



Reconsidering the EU's 'Democratic Deficit'

A Deliberative Perspective

Christina Schmahl

Centre for European Research (CERGU)

University of Gothenburg

Box 711, SE 405 30 GÖTEBORG

November 2015

© 2015 by Christina Schmahl. All rights reserved.



This paper was the winner of the 2015 Rutger Lindahl Award for Best Master's Thesis in
European Studies.

ABSTRACT

The debate on the ‘democratic deficit’ of the European Union is omnipresent at times when rapid inter-governmental and insufficiently legitimised policy decisions are taken in order to resolve the effects of the current Eurozone crisis. Taking a deliberative perspective on the question whether the EU actually suffers a ‘democratic deficit’, this paper develops an analytical framework based on the normative cornerstones of deliberative theory. Contrary to previous work, it is argued that the EU and usual nation states are not simply comparable as concerns their democratic structure, but that the level of comparison has to be adequately lifted to the more abstract level of a political system. Therefore, this paper chooses a systemic approach and incorporates the special features of the EU’s *sui generis* character in its investigation. By thoroughly carving out the core assumptions from deliberative theory and identifying the minimal or necessary conditions of the concept of democracy proposed by deliberative theory, i.e. Deliberative Democracy, this investigation provides a theoretically deduced analytical framework which is apt to give an answer to the guiding question whether the EU (or any political system) suffers a ‘democratic deficit’. By way of illustration, the identified conditions are applied to the economic governance structure of the EU that evolved in the course of the Eurozone crisis in order to demonstrate the framework’s applicability. It is found that the demanding circular process of self-legislation proposed by deliberative theory is interrupted at several points and that the EU, in its current architecture, does suffer a ‘deliberative deficit’.

I. Introduction

Today’s nature of the European Union (EU) as entity *sui generis*¹ displays a fascinating, but, at the same time, highly demanding research subject. While European integration proceeds constantly – now no longer only at the economic dimension, but also at the political dimension – and more and more rights are transferred to a supranational level of governance, the EU has to see itself confronted with the accusation of lagging behind as regards the expansion and development of democratic values and principles. The multifaceted democratic flaws that are brought forward by scholars, politicians and citizens alike add up to the broader debate on whether the EU suffers a so called ‘democratic deficit’.

This debate necessarily reflects considerations on the fundamental nature of democracy as such (cf. Jensen, 2009) and thus explains why the question of whether the EU meets (however defined) democratic standards is so hotly debated. Definitions of democracy reach from substantive to procedural, from input- to output-oriented, from broad to narrow, from normative to empirical conceptualisations. This is obviously mirrored in the manifold definitions and localisations of the ‘democratic deficit’ of the EU. Whereas some scholars see the EU’s most severe problems of legitimacy in the

¹ The labelling of the EU as entity *sui generis* is not uncontested. For an opposite view, see for example, Sbragia (1992).

persistently weak role of the European Parliament (EP), others criticise the (nationally) fragmented party structure, the missing opportunity to directly elect the President of the European Commission or the absence of a European public sphere (including, for example, a European media) (cf. Grimm, 2014).

Although it might not be possible to narrow down the phenomenon of democracy (and consequently the definition of the ‘democratic deficit’) to one universally accepted conception, the coexistence and mixing of multiple definitions urges for a targeted investigation that thoroughly carves out the theoretical standards of the respective theory of democracy and applies them. Since previous literature shows rather severe inadequacies with regard to this endeavour, European Union research is in desperate need of a well defined concept of democracy that is able to grasp the EU in its genuine design of supranational governance and accounts for all its peculiarities compared to international organisations or ‘usual’ nation states.

