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DELIBERATIVE DEMOCRACY OR DELIBERATIVE SUPRANATIONALISM? PRELIMINARY INSIGHTS FROM THE CONFERENCE ON THE FUTURE OF EUROPE

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Abstract: *The goal of this article is to assess the effectiveness of deliberative democratic mechanisms in the practice of international organization, with the Conference on the Future of Europe serving as the main object of the study. The analysis is focused on a comparison of the usefulness of two concepts (deliberative democracy and deliberative supranationalism) to the analysis of the EU political decision-making. On the basis of both approaches four hypotheses are formulated and initially verified. The dependent variables of the hypotheses are confronted with the essential features of the course and follow-up of the Conference in the first year after its conclusion. The most important results of the study include four findings. Firstly, the structure of the Conference did not fully correspond to the assumptions of the concept of deliberative democracy, while – secondly – the substantial quality of the Conference’s proposals was low. Thirdly, one year after the conclusion of the Conference, no interinstitutional debate on the implementation of its proposals has started. Fourthly, there is no inter-state discussion on the results of the Conference, no Convention is planned, and support for introducing treaty changes is low. So far, the only measurable results of the Conference are minor non-treaty reforms proposed by the Commission. Therefore, the introduction of the principles of deliberative democracy at the EU level proved to be an ineffective step. If the activity of the Union is considered in deliberative terms, then the concept of deliberative supranationalism is more useful here. After the Conference, the EU turned out still to be an international organization in which major decisions on reforms are taken by the governments of the member states.*

Keywords: deliberative democracy, deliberative supranationalism, EU future, EU institutions, EU member states

1. Introduction

The Conference on the Future of Europe (CoFoE) was the first attempt to apply the mechanisms of deliberative democracy within an international organization bringing together states with a population of almost half a billion. It is difficult to consider as similar the earlier activities related to Conventions practiced in connection with the Charter of Fundamental Rights or the Treaty establishing a constitution for Europe. This is important, however, that the convention method is currently foreseen in the treaty (Art. 48 TEU), while the Conference was convened without any treaty basis. As one of former politicians stated: „it is possible that the Conference (...) may create the illusion that a quasi–constitutional procedure is taking place, while this is not the case” (Venizelos, 2021, p. 2).

The main goal of this article is to assess the effectiveness of deliberative democratic mechanisms on CoFoE’s example. The time range of the study covers the course of the Conference and the first year after its completion. Effectiveness in this case is to mean both maintaining high quality of the deliberation process, as well as the impact of opinions adopted during this process on the solutions adopted by final decision–makers. Therefore, the considerations are not focused mainly on the democratic deficit. The main subject is a comparison of the usefulness of two (pre–)theories to the analysis of the EU political decision–making: while the concept of deliberative democracy is of normative nature (Dryzek, 2017, p. 611), the deliberative supranationalism tends to have explanatory aspirations (Tosiek, 2018, p. 104).

In the first part of the article the basic theoretical and methodological elements of the study are outlined. Then, the conceptual assumptions of deliberative democracy and deliberative supranationalism are elaborated. On this basis, four hypotheses are presented and initially verified. Finally, the Authors try to briefly characterize the essence of the European Union, as it is today – being both the political and the international system.

2. Theoretical and Methodological Framework

The argumentation here is based on theoretical views related to deliberative democracy and deliberative supranationalism. Although the ideals of deliberation have been discussed since ancient times (Chambers, 2018, pp. 55–57), the very term “deliberative democracy” was highly popularized in the scientific discourse only in the end of twentieth century by, *inter alia*, Joseph M. Besette who presented the postulate of improving the quality of the political system by increasing the participation of citizens in decision-making processes and improving the participation process itself (Krzynówek, 2010, p. 18; Jasiński, 2017, p. 44). A deeper basis for considerations on deliberative democracy should be sought in the works of John Rawls and Jürgen Habermas, who created relatively independent concepts. Still, the key question here is to link political decisions with the discussions of members of the society (Cohen, 1996, p. 95). The deliberative supranationalism, in turn, is a concept proposed by Christian Joerges and supported by Jürgen Neyer. This is based on the general premise of Habermas’ thought resulting from the discursive theory of law and democracy: citizens must perceive themselves as the authors of the laws that they are then supposed to obey. EU law has two functions related to the implementation of the obligations of the member states towards each other: the first of them is the requirement to take into account the interests of the others when developing national policies, and the second one is the obligation to cooperate (Joerges, 2019, p. 166).

Both theoretical approaches are treated here as rooted in a similar way of thought assuming that deliberative mechanisms are the appropriate response to the current needs of the EU or at least they offer an analytical language that properly explains EU functioning normatively or descriptively. At the same time, these approaches are set against each other due to the different perception of the quality of the Union’s democracy. On this basis four hypotheses are formulated to be then subjected to preliminary verification. The dependent variables of those hypotheses are confronted with the essential features of the course and follow-up of the Conference.

Methodologically, the European Union can be perceived as a political system or as an international system. Research on it requires a dynamic combination of methods used in

comparative politics and in international relations theory. The main task of the EU is to make decisions in the area of public policies, while international factors have a major impact on this process. This is not a new conclusion that the distinction between intra-state and inter-state politics is becoming more and more problematic (Hurrell and Menon, 1996, pp. 394–400).

