As Hauke Brunkhorst argues in his critical theory of legal revolutions, once democratic procedures are set up, even if they come from the top, they can 'strike back' because citizens can invoke them to demand change[163].

While much of the incipient academic discussion around the Conference focuses on the relationship between the institutions responsible for running it and the individual citizen (this article is no exception), the initiatives that civil society organisations— from trade unions, women's organisations, the disabled, religious or cultural communities, other minorities, grassroots movements to think tanks and academia — might develop around the Conference might reveal equally, or even more important[164]. These might consist of journeying to the far corners of the continent to facilitate – possibly amplify – public debate, engage into

[159] P. Craig, EU Administrative Law, supra note 54, 295, 297-298.

[160] Habermas, supra note 14.

[161] Jürgen Habermas, The Postnational Constellation, MIT Press, 1998.

[162] Marlies Desomer, Koen Lenaerts, 'New Models of Constitution-Making in Europe: The Quest for Legitimacy', (2002), 39, Common Market Law Review, Issue 6, pp. 1217-1253.

[163] Hauke Brunkhorst, Critical Theory of Legal Revolutions: Evolutionary Perspectives, Bloomsbury, 2014, 42.

[164] See, e.g., Luke Cooper et al., The Rise of Insurgent Europeanism. Mapping Civil Society Visions of Europe 2018-2020, LSE Ideas, 2021.

'constitutional pedagogy' by illustrating the intricacies and significance of the process, aggregate and mobilise public opinion, host meetings and conferences, do research, disseminate ideas, advocate and lobby for them, all of this in multiple languages. This civil society's activation and ensuing, parallel media attention are key to attain the level of public attention necessary for the kind of broad deliberation needed to generate the level of legitimacy sought by the Conference.

While it would be naïve political solutionism to expect that this ad hoc democratic innovation initiative will magically address the EU democratic malaise, the Conference's embedded experimentalism can be seen as a promising first step towards the realization of the legitimacy-enhancing potential of participation, as it was originally conceived in the Constitutional Treaty and eventually resurrected into the Treaty of Lisbon. Therefore, rather than measuring the success of the Conference upon its ability to gingerly lead to Treaty reform – or transmute into a new mode of constitution-making[165] –, it might be more relevant to gauge it against its capacity to offer both EU institutions and its citizens a foretaste of a more intelligible, deliberative, and therefore more inclusive, transnational Europe. Only the latter outcome could make up for the original sin of 'democratic' Europe, that of moving ahead with EU institutional reform in 2007 – not only without citizen input, but also despite negative referenda in two EU member states in 2005. Ultimately, while EU citizens continue to lack effective possibilities to shape EU integration, the launch of the Conference on the Future of Europe marks the first explicit admission that they – not the Member States or the EU institutions – are the EU's ultimate source of authority.

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[165] See,e.g., Federico Fabbrini, supra note 3; Markus Patberg, supra note 25.