Apart from the scientific relevance of the issue, it goes without saying that, at the same time, it is of crucial importance to the European peoples themselves. As EU legislation permeates more and more the societal spheres of the EU, they are ever more directly affected by the decisions that are met at that supranational level of governance. Most notably, survey data shows that the European citizens’ image as well as future expectations of the EU and their trust in the organisation have continued a downward trend since the eruption of the Eurozone crisis in 2009 (Eurobarometer, 2014). Especially the Euro-rescuing politics conducted by the so called Troika (composed of European Commission, International Monetary Fund (IMF) and European Central Bank (ECB)) as well as the Euro group were preponderantly regarded as highly undemocratic (cf. Scharpf, 2014a). This is because, on the one hand, these institutions are considered to possess the least democratic control by their constituency or other European institutions, but which, on the other hand, dominantly shaped and determined the measures to be taken concerning the rescue of indebted banks and later even Member States (MS). Besides, in the course of the crisis, more and more rescue measures (such as the European Fiscal Compact and the European Stability Mechanism) were established outside the ‘constitutional’ framework of the EU, i.e. the Treaties, on a mere intergovernmental level of governance (cf. Bickerton *et al.*, 2014). These developments substantially challenge the EU’s legitimacy as well as future European integration. As concerns for example the objective of the European Commission to create a ‘deep and genuine Economic and Monetary Union (EMU)’ in order to prevent a recurrence of the crisis, further supranationalisation will give rise to the question of how to realise the transfer of rights from MS to the EU without losing track of the legitimacy of the decision-making procedures and the approval of the citizens (European Commission, 2012).

In the present paper, it is presupposed that only with a normatively well-founded approach which is equally empirically applicable to the case(s) of interest it will be possible to have a constructive debate on whether the EU suffers a ‘democratic deficit’ or not. Since existing theories of democracy and their respective measurement instruments do not succeed in doing so, this paper sets out to develop a new perspective on democracy in the EU. I argue that it is through the lenses of deliberative theory² the EU can most fruitfully be investigated with regard to its democratic character. As shall be clarified later, deliberative theory can be considered to have certain advantages over other theories of democracy, i.e. for example its stringent focus on procedures rather than on the output and, correspondingly, its flexibility and adaptability. Thus, it seems promising to take a deliberative perspective on democracy in the EU and generate a corresponding set of variables capturing the core idea of the concept of Deliberative Democracy. Thereby, the question whether the EU suffers a ‘democratic deficit’ can be reconsidered from an innovative and fresh point of view and can be reformulated as follows ‘Does the EU suffer a ‘*deliberative* deficit’?’. In this way, the gridlocked debate might be fuelled once again and provide new and valuable insights, essential for future research as well as actual reforms regarding democratic standards in the EU.

Accordingly, this paper attempts to give an answer to the broader question of the EU’s democratic quality and the question whether the EU suffers a ‘democratic deficit’ from the theoretical perspective of deliberative theory – which is, as a matter of course, only *one* possible approach to the issue at hand.

II. Outline

This paper is divided into seven sections. After the introduction (section I) and this short overview (section II), section III discusses two major strands of research, which, on the one hand, deal with the question whether the EU suffers a ‘democratic deficit’ and, on the other hand, apply deliberative theory to the EU. Based on the findings of the literature review, section IV specifies the research question and states the aim of this thesis. Section V subsequently intends to substantiate the concept of Deliberative Democracy. To this end, it, first, presents some preliminary considerations concerning the normative grounding of a notion of democracy, justifies the choice of deliberative theory for this present investigation and discusses the special features of the EU as a political system.

² In this paper, the terms ‘deliberative theory’ and ‘discourse theory of law and democracy’ (which is the Habermasian term used in his work *Between Facts and Norms*) will be treated as synonymous expressions. ‘Deliberative Democracy’ then, rather points towards the underlying concept of the theory.

Second, deducting necessary conditions from deliberative theory, it identifies the core variables constituting the concept of Deliberative Democracy. Section VI investigates whether the case of interest, i.e. the EU meets the democratic standards distilled from the theory. By way of illustration, it examines whether the rescue policies adopted in the course of the Eurozone crisis erupting in the end of 2009 and the evolving economic governance structure live up to the democratic standards set by deliberative theory. Finally, section VII draws a short conclusion and discusses potential future research.