The basic research method in this article is the decision-making analysis in its systemic variant, which is based on five categories (Pietraś, 1998, pp. 18–77). The first of them is a decision-making situation defined as a state of reality that makes it necessary to solve a certain problem. In the case under examination, it is the conviction about the necessity of EU reforming. The second category is the decision-making centre constituting the subject of political action making decisions on behalf of the political system. Such a centre is not only the Conference on the Future of Europe, but also other institutional entities that must be – if only because of treaty provisions – involved in the process of reforming the Union. The third category is the decision-making process, which is a combination of cause-and-effect relationships within the decision-making centre in relation to the input, the structure of the centre and the goals of decision-makers. Also in this case, the processes occurring within the Conference, as well as in other decision-making bodies, require special consideration. The fourth category is a political decision, defined as an act of non-random selection of political action or inaction. Here, given the redundancy of an in-depth analysis of the results of the Conference, the most important step is to define the main conclusions related to these results. The fifth category is implementation, that is, the process of entering into force of decisions by using methods and means appropriately selected. Here, the analysis should be focused on the activities undertaken by EU institutions as part of the follow-up of the Conference. It should be emphasized that the goal is not to reproduce the facts, but to capture some fundamental trends. Technically, the study is based on non-participant observation, as well as on analysis of documents and opinions.

3. Towards EU's Deliberative Democracy...

Rawls starts from a normative definition of deliberative politics and formulates the theories of “public reason” and “impartial justice” which are to reconcile the principle of freedom with the principle of equality. This thought is supported by the concept of a social contract based on

two principles of the constitution of a just society. The first principle describes a situation of fundamental equality: each person has an equal right to a system of equal fundamental freedoms. The second principle indicates the conditions that allow inequality to occur: the introduction of benefits for underprivileged citizens and the availability of positions for all under conditions of equal opportunity (Rawls, 1997, pp. 96–99; Rawls, 2013, p.107; Perlikowski, 2020, pp. 65–68; Sroka, 2009, pp. 19–20).

Habermas, departing from normativism, proposes a procedural approach to deliberative politics. Drawing from a liberal approach to the democratic process and assuming compromises between interests and republicanism, he integrates them, creating an intermediate model of the debate. Thanks to the influx of information within it, pragmatic considerations take place, and the rules of discourse and forms of argumentation assume actions aimed at reaching agreements. In result, the relatively reasonable results are produced: the success of deliberative politics depends on institutionalization of appropriate procedures and communicative assumptions, as well as on the interplay of institutionalized debates with informally produced public opinions (Habermas, 2005, pp. 316–321).

Despite their fundamental differences, both Rawls and Habermas agree on four points (Cooke, 2000, p. 957). Firstly, both recognize the lack of authoritative standards for legal norm-making and emphasize the need for alternative epistemic standards. Secondly, both emphasize the principle of equal respect for citizens as moral agents with separate points of view. Thirdly, they both recognize the ideal of personal autonomy, according to which rational responsibility is a part of human agency. Fourthly, both emphasize the importance of transparency in the area of law and uphold the ideal of political autonomy. They also generally agree that the public will and opinion are shaped through dialogue and discussion. In their view, individuals are members of a political community, and therefore their well-being harmonizes with the collective good. People should see themselves as free and equal subjects while accepting the existence of reasonable pluralism (Dyszy-Graniszewska, 2016, p. 42).

Selen A. Ercan and John S. Dryzek (2015, pp. 243–244) list four assumptions that are to place deliberative trends in the theory of democracy. Firstly, the concept of deliberative democracy is a normative one: that is, it does not explain the current policy, but rather shows how it should be conducted. Secondly, deliberative democracy should not be classified as

another model of democracy and verified by empirical research. This approach offers assumptions that can be contextualized, interpreted and evaluated in practice. Thirdly, deliberative democracy should be treated as a transformative project. It should not assume a thorough conversion of the social order, but be a way to gradually change the functioning of politics. Fourthly, deliberative democracy is not only an offer to use new tools in the institutional sphere. In order to avoid superficiality, it must have an axiological basis, and the rulers cannot perceive it as a sole mechanism for designing social consultations.

The most common objects of deliberative democracy are small social groups, that is, the residents belonging to a specific local unit – they are often called “mini-publics” (Goodin and Dryzek, 2006, pp. 221–224). However, there is a view, advocated by Habermas himself (cited in Bucholski, 2015, pp. 10–11), that the deliberative model is also appropriate for post-national political systems such as the EU, because a more heterogeneous view of society can be used here. A diverse society is capable of making fair and reasonable agreements, and the role of the state is to provide a set of procedures on the basis of which deliberations leading to the emergence of a new public sphere can be conducted. The application of the deliberative model would therefore reduce the Union’s democratic deficit and serve to support solidarity.

Based on the above review, two hypotheses regarding the Conference on the Future of Europe can be put forward. Firstly, in structural terms, it should be assumed that if the personal composition of the Conference were to fully correspond to the basic assumptions of deliberative democracy, then the individual social actors should have been the leading participants of the CoFoE’s discourse (H1). Secondly, in the functional scope, it should be suggested that the relative disregard for the substantive context, that is characteristic of deliberative democracy, lowered the practical quality of the final effects of the Conference (H2).

Rawls’ theory of impartial justice has not been faithfully reflected in the work of CoFoE. The limited freedom in participation opportunities did not contribute to increasing equal access to freedom, understood as equality in processes and results. It is not clear who concluded this social contract (EU institutions, member states giving the mandate to the Conference, or citizens). Which is certain, is that the CoFoE did not take place in the original situation, but was a top-down process simply involving the bottom level, allowing for limited input from societies and also making a distinction between components. This was evident, for example, in the

primacy of European Citizens' Panels (ECPs) over their national counterparts – it was the first of them that debated the solutions submitted by the organizers of national events, and it is not clear how diligently this was done (cf. Moscrop and Warren, 2016, p. 2).

Allowing inequalities to increase benefits for the least-advantaged citizens has been met in fragments through repeated concern for the elderly, disabled or young people in the recommendations of most thematic areas of the Conference's final report. Equality between ECPs' participants, experts and observers, or between the commentators of the Multilingual Digital Platform and those who sat at the Plenary Session assemblies, did not formally distinguish the social relations, but the duties and obligations that individuals had towards each other were rather interdependent within the collective. Unfortunately, the opportunity to participate in CoFoE assemblies was mainly based on randomness, which was far from genuine equality of rights. It can be argued that the ability of individuals to present their own opinions strengthened the comprehensive system of freedom, which had only taken its first steps at the EU level so far. The priority of differentiation giving the privilege of justice over efficiency has been fulfilled, because although the actions aimed at implementing the proposals have not yet brought any tangible effects for citizens, the manifestations of impartial and democratic activities could have been seen during the Conference (cf. *ibid.*, pp. 2–10).

The political autonomy, understood as the lack of external coercions, was also preserved because the participants were obliged to be apolitical, and they themselves avoided attempts to contact influential people. However, it is not obvious whether authoritative standards in contacts, for example between Members of the European Parliament and the citizens in the ECPs, did not take place or were implemented in an unverifiable way. Nevertheless, a discussion containing elements of exerting influence between an experienced politician and an "ordinary citizen" culminating in a vote could have had only one winner and it was not the European public (cf. Cooke, 2000, p. 967).

Therefore, this is the procedural Habermas' approach that seems to be more in line with the progress of the Conference on the Future of Europe, as this concept is fundamentally broader while emphasizing formalism and leaving decision-makers the possibility to choose to what extent a given procedure is being implemented. It allows for the cognitive dimension of the discussion in order to find the "best way" to regulate public affairs. This method corresponds to

the standards of rationality, which are characterized by a kind of objectivity. Today's technological advancement undoubtedly guarantees access to information, but it is not certain whether citizens are aware of the credibility of their sources and whether they have sufficient openness of mind to assimilate content that has so far been foreign to them. Although CoFoE used the Internet to conduct debates, it was no longer applicable to broadening the knowledge of participants, and it could bring measurable effects if, for example, the Conference platform became not only a repository of documented activities, but also of theories in the thematic areas within which the debates were held. The only manifestation of activities in this area was the inclusion of experts in the ECPs, but the time allocated for their activity seemed insufficient for the participants' process of thinking to prove successful in each individual case and in each topic. It seems reasonable to ask why the permanent inclusion of specialists in other CoFoE components, for instance, in national events and panels, or even during the Plenary Session, was not adopted as an absolute rule, because also then some issues could require specialized clarification. The answer that comes to mind is as follows: it was not the deepening of knowledge, but – according to Habermas' assumptions – finding the pragmatic solutions approved by all parties, which played a more important role here (cf. *ibid.*, pp. 948–949).

In substantial terms, more things did not work properly in the unprecedented CoFoE phenomenon. The multiplicity and complexity of topics made it difficult for citizens to delve into the many different elements of their panel, which affected the quality of the deliberations. In a large number of cases, the participants also lacked basic information about the EU institutions, their functions and competences, as well as the decision-making processes in the Union (Emmanouilidis et al., 2022, pp. 5–6). This resulted in a tendency of the participants to exchange random remarks instead of conscious and thoughtful opinions. Despite the efforts of the organizers to provide information and access to the database of experts, their knowledge “was not sufficient or sufficiently objective”. Some ECPs' experts did not focus on providing a balanced overview of their topics, and sometimes used jargon that laymen could not understand. Moreover, the main controversies, challenges, opportunities, ongoing initiatives or existing policies in each area have been covered little or superficially (*ibid.*), which is reflected in the CoFoE's final report (*Conference*, 2022).

The debates taking place in the member states, if any, were not linked in a way that improved the quality of deliberation throughout the process. In the debates within the ECPs there was no discussion of proposals resulting from events in the member states, and many ECPs' participants were unaware of the national CoFoE dimension. Some experts considered the lack of a systematic relationship between the different levels of deliberations to be a key structural deficit of the Conference, as without a common methodological framework, national debates did not have to mirror the framework of discussions in ECPs. Moreover, since each national debate was free in the way the events were conducted, also their comparison seems not to add much, and the only thing they had in common was the coincidence (Emmanouilidis et al., 2022, p. 6).

Participatory democracy, emphasizing direct participation in the decision-making process also thanks to the development of information technology, contributes – according to its promoters – to overcoming obstacles in this art of governance. In fact, however, the involvement of citizens is treated as a remedy for the crisis of modern democracy manifested in a non-functional institutional apparatus and lowering social trust towards the authorities. Increasing the activity of citizens as a result of informing, communicating and voting with the use of new technologies is to enable a faster and more convenient way to participate in political life in the face of changes taking place in the modern world (Musiał-Karg, 2013, pp. 89–93). Some elements taken from this approach should have been used also in CoFoE, namely, the Multilingual Digital Platform. It meant a departure from the current digitalized EU consultation practice, which is by definition top-down, non-deliberative, monolingual, questionnaire-based and has a static format, and taking on a new dimension that is open, interactive and moderated. Ultimately, however, it was still characterized by a vertical structure. Due to its limited functionality, it has mainly become a mechanism for collecting evidence of activity, “contribution from many events held under the umbrella of the Conference”, and not necessarily a meeting place. It provided the technocratic input of citizen-experts over the advice of laymen and did not allow for the desired discussion between citizens and other stakeholders present on the platform. This tool did not seem to be able to overcome the main structural limitations within the EU participatory channels (Alemanno, 2022, p. 495).

Deliberative democracy emphasizes rational responsibility, not at all because it offers a vision of perfect ethical harmony while operating within the framework and limits of the law.

The participation of civil society in the CoFoE has been terminated for the moment, and the created mandate must wait for legal implementation. When establishing the Conference, the EU institutions did not commit themselves to implement all the proposed suggestions. Sceptics of this solution could say that it was a departure from responsibility for something they endorse, and the work of citizens during the debates would have been in vain if its effects had not been literally implemented. However, the intentions of EU institutions were different, because it was not known in advance what the feasibility of CoFoE recommendations would be. The goal was not the dispassionate submission to the opinions of citizens, which might even be mutually exclusive or counter-effective, but only to determine the directions of the authorities' actions, which was not in contradiction with the principle of sovereignty. Some of the proposals will be ignored by EU institutions, and there may even be selectivity among the solutions recommended. It is worth remembering, however, that EU institutions are only a part of the whole EU system, and some of their moves may be blocked by member states. Eventually, the CoFoE has been considered a success, because it is not up to the Conference itself to decide what, when and where the proposed measures will be implemented. Deliberative communication, which is the result of political culture, political socialization and initiatives that shaped the opinions produced, remained high, which did not determine the follow-up of the process (cf. Habermas, 1997, pp. 56–58).