III. Previous Research

The motivation to reconsider the debate on the ‘democratic deficit’ from a perspective of deliberative theory presupposes two important considerations. First, it challenges existing literature on the EU’s ‘democratic deficit’ as it refrains from applied concepts of democracy; second, notwithstanding the acknowledgement of the great value of existing approaches applying deliberative theory to the EU, it questions the employed scope. Accordingly, this section on previous research has two foci. On the one hand, it will discuss the literature that evolved around the debate on the EU’s ‘democratic deficit’ in general, on the other hand, it will take a closer look at the efforts trying to connect the theory of deliberative theory to the EU in order to explore its deliberative character.³

A. Research on the ‘democratic deficit’: In search of the nature of democracy

The discussion of literature on the ‘democratic deficit’ of the EU follows a procedural, rather than a substantial logic, i.e. it aims at reproducing the method or procedure through which scholars arrive at a certain definition of the ‘democratic deficit’. It therefore does not explicitly focus on the scholars’ localisation of the problems the EU suffers from (e.g., among the most prominent, the weak position of the European Parliament), but on the underlying assumptions and arguments. In this sense, loopholes of respective literature can be identified on three different levels. Either the approaches demonstrate (1) *conceptual flaws* choosing an inappropriate point of departure for their theoretical reasoning (usually the unit of analysis of a nation state); they suffer (2) *theoretical deficiencies* in the sense that they choose a theory of democracy as the basis of their arguments that is too minimalist and output-oriented or they do not thoroughly and comprehensively deduct their arguments from a theory of democracy at all; or the approaches struggle with (3) *the challenge of empirical explication*, i.e.

³ It goes without saying that the question on the EU’s democratic deficit closely relates to the concept of legitimacy (see also Jensen, 2009). Accordingly, in the course of this investigation, it will often be referred to aspects of legitimacy utilising the definitions of input- and output-legitimacy introduced by Scharpf (1999).

in simple terms, the applicability of the theory. Obviously, these three types of deficiencies are not mutually exclusive, i.e. the very same approach might show more than one of these shortcomings. However, for the sake of better clarity, one contribution shall only be discussed under one section.

(1) Conceptual flaws

Many scholars apply measures of democracy to the EU that originally were generated to measure this phenomenon at nation state level or they compare the EU to ‘usual’ nation states on the basis of different indices of democracy (see Zweifel, 2002; Crum, 2005; but also Crombez, 2003 and Moravcsik, 2002). These comparative approaches require the assumptions that the EU resembles other respective units of analysis at least to a certain extent. Therefore, scholars like Zweifel (2002, p. 814) presuppose that “the EU resembles federal states such as Germany, Switzerland, Canada, and the US in important respects” in order to be able to measure it against the same scales of democracy as the states. Also Crum (2005), actually acknowledging problems related to the mere transfer of the nation state’s analytical grid to the EU, resigns and seems to accept that “[f]or the moment, however, the institutions and the experience of representative [democracy] are what we have to start from, and bit by bit it may be possible to draw upon that experience to tailor institutions that are appropriate for the European Union” (Crum, 2005, p. 465).

Indeed, the EU can certainly be considered to have approached the characteristics of a federal state more and more throughout its process of integration that started back in the 1950s. However, clear differences, which question the comparability of the above listed units of analysis, remain. One of the most important and crucial differences is identified by Habermas (2014). According to him, the EU (in contrast to federal nation states) disposes of a supremacy of law, without having the provision of exercising a monopoly on the use of force and the power to take decisions of last resort. Remarkably, the right to alter the ‘constitution’, i.e. the Treaties of the EU, still lies in the hands of the Member States. This single, but far-reaching and decisive difference in the structure of the EU raises serious doubts about the ability to compare the EU to e.g. Germany in terms of democratic legitimacy and accountability.⁴

As, currently, the EU cannot be defined as a state, but rather as ‘state-like’ (Eriksen & Fossum, 2002; Grimm, 2015), somewhat in between a federal state and a confederation, these types of approaches demand too high of requirements from the political system⁵ of the EU. Consequently, in the application of these approaches, the EU usually falls short of the necessary conditions of a democ-

⁴ For a more detailed reflection on the special features of the EU (compared to national states), see section V.