Therefore, it should be stated that the first hypothesis (H1) was not strengthened because both social and institutional actors played key roles in the Conference on the Future of Europe. The hybrid structure of the Conference did not correspond to core assumptions of the concept of deliberative democracy, since the impact of those two types of entities on the final report was not mutually balanced. Moreover, the participation of experts (selected by institutions in a non-transparent way) made the social individuals subjected to manipulation in terms of access to knowledge and information, which contributed to lowering the practical quality of the Conference results reflected in the final report. The reform proposals presented in this document are ideologically biased, expressing mainly pro-federalist connotations. Some of them are practically impossible to implement, which strengthens the second hypothesis (H2). In general, in most cases, the deliberative process during the Conference was characterized by all kinds of in-built limitations, which resulted in CoFoE not fulfilling its declared tasks.

4. ...or Back to EU's Deliberative Supranationalism

Deliberative supranationalism – in more recent works Joerges (2021, p. 5) proposes to call it the “conflicts law constitutionalism” – refers primarily to defining EU law but in a broader sense it should be seen as a pre–theory of EU political decision–making (cf. Tosiek, 2018, pp. 67–106). It is based on the adoption of three theses. Firstly, the European Union has not become a “market without a state” and the member states have not turned into “states without a market”. Binding decisions of the Union act as guardians of compliance with the principle of freedom of competition and become an instrument of deregulation. Secondly, the European Union has not been transformed into a “regulatory state” in which the internal market based on “re–regulation” is driven by the decisions of non–majoritarian institutions. Rather, the resulting system offers a perspective of more far–reaching consequences for the relationship between decisions of the state and those of the EU (Joerges, 2002, pp. 139–142).

The proponents of deliberative supranationalism assume that the EU member states are not autonomous entities, being instead dependent on cooperation. However, the EU does not transform into a federation and will not be able to transform into one until its component parts in the form of states express such a will. The EU manages matters of “knowledge”, leaving political issues to democratic bodies. It is organized around functional goals, without being a structure striving for federalization (Joerges, 2010, p. 1–8).

Deliberation can be perceived here in three ways: normatively, rationalistically or functionally (Neyer, 2006, pp. 781–788). The normative approach is based on the statement that political power ultimately results from the will of the nation understood as free and equal citizens acting as a collective body. The concept of the “public sphere” is of greatest importance, in which individual preferences are transformed into collective will. In the case of the European Union, the focus is on disagreement, which contributes to a permanent process of political constitutionalization aimed at recognizing, respecting and representing the values, opinions and vital interests of the participants. The rationalist approach is based on treating the self–interest of political actors as the main source of their motivation. Politics is perceived as a sphere of

interests and asymmetric distribution of power. Conflicts of interest are resolved through bargains and voting, while deliberation is only in the background. In the case of the European Union, political solutions are not the result of the interaction of individuals, but of collective actors representing a “combined” interest. The legitimacy of the views presented by the participants of the deliberation is not the subject of the discussion itself, and the main task is to determine the conditions of the deliberation. It is also important to distinguish administrative actors from political ones: technocrats definitely prefer to look for solutions corresponding to their expertise, not being dependent on political choices. The functional approach to deliberation is based on perceiving it as a means to achieve the goal of effective and legitimized governance of the European Union. Any political system should be based on communicative interaction and joint efforts to solve problems. The decision resulting from the deliberation process is based on the application of convergence-oriented procedures. The deliberation procedures also support the subsequent decentralized implementation of the adopted decisions (ibid.).

The authors of deliberative supranationalism emphasize the importance of democracy within a member state, but they deliberately do not use the term “deliberative democracy” at the EU level. Firstly, the decisions taken in the Union are fundamentally influenced by the limitations imposed on the domestic decision-making processes of states through guarantees of compliance with the EU law, commitments not to ignore the positions of other states, and the binding of nation states to transnational rules and obligations. Therefore, the supranational nature of the political system of the European Union is of fundamental importance. Secondly, governing the European Union cannot be based on a democratic mandate identical to the one of the state. In the context of a supranational system, a different quality of opinion-forming and decision-making must be taken into account (Joerges, 2002, p. 151; Joerges and Rödl, 2008, pp. 2–7; Joerges and Rödl, 2009, pp. 2–7).

The goal of deliberation is not to democratize the EU. It is impossible also because the Union is based on the principle of inequality linked to the principle of state sovereignty. The historical development of integration processes shows no tendency to strengthen the democratic principle of political equality. Most member states are satisfied with the situation in which the EU is not a stand-alone carrier, but an additional and supporting “layer” of democratic governance. At the same time, the EU is a relatively transparent organization and offers great opportunities in terms

of participation, accountability and transnational discourse (Neyer, 2012, pp. 526–527). It is therefore proposed to look for sources of legitimacy for EU decisions outside the sphere of democracy, offering a two–stage approach. The first level is based on emphasizing the supranationality: EU law is defined as an order oriented to resolving conflicts by referring to principles accepted by all stakeholders. The democratic basis of this law are the defects of the member states, which are manifested in the form of extra–territorial effects. The second level is based on emphasizing the deliberation, where the EU becomes an alternative to hierarchical legal structures, and its main feature is the orientation towards mutual control of the interests of individual states. In this situation, the structures of transnational decision–making contribute to deepening of the democratic deficit defined in terms typical for the state (Joerges, 2001, pp. 4–5; Joerges, 2007, pp. 5–9).

However, in his recent works, Joerges clearly begins to see the need to supplement his pre–theory with a democratic context, referring, for example, to the concept of “democracy–enhancing conflicts law” created by Dani Rodrik (cited in Joerges, 2022, p. 817). At the same time, he seems to reject the possibility of the EU building its own model of democracy, recalling the concept of “inter–democracy” created by Daniel Innerarity. An important consequence of this thinking is the recognition of the heterogeneity of Europe, which excludes the creation of absolutely universal regulations, proposing instead a democratization of the EU “on the model of complex democracies”. This complexity is related not only to the diversity of its citizens, but to the diversity of issues on which they have to decide. In essence, it is a “democratization of interdependencies” that must replace hierarchical models typical for states. The idea of “United in Diversity through conflicts–law constitutionalism” indicated by Joerges is an anti–centralist and confederal vision, not a federalist one (Joerges, 2019, pp. 167–168). It is also recognized that the survival of the European Union depends on the establishment of a specific solidarity between the divided but interdependent societies of Europe. This vision means abandoning the idea of increasing uniformity in favour of seeking constructive cooperation between unequal polities (Hien and Joerges, 2020, p. 9).

Based on the above review, two hypotheses can be put forward regarding the implementation of the results of the Conference on the Future of Europe. Firstly, in terms of substance, it should be suggested that due to the limited epistemic quality of deliberative processes, the EU

institutions would not follow up the results of the Conference in the form of significant reforms (H3). Secondly, in view of the characteristics of the EU decision-making system, it must be assumed that due to the restricted position of member states' representatives in the structure of the Conference, the governments would ignore CoFoE's results (H4).

From the start, the joint declaration signed on 10 March 2021 by the presidents of the European Parliament, the Commission and the Council was a compromise text with many ambiguities. The Conference was conceived as a combination of bottom-up participatory democracy and top-down elite decision-making, while its mandate remained open. The ultimate success or failure of the Conference depended on the quality of political leadership and legal ingenuity (Fabbrini, 2020, p. 413). At the same time, the Conference was strongly influenced by agreements between the three largest political groups in the European Parliament. In this sense, the agenda of the Conference was marked by topics that include strengthening both the Parliament and the Commission as supranational institutions (Johansson and Raunio, 2022, pp. 188–189).

As expected, the reactions of EU supranational institutions to the results of the Conference were positive. The European Parliament adopted its resolution even before the closing event (European Parliament, 2022a). Appreciating its contribution to the Conference, it saw the need for treaty changes, and in its subsequent resolution (European Parliament, 2022b) presented an informal proposal to amend the treaties on the basis of Art. 48 TEU, which provides, among others, moving from unanimity to qualified majority voting in the Council, adjusting the EU's powers in certain areas, and strengthening Parliament's powers in EU budgetary procedures. Finally, the Parliament called on the European Council to prepare a Convention.

The European Commission has also committed itself to making efforts as part of its response to CoFoE's demands. It declared a reflection on the Conference in order to make participatory democracy a permanent element of the policy-making process in the EU (Commission, 2022a). To this end, it presented four categories of action, announcing both the legislative and non-legislative activities. The Commission has advocated reforms to make the EU more effective, including through treaty changes if needed (Commission, 2022b).

A preliminary technical assessment of the CoFoE's proposals was also made by the Council's General Secretariat. It declared that treaty changes were not necessary to implement

the vast majority of measures (Council, 2022a; 2022b). The European Council, on the other hand, was very modest about the results of the Conference. While taking note of the proposals in the final report, it stipulated that the EU institutions, within the limits of their competences and in accordance with the provisions of the treaties, should take effective follow-up measures that had already started and of which citizens should have been informed (European Council, 2022). This laconic statement showed the lack of consensus among the heads of states and governments on whether to consider the CoFoE objectives of direct dialogue with citizens as met and how to behave towards the results of the Conference.

The Conference's originator, French President Emmanuel Macron, spoke positively about its results. At the closing ceremony, he hailed CoFoE as an unprecedented democratic exercise that involved citizens in designing solutions for themselves and Europe. He was of the opinion that most of the measures envisaged did not require institutional reforms, but that in some cases swift and joint decisions needed to be taken, which could be achieved through a revision of the treaties by Convention (Macron, 2022). Also, the speech of German Chancellor Olaf Scholz at the University of Prague was rather favourable to the outcome of the Conference. He tackled there, *inter alia*, the topic of possible EU enlargement, which must have been combined with institutional deepening in terms of the transition from unanimous to majority decision-making, limiting the number of commissioners and more faithfully reflecting the structure of societies in elections to the European Parliament. In this respect, he considered possible treaty reforms to be acceptable and desirable (Scholz, 2022).

On the other hand, thirteen member states from Eastern and Northern Europe presented a non-paper dated 9 May 2022. Their leaders adopted a different perception of the whole process and what should follow it, being of the opinion that citizens' ideas "should speak for themselves" and should not be instrumental in the interests of EU institutions. Each of them should act in accordance with its own regulations, within the framework of the treaty-based division of competences, while respecting the principles of subsidiarity and proportionality. The signatories also stipulated that the change of the treaties had never been CoFoE's aim, and although they did not rule it out in advance, they did not support ill-considered and premature attempts to revise them. They were of the opinion that this would risk diverting political energy away from issues of concern to Europe's citizens and geopolitical challenges. Moreover, they stressed that

the current treaty framework has shown that the EU is able to cope with crises like Covid–19 pandemic and Russia’s aggression on Ukraine (*Non–paper*, 2022; cf. Zheltovskyy, 2022, pp. 674–675). Although the most important one, this document was not the only negative written reaction of groups of member states to the CoFoE during its progress and follow–up (cf. Drachenberg, 2022, pp. 6–7). As a result, one year after the conclusion of the CoFoE, member states have not even initiated any real discussion on implementation of the Conference’s results.