⁵ Whether the EU can be classified as a political system has also been hotly debated. See, for example, Hix & Hoyland (1999). For the explicit definition of the concept used in this paper, see further below.

racy and cannot live up to the high expectations.⁶ Consequently, the different concepts of democracy are ‘stretched’ (see Sartori, 1970) and applied to cases that actually do not belong to the same class of units of analysis. Scholars such as Crombez (2003) try to circumvent that problem by using a more abstract class of units of analysis. In this sense, the different units are not grouped among the notion of ‘state’, but under ‘political system’. However, the different labelling does not bypass the problem that the EU can simply not be measured against the same standards of democracy as federal states – especially when it comes to the output of its legislative processes and the feedback loop to its constituency (cf. Ismayr, 2008).

To sum up, in ignorance of the peculiarities of the EU and its differences from well researched nation states the above discussed approaches show loopholes as concerns the very point of departure of their subsequent theoretical reasoning. Especially the work of Zweifel (2002) displays how far concepts of democracy are stretched in order to be able to impose existing indices of democracy on the EU. These circumstances urgently call for the development of a new set of measurement variables, which is based on an appropriate footing.⁷

(2) Theoretical deficiencies

The literature that shall be discussed in this section demonstrates so called theoretical deficiencies. Many scholars dealing with the question whether the EU suffers from a ‘democratic deficit’ acknowledge the critique which has been outlined in the preceding subsection and try to include it into their theoretical frameworks. Accordingly, the critique that will be brought forward against these approaches shifts its focus from the conceptual basis of a theoretical framework to the framework itself. Although most of the literature that shall be discussed here dissociates itself from nation state yardsticks (except from Moravcsik, 2002 and Crombez, 2003) and the – at this time often utilised – nation state based ‘parliamentary model of democracy’, it still shows severe shortcomings with regard to the assumptions derived from the respective democratic frameworks. Two groups can be identified: First, the famous output-oriented, democratically rather minimalist approaches by Majone (1998) and Moravcsik (2002), who do not see a ‘democratic deficit’ of the EU (cf. also Crom-

⁶ Zweifel (2002), however, concludes that the EU does not suffer from a ‘democratic deficit’. The different conclusions made by the scholars can be explained by their different perspectives: Whereas Zweifel (2002) (empirically) sees no difference between the EU (which, in his view, does not suffer a ‘democratic deficit’) and a federal nation state, Crum (2005) and others assert that the EU should be judged by the same yardsticks as nation states, as it is normatively desirable that the EU resembles a federal state. Hence, one could argue that they only implicitly assume a similarity of the units of analysis.

⁷ It has to be mentioned that, hypothetically, it cannot be ruled out that the normatively grounded variables that are to be identified do actually resemble nation state yardsticks. However, what is criticised here is the imprudent course of action of many scholars simply equating the EU with a nation state.

bez, 2003); second, approaches that recognise the ‘democratic deficit’ as a severe problem and suggest to overcome it by further EU integration (Føllesdal & Hix, 2006).

Concerning the first group, both Majone (1998) and Moravcsik (2002) take a very minimalist point of view on democracy in the EU. In this sense, Moravcsik (2002), in line with his Liberal Intergovernmentalist reasoning, naturally has rather limited expectations from the EU as a supranational level of governance. In his view, the EU, on which responsibilities have been transferred by the Member States throughout the integration process, has been instructed to carry out respective *functions*, but is still largely constrained by the MS themselves – which protects the EU at least in some respects from sliding into a ‘democratic deficit’. Moravcsik argues that “judged by the *practices* [emphasis added] of existing nation-states⁸ and in the context of a multi-level system, there is little evidence that the EU suffers from a fundamental democratic deficit” (Moravcsik, 2002, p. 621). Moreover, he points out that the policy output of the EU is quite close to the median voter’s preferences (Jensen, 2009). As Moravcsik (2002) does not account for any ‘independent’ developments at EU level that were not intended by the Member States (often referred to as *spill-overs*), he solely looks at the EU as an instrument used by the MS to execute certain functions (that, in his view, are mostly carried out efficiently and satisfyingly) and totally neglects any legitimacy problems that might result from democratically deficient input factors.