In some views (Alemanno, 2022) the Conference proves that the EU has become – albeit temporarily – an extraordinary “laboratory” for empirically testing the legitimacy of deliberative democracy not only in the real world, but also on a supranational scale in a way that has never been done before. From this perspective, the Conference could be seen as the ultimate testing ground for Habermas’ concept in transnational conditions. However, even before and also during the Conference, two fundamental views regarding its conclusion emerged (Ondarza and Ålander, 2021, pp. 6–8). The first of them was called a “counterproductive show” scenario, according to which the effect of CoFoE would be a solemn presentation of a report to the European Council without specific recommendations. The European Council would then duly take note of the report and make a non–binding promise to meet citizens’ demands as part of its strategic agenda. The second scenario was called a “European impulse”, in which the success of the Conference depended on the political quality and the active participation of national capitals in the Conference. In fact, a third scenario, unforeseen before, is most likely to happen, namely that the CoFoE’s results contain quite a lot of specific recommendations, but they will not be taken into account as a starting point for reforms, because no reforms will be undertaken.

The Conference could have provided an innovative model for the debate on EU reform, but it was not clear from the outset whether the ultimate mission of the Conference was to bring about a major federal restructuring of the Union or rather a more discreet functional readjustment. Therefore, it was necessary to generally answer the question whether the very convening of the Conference was not intended to circumvent the treaties (Fabbrini, 2019, p. 17). In this line of thought, Evangelos Venizelos (2021, p. 4), a former politician, believed that problems related to the crisis of the implementation of European constitutional law, liberal democracy and the rule of law, or challenges to the autonomy and supremacy of the EU legal order could not be solved by means of hybrid forms of inter–institutional dialogue and

consultations with randomly selected citizens. On the contrary, better solutions can be achieved by openly addressing the issues of sovereignty, identity and political equality. In other words, it would be detrimental to the Conference on the Future of Europe to create the false impression that the state and prospects of European integration are a soft matter of a consultative democracy offering only deliberative solutions. Moreover, it could be a dangerous “institutional illusion”.

Also from the point of view of strengthening the federal features of the EU, the Conference has been criticized. For example, there were accusations that the Conference ignored the legal context, which is supposedly reflected in the fact that judges had not been invited to the deliberation process. Their disregarding created an imbalance in access to information resulting from the adoption of the view of elitist isolation of judges from the general population. Such exclusion artificially reduced the importance of judges in shaping the future of the EU and the potential for interactions between them and the participants in the Conference (Steuer, 2021).

Therefore, it seems that hypotheses arising from deliberative supranationalism have been strengthened. In line with the third hypothesis (H3), within a year after the end of the Conference, there was not even a political discussion on the implementation of important postulates resulting from the final report. Only minor suggestions concerning the use of deliberative procedures as elements of social consultations were announced for implementation (cf. Commission, 2023). Despite the initial efforts of the European Parliament and the Commission, there is no debate on changes in primary law – this has been blocked by the member states. The hypothesis of a negative reaction of the member states (H4) – although not confirmed for all of them – has also gained importance, proving that the EU decision-making system is still of an intergovernmental nature. The positive, though to a large extent propagandist reaction of the two largest national players did not meet a positive response from the others.

5. Conclusions

Despite the fact that the Conference on the Future of Europe enabled historical participation of citizens in shaping EU development, the level of democratization of this organization did not increase, and it is possible that due to the nature of the discussions, the low inclusivity of the process, intransparency and the lack of participation of representatives of the governments, it

decreased. After the Conference, the EU turned out to be first and foremost an international organization in which major decisions on reforms are taken consensually or unanimously by the governments of the member states, and then – if they take the form of treaty changes – approved in national processes in accordance with constitutional requirements and political practice.

Therefore, the congruence with reality of the hypotheses referring to the concept of deliberative democracy has been only partially confirmed, since the structure of the Conference did not fully correspond to its assumptions, while the substantial quality of the Conference's proposals seemed to be low. In turn, both hypotheses relating to deliberative supranationalism have been strengthened. One year after the conclusion of the Conference, no significant interinstitutional or inter-state discussion on the implementation of its proposals started, no Convention is planned, and there is no support for introducing treaty changes. So far, the only measurable results of the Conference are minor non-treaty reforms proposed and partially implemented by the Commission, consisting in the establishment of new informal deliberative bodies of a consultative nature.

It would be wrong to see the European Union as just a political system, forgetting that it is also an international (sub)system. It can be confirmed that the EU is not a developed political community as that of a state. It is the interdependence of national (democratic) political communities that plays a fundamental role in EU decision-making. It seems, therefore, that the introduction of principles of deliberative democracy at the EU level was an ineffective step. If the activity of the Union is considered in deliberative terms, then the concept of deliberative supranationalism is more useful here, because it takes into account the crucial decision-making role of the governments or, at least, national institutions. As it was stated, the idea of deliberative democracy is of normative nature, while the deliberative supranationalism is an explanatory concept. These initial findings require, however, further in-depth research, including not only qualitative but also quantitative studies.

References

1. Alemanno, A. (2022). Unboxing the Conference on the Future of Europe and Its Democratic Raison d'être, *European Law Journal*, 26(5–6), pp. 484–508.
2. Bucholski, M. (2015). *Deliberative Democracy and the European Union: Habermasian and Foucauldian Perspectives*. Bachelor Paper, Faculty of Arts and Social Sciences, Maastricht University.
3. Chambers, S. (2018). The Philosophic Origins of Deliberative Ideals, in Bächtiger, A., Dryzek, J.S., Mansbridge J., Warren M. (eds.). *The Oxford Handbook of Deliberative Democracy*. Oxford: Oxford University Press, pp. 55–69.
4. Cohen, J. (1996). Procedure and Substance in Deliberative Democracy, in: Benhabib, S. (ed.). *Democracy and Difference. Contesting the Boundaries of the Political*. Princeton: Princeton University Press, pp. 95–119.
5. Commission 2022a. *European Commission Press Release. Commission Sets out First Analysis of the Proposals Stemming from the Conference on the Future of Europe*, Brussels, 17 June.
6. Commission 2022b. *Communication from the Commission to the European Parliament, the European Council, the Council, the European Economic and Social Committee and the Committee of the Regions. Conference on the Future of Europe. Putting Vision into Concrete Action*, Brussels, 17.6, COM(2022) 404 final.
7. Commission 2023. *European Commission Press Release. New Generation of European Citizens' Panels: Commission Hosts Panel on Learning Mobility*, Brussels, 3 March.
8. *Conference on the Future of Europe. Report on the Final Outcome*, May 2022.
9. Cooke, M. (2000). Five Arguments for Deliberative Democracy, *Political Studies*, 48(5), pp. 947–969.
10. Council 2022a. *Conference on the Future of Europe – Proposals and Related Specific Measures Contained in the Report on the Final Outcome of the Conference on the Future of*