A similar, but even more output-oriented approach to EU governance is taken up by G. Majone (1998; 2002) – with the great difference that he dissociates himself from the idea of placing the EU, which he sees as a ‘mixed polity’ (between a parliamentary and a separation-of-powers system), on the same footing as nation states. Majone (1998, p. 27) felicitously notes that “there is no reason at all that the political and constitutional arrangements of the future will mirror the institutional architecture of the nation-state”; meaning that it is not altogether clear which strand of research – intergovernmentalist or supranationalist⁹ – will prevail in the debate on the EU’s *telos*. Once again, that argument points towards the necessity to detach the question of a ‘democratic deficit’ in the EU from the concept of the state and to generate a set of variables of democratic governance that adequately accounts for the *sui generis* character of the EU.¹⁰

Coming back to his analytical approach of EU governance, Majone (2002) argues that the EU should be seen as a ‘regulatory state’ that is functionally differentiated and delegates powers to non-

⁸ The fact that Moravcsik (2002) also judges the EU against nation state yardsticks can be explained against the background of his general understanding of the European integration process and the decisive and dominant role of the Member States.

⁹ Here, the theory of EU integration of Supranationalism does not only refer to the theory introduced by Sandholtz & Stone (1998), but also to its predecessor by Haas (1964).

¹⁰ In how far it will be possible to detach the issue from the general question of the EU’s *telos*, shall be discussed later.

majoritarian, autonomous regulatory institutions. Although he also mentions some *credibility* advantages of a “Union-wide ‘regulatory estate’” (Majone, 2002, p. 336) for the existing European structure of governance, Majone (2002) clearly focuses on the efficiency gains of those regulatory agencies, i.e. the *output* of EU decision-making. In contrast to many other scholars, he is not convinced that e.g. the European Parliament’s strengthened political control of the Commission may potentially help to overcome the ‘democratic deficit’, but rather pleads for a ‘de-politicisation’ of the European institutions and the transfer of regulatory power to independent public agencies (Majone, 2002). In his attempt to display the EU as an efficient, functionally differentiated network, Majone does not seem to have room for any serious, substantiated considerations on democratic legitimacy – especially when it comes to the non-majoritarian regulatory institutions.

To conclude, in theoretical terms, Majone and Moravcsik share a distinct positivist approach, which implies an output-oriented, simplistic, minimalist and one-sided notion of ‘democracy’. As a consequence, Majone and Moravcsik completely ignore the two other spheres that are essential in generating legitimacy in a democratic system, i.e. input- and throughput-aspects (cf. Schmidt, 2013).¹¹ Therefore, it is considered that these two approaches do not represent an appropriate starting point for the development of a measurement tool of democracy in the EU. To the author, a more encompassing (multivariate explanatory) theory of democracy, such as Deliberative Democracy – considering a complex and closed circuit of legitimacy – seems to display a more adequate and suitable approach.¹²

Scholars of the second group of literature within this section criticise the above discussed approaches sharply. Føllesdal & Hix (2006) have written a direct reply to Majone and Moravcsik in which they try to disprove their arguments and show why the existence of a ‘democratic deficit’ in the EU must not be denied. In particular, they argue that democracy is more than “matching the present preferences of voters to policy outputs” (Føllesdal & Hix, 2006, p. 556). In their view, the crucial problem of present EU politics is the lack of democratic contestation¹³ (both concerning the po-

¹¹ For Scharpf (2009), the reason why Majone and Moravcsik do not consider the EU to suffer a ‘democratic deficit’ is their libertarian (in contrast to the republican view by, for example, Føllesdal and Hix) perspective on democracy. As this libertarian ideal of democracy (i.e. the protection of individual rights, the pluralist openness to policy inputs, consensual decision rules, and the effectiveness of its regulatory policies) is already perfectly mirrored in the EU’s current *status quo*, the two authors have no reason to assume that the EU would not live up to its (libertarian) objectives (Scharpf, 2009).

¹² A detailed discussion of this rather normative standpoint will be provided later.

¹³ That argument also mirrors Føllesdal’s & Hix’ (2006, p. 547) definition of democracy: “1. institutionally established procedures that regulate, 2. competition for control over political authority, 3. on the basis of deliberation, 4. where nearly all adult citizens are permitted to participate in 5. an electoral mechanism where their expressed preferences over alternative candidates determine the outcome, 6. in such ways that the government is responsive to the majority or to as many as possible.”

litical leadership and the policy agenda), which might be overcome by the direct election of the President of the European Commission (Føllesdal & Hix, 2006).

All in all, Føllesdal & Hix (2006) rightly criticise Majone and Moravcsik for their minimal concepts of democracy, but they themselves do not even make the attempt to thoroughly deduct their concept and their arguments from a theory of democracy. Instead, they almost arbitrarily choose one specific component of well-known concepts of democracy – here, contestation – as the panacea of the EU’s ‘democratic deficit’, which is indicative for most of the literature on the ‘democratic deficit’ of the EU.¹⁴

Clearly, the contributions by Moravcsik (2002), Majone (1998; 2002) and Føllesdal & Hix (2006) point towards several loopholes which are to be avoided in the present investigation. It can thus be expected that this work will aim at thoroughly making explicit the single arguments and deducting the cornerstones of deliberative theory as an encompassing theory of democracy. In addition, it will provide an analytical framework that lends itself to measure whether the EU falls under the concept of Deliberative Democracy or not – it will *not* present a normative perspective on the *best* democratic set-up for the EU.

(3) The challenge of empirical explication: Democracy as a promising ‘third way’?

Third, a rather different approach claims to build up a ‘demo(i)cratic’ (both analytical and normative) framework for the EU (Nicolaidis, 2013; 2014). This approach sees itself as a *third way* between the ‘intergovernmentalist’ or ‘national civic’ and the ‘supranationalist’ or ‘European demos’ strands of literature by acknowledging the existence of multiple demoi within the EU, which are simultaneously perceived as citizens and states (Nicolaidis, 2013, p. 353). The ‘democratic deficit’ is re-labelled as ‘Europe’s democratic trilemma’ and consists of 1. ‘*transnational* democratic interdependence’, 2. ‘*national* democratic legitimacy’ and 3. ‘*local* democratic legitimacy’ (Nicolaidis, 2014, pp. 1409). According to Nicolaidis & Youngs (2014), the trilemma can only be solved, if legitimacy is enhanced with regard to all three spheres and tensions between these three requirements are relieved. A stronger empowerment of the citizens is seen as key to this endeavour (Nicolaidis & Youngs, 2014).

With their clear-cut focus on the EU as an entity *sui generis* and their simultaneous attempt to disregard the broader debate between supranationalists and intergovernmentalists, Nicolaidis *et al.*

¹⁴ Many other approaches to the ‘democratic deficit’ of the EU can be criticised for the lacking normative grounding of arguments – also scholars, who are discussed in this literature review. However, as criticism on that level would tremendously shorten the list of approaches that actually do discuss a theory of democracy and that distil their arguments directly from it, I have decided to include all relevant approaches and to offer criticism on a more detailed level.

provide a fruitful approach to today's architecture of the EU. Especially, their multi-level approach can be considered promising. However, until now, the approach falls short of providing suggestions on how to implement the three legitimacy requirements into practise. However, as the present work focuses on the analysis of the current (empirical) *status quo* of the democratic architecture of the EU, it has to build upon a theory that provides the possibility to sufficiently translate the theoretical arguments into empirically observable indicators.