- Europe: Preliminary Technical Assessment*, Brussels, 10 June (OR. en), 10033/22 ADD, 1 en, LIMITE AG 63 INST 223.
11. Council 2022b. *Conference on the Future of Europe – Proposals and Related Specific Measures Contained in the Report on the Final Outcome of the Conference on the Future of Europe: Preliminary Technical Assessment*, Brussels, 30 November (OR. en), 10033/22 ADD, 1 REV 1 en, AG 63 INST 223.
 12. Drachenberg, R. (2022). *The Conference on the Future of Europe and the European Council: How Far is There a Shared Policy Agenda for the Future?*, European Parliamentary Research Service, European Council Oversight Unit, PE 730.325.
 13. Dryzek, J.S. (2017). The Forum, The System, and the Polity: Three Varieties of Democratic Theory. *Political Theory*, 45(5), pp. 610–36.
 14. Dyszy–Graniszewska, M. (2016). Teorie Johna Rawlsa i Jürgena Habermasa a deliberatywny model demokracji [Theories of John Rawls and Jürgen Habermas and the Deliberative Model of Democracy], in Turoń–Kowalska A. (ed.). *Demokracja deliberatywna: utopia czy ratunek dla demokratycznych wartości? [Deliberative Democracy: Utopia or Salvation for Democratic Values?]*. Sosnowiec: Remar, pp. 27–44.
 15. Emmanouilidis, J. et al. (2022). *Conference on the Future of Europe: What Worked, What Now, What Next?*. Bertelsmann Stiftung, European Policy Centre, King Baudouin Foundation, Stiftung Mercator, High Level Advisory Group Report, 22. February.
 16. Ercan, S.A., Dryzek, J.S. (2015). The Reach of Deliberative Democracy, *Policy Studies*, 36(3), pp. 241–248.
 17. European Council 2022. *European Council Meeting (23 and 24 June 2022) – Conclusions*, Brussels, 24 June (OR. en), EUCO 24/22, CO EUR 21, CONCL 5.
 18. European Parliament 2022a. *European Parliament Resolution of 4 May 2022 on the Follow-up to the Conclusions of the Conference on the Future of Europe ([2022/2648\(RSP\)](#))*.
 19. European Parliament 2022b. *European Parliament Resolution of 9 June 2022 on the Call for a Convention for the Revision of the Treaties (2022/2705(RSP))*.
 20. Fabbrini, F. (2019). *The Conference on the Future of Europe: A New Model to Reform the EU?*. Brexit Institute Working Paper Series, No. 12.

21. Fabbrini, F. (2020). The Conference on the Future of Europe: Process and Prospects, *European Law Journal*, 26, pp. 401–414.
22. Goodin, R.E., Dryzek, J.S. (2006). Deliberative Impacts: The Macro–Political Uptake of Mini–Publics, *Politics & Society*, 34(2), pp. 219–244.
23. Habermas, J. (1997). Popular Sovereignty as Procedure, in Bohman, J., Rehg, W. (eds.). *Deliberative Democracy: Essays on Reason and Politics*. Cambridge–London: MIT Press, pp. 35–65.
24. Habermas, J. (2005). *Faktyczność i obowiązywanie: teoria dyskursu wobec zagadnień prawa i demokratycznego państwa prawnego [Factuality and Validity: Theory of Discourse towards the Issues of Law and the Democratic Rule of Law]*. Warszawa: Scholar.
25. Hien, J., Joerges, C. (2020). Cultural Political Economy and Conflicts Law – A New Way to Approach the Eurozone Crisis, *Global Perspectives*. doi: <https://doi.org/10.1525/gp.2020.13301>
26. Hurrell A., Menon A. (1996). Politics Like Any Other? Comparative Politics, International Relations and the Study of the EU, *West European Politics*, 19(2), pp 386–402.
27. Jasiński, K. (2017). Źródła i charakter demokracji deliberatywnej [Sources and Character of Deliberative Democracy], *Studia Warmińskie*, 54, pp. 43–58.
28. Joerges, C. (2001). ‘Deliberative Supranationalism’ – a Defence, *European Integration online Papers*, 5(8). Available at: <http://eiop.or.at/eiop/pdf/2001-008.pdf> (Accessed: 1 May 2023).
29. Joerges, C. (2002). ‘Deliberative Supranationalism’ – Two Defences, *European Law Journal*, 8(1), pp. 133–151.
30. Joerges, C. (2007). *Democracy and European Integration: A Legacy of Tensions, a Re–Conteptualisation and Recent True Conflicts*, EUI Working Papers, LAW, 25.
31. Joerges, C. (2010). *Unity in Diversity as Europe’s Vocation and Conflicts Law as Europe’s Constitutional Form*. Political Science Series, Institute for Advanced Studies, Vienna.
32. Joerges, C. (2019). Sociological Shortcomings and Normative Deficits of Regulatory Competition, *European Papers*, 4(1), pp. 157–168.