Overall, the above outlined overview of literature reveals the reasons for the arbitrariness and fragmentariness of the discussion on the 'democratic deficit' of the EU. First, it shows that already at the conceptual level, i.e. the point of departure of any further (theoretical) reasoning, some scholars ground their works on highly questionable assumptions. As they equate the European Union with any modern democratic nation state, they entirely disregard the legal, political and organisational peculiarities of the EU. These approaches lead to inappropriate and distorted comparisons. Second, it becomes obvious that the missing explicitness of the respective concept of democracy – due to weak normative foundations – further adds to the flaws of the current discussion and paves the way for the arbitrarily political instrumentalisation of the issue. Third, mere theoretical approaches apparently do not lend themselves to serve as the basis for the deduction of necessary conditions of democracy. To conclude, the literature review clearly points towards the necessity to execute further research on the question whether the EU suffers a 'democratic deficit' or not.

As has been indicated above, in order to contribute to the development of this strand of research, the paper sets out to take an innovative perspective on the EU based on deliberative theory, which will be capable of overcoming some of the multifaceted deficiencies of previous scholarly contributions. Accordingly, in the following section and second part of the literature review, an overview of approaches applying this specific type of theory of democracy to the EU will be given.

B. Research on Deliberative Democracy in the EU: A question of scope

The literature that will be discussed in this section does not necessarily focus on the phenomenon of the 'democratic deficit'. It certainly touches upon it – but the following review shall rather serve as a broad overview of different motivations that link deliberative theory to the entity of the European Union in order to assess its deliberative character. To this end, the literature will be grouped by the different ways that are recommended by the scholars to realise this connection. Two clusters of research confront each other choosing either a local or (1) *micro-level approach* to delibera-

tive theory or a global or (2) *macro-level approach*. A third, although quite different, attempt to emphasise the importance of deliberative theory with regard to European Union research depicts the theory as an (3) *integration theory* explaining crucial watersheds of deepening and widening in the EU.

(1) Micro-level approaches: Trying to ‘measure’ deliberation

In the early 2000s, first attempts were made to actually ‘measure’ a core element of (early) Habermasian deliberative theory, i.e. the quality of discourse derived from the ideal type of the *Ideal Speech Situation* (see, among others, Holzinger, 2001; Steenbergen *et al.*, 2003). The so called ‘Deliberative Quality Index’ (DQI) by Steenbergen and colleagues has been proven a useful analytical tool to investigate the implementation of several aspects of deliberative theory in parliamentary debates and has been developed further throughout the last years. Lord & Tamvaki (2013), for example, apply the index to the debates of the European Parliament and thereby try to extend its scope to the supranational level. In order to do so properly they make slight modifications to the original Index developed by Steenbergen *et al.* and add some additional indicators. They also do not just try to evaluate the quality of discourse in the EP, but rather also intend to explain variations in the quality by testing different contextual factors (e.g. respective decision-making procedures, the background of the MEPs, polarisation of the issue at hand, etc.). Doing so, Lord & Tamvaki (2013) provide some valuable insights in the deliberative patterns of the EP and furthermore introduce important context variables that may guide future research on institutional settings promoting deliberation.

Another strand of research focuses on the effects deliberative settings can achieve. In quasi-experimental research designs, called ‘Deliberative Polling’, scholars such as Isernia & Fishkin (2014) (see also Fishkin, 2010) try to show the potentials of Deliberative Democracy on the basis of medium-sized, representative groups of citizens. In their EuroPolis project, Isernia & Fishkin (2014) investigate to what extent a European public sphere is realisable (at least partially) through so called mini-publics, i.e. randomly selected citizens who come together to discuss a certain issue that is actually on the agenda of the EU. In case of the EuroPolis project, the participants discussed climate change and immigration policies. They were interviewed before, during and after the experiment on items, such as policy preferences, general attitudes, voting intentions and socio-demographic data. Hence, the scholars could evaluate in how far the discourse with other participants had an effect on their attitudes. These findings finally allowed them to draw conclusions concerning the overall effects of deliberative practises on EU level. A more theoretical approach on these mini-publics is taken, for example, by Bohman (2012) as well as Mackenzie & Warren (2012). They discuss the potential role of mini-publics in the democratic system, especially concerning their representativeness and legiti-

macy, and thereby give a tentative outlook for the integration of mini-publics in the institutional setting of the EU.