33. Joerges, C. (2021). Responding to Socioeconomic Diversity in the European Union (and to Steven Klein's Essay) with Democracy–Enhancing Conflicts Law, *Global Perspectives*. doi: <https://doi.org/10.1525/gp.2021.18788>
34. Joerges, C. (2022). Economic Constitutionalism and “the Political” of “the Economic”, in Grégoire, G., Miny, X. (eds.). *The Idea of Economic Constitution in Europe. Genealogy and Overview*. Leiden: Brill, pp. 789–820.
35. Joerges, C., Rödl, F. (2008). *Von der Entformalisierung europäischer Politik und dem Formalismus europäischer Rechtsprechung im Umgang mit dem “sozialen Defizit” des Integrationsprojekts. Ein Beitrag aus Anlass der Urteile des EuGH in den Rechtssachen Viking und Laval*, ZERP–Diskussionspapier, 2.
36. Joerges, C., Rödl, F. (2009). Informal Politics, Formalised Law and the ‘Social Deficit’ of European Integration: Reflections after the Judgements of the ECJ in Viking and Laval, *European Law Journal*, 15(1). doi: <https://doi.org/10.1111/j.1468-0386.2008.00448.x>
37. Johansson, K.M., Raunio, T. (2022). Shaping the EU's Future? Europarties, European Parliament's Political Groups and the Conference on the Future of Europe, in Ahrens, P., Elomäki, A., Kantola J. (eds.). *European Parliament's Political Groups in Turbulent Times*. Cham: Palgrave Macmillan, pp. 173–197.
38. Krzynówek, A. (2010). *Rozum a porządek polityczny: wokół sporu o demokrację deliberatywną [Reason and Political Order: around the Dispute over Deliberative Democracy]*. Kraków: WAM.
39. Macron, E. (2022). *Speech by Emmanuel Macron at the Closing Ceremony of the Conference on the Future of Europe*, Strasbourg, 9 May. Available at: <https://lv.ambafrance.org/Speech-by-Emmanuel-Macron-at-the-closing-ceremony-of-the-Conference-on-the> (Accessed: 1 July 2022).
40. Moscrop, D.R.H., Warren, M.E. (2016). When is Deliberation Democratic?, *Journal of Public Deliberation*, Vol. 12, No. 2. doi: <https://doi.org/10.16997/jdd.256>
41. Musiał–Karg, M. (2013). Demokracja bezpośrednia w obliczu zastosowania nowych technologii [Direct Democracy in the Face of the Use of New Technologies], in Musiał–Karg, M. (ed.). *Demokracja w obliczu nowych mediów: elektroniczna demokracja, wybory przez Internet, kampania w sieci – teoria, doświadczenia, perspektywy [Democracy in the*

- Face of New Media: Electronic Democracy, Online Elections, Online Campaign – Theory, Experience, Perspectives*]. Toruń: Adam Marszałek, pp. 86–114.
42. Neyer, J. (2006). The Deliberative Turn in Integration Theory, *Journal of European Public Policy*, 13(5), pp. 779–791.
43. Neyer, J. (2012). Who’s Afraid of Justice? A Rejoinder to Danny Nicol, *Journal of Common Market Studies*, 50(3), pp. 523–529.
44. *Non-paper by Bulgaria, Croatia, the Czech Republic, Denmark, Estonia, Finland, Latvia, Lithuania, Malta, Poland, Romania, Slovenia, and Sweden on the outcome of and follow-up to the Conference on the Future of Europe*, 9 May 2022. Available at: https://www.europa-nu.nl/9353000/1/j4nvih7l3kb91rw_j9vvj9idsj04xr6/vlstn1p5intb/f=/non_paper.pdf (Accessed: 20 May 2022).
45. Ondarza, N. von, Ålander, M. (2021). *The Conference on the Future of Europe Obstacles and Opportunities to a European Reform Initiative That Goes beyond Crisis Management*, Stiftung Wissenschaft und Politik, Comment, No. 19.
46. Perlikowski, Ł. (2020). *Pluralizm i racjonalność w świetle demokracji deliberatywnej [Pluralism and Rationality in the Light of Deliberative Democracy]*. Płock: Mazowiecka Uczelnia Publiczna.
47. Pietraś, Z.J. (1998). *Decydowanie polityczne [Political Decision-Making]*. Warszawa–Kraków: PWN.
48. Rawls, J. (1997). The Idea of Public Reason, in Bohman, J., Rehg, W. (eds.). *Deliberative Democracy: Essays on Reason and Politics*. Cambridge–London: MIT Press, pp. 93–141.
49. Rawls, J. (2013). *Teoria sprawiedliwości [Theory of Justice]*. Warszawa: PWN.
50. Scholz, O. (2022). *Speech by Federal Chancellor Olaf Scholz at the Charles University in Prague*, 29 August. Available at: <https://www.bundesregierung.de/breg-en/news/scholz-speech-prague-charles-university-2080752> (Accessed: 1 October 2022).
51. Sroka, J. (2009). *Deliberacja i rządzenie wielopasmowe: teoria i praktyka [Deliberation and Multistrand Governance: Theory and Practice]*. Wrocław: Uniwersytet Wrocławski.
52. Steuer, M. (2021). *Neglected Actors at the Conference on the Future of Europe*, *Verfassungsblog*, 30 Juni. Available at: verfassungsblog.de/neglected-actors-at-the-conference-on-the-future-of-europe/ (Accessed: 10 February 2023).

53. Tosiek, P. (2018). *Member State in the Decision–Making System of the European Union. The Example of Poland*. Lublin: UMCS.
54. Venizelos, E. (2021). *The Conference on the Future of Europe as an Institutional Illusion*, Verfassungsblog, 16 Dezember. Available at: <https://verfassungsblog.de/the-conference-on-the-future-of-europe-as-an-institutional-illusion/> (Accessed: 5 February 2023).
55. Zheltovskyy, V. (2022). The European Parliament as Transformational Actor toward the Reconsideration of the EU Eastern Policy, *Politics in Central Europe*, 18(4), pp. 661–679. doi: <https://doi.org/10.2478/pce-2022-0027>