To conclude, this local perspective definitely provides valuable insights into the empirical potential of aspects of deliberative theory at EU level. However, investigations of the DQI in the EP or of the role of mini-publics do not capture the whole range of theoretical implications of deliberative theory. They rather shed light on some single components of it, but are disregarding the system of the EU as a whole. Accordingly, the effects on the system caused by the implementation or alteration of such deliberative elements as well as the generalisability of these effects are very hard to predict or estimate. Thus, these local approaches do not lend themselves for a theory-driven investigation of the question if the EU suffers a ‘deliberative deficit’.

(2) Macro-level approaches: Deliberative Systems

The opposite, macro-level, point of view is taken by a group of researchers around Parkinson & Mansbridge (2012), who have gathered their ideas about a rather new approach to deliberative theory in their recently published work ‘Deliberative Systems’. Taking a systemic view, the scholars intend to present an overarching approach expanding the scope of existing literature on deliberative theory.¹⁵ In this sense, they argue, that their framework is capable of embracing all different kinds of ‘democratic systems’, ranging from units of analysis like universities to institutions such as the European Parliament. As this extension of the population of potential cases opens up for the possibility to investigate the EU as a ‘deliberative system’, a more detailed look will be taken on this approach.

Parkinson & Mansbridge (2012, pp. 1) suggest “that it is necessary to go beyond the study of individual institutions and processes to examine their interaction in the system as a whole”. According to the idea of a ‘division of labour’ Parkinson & Mansbridge (2012) argue that it is not necessary that every single component of the system has to fully live up to the ideal of deliberation. Rather, it may well be possible that a non-deliberative element in its interplay with another (deficient or deliberative) element unfolds a deliberative potential in the sense that it corrects other deficient or supports other deliberative element in its functions.

Defining the *boundaries* (“at least loosely democratic”, Parkinson & Mansbridge, 2012, p. 7) and *functions* (“seeking truth, establishing mutual respect, and generating inclusive, egalitarian decision-making”, Parkinson & Mansbridge, 2012, p. 22) of such a system, the scholars try to give their framework a solid shape. However, in their attempt to extend the size of the population of potential cases infinitely, Mansbridge and colleagues lose track of some essential characteristics of a theory. In

¹⁵ For further so called middle-range theories, see e.g. Goodin (2005), Fung & Wright (2003) and Thompson (2008).

particular, their concept of Deliberative Systems loses the capacity of being falsifiable, as it becomes unclear which cases do *not* belong to the population, i.e. which systems may *not* be labelled ‘deliberative’ in the end. This, of course, poses a huge problem to the application of the approach. After all, it might be applicable to, for example, the EU, and it might, as an analytical tool, provide interesting insights in its functioning. However, it will not provide any valuable results as regards the classification of the EU as a ‘deliberative’ or ‘deliberatively deficient’ system, since these *classes* are not sufficiently specified.¹⁶

This being said, it can be expected from this paper that it will provide the reader with a thorough specification of the concept of Deliberative Democracy in order to establish an appropriate basis for the establishment of distinct and mutually exclusive classes – capturing both deliberative and non-deliberative cases.

(3) Deliberative Theory as integration theory

An entirely different reading of deliberative theory and application to the level of the EU is introduced by Eriksen & Fossum (2002; 2012). Claiming that neither intergovernmentalist nor neo-functional integration theories can fully explain European integration, the scholars advance an institutional perspective on deliberative theory which is argued to have the potential to properly understand European integration. To this end, Eriksen & Fossum (2012) suggest three explanatory mechanisms of European democratisation, which certainly mirror core assumptions of deliberative theory: first, *claims-making*, second, *justification*, and third, *learning*. By means of these mechanisms the scholars trace back the integration process of the EU. Thereby they frame deliberative theory as an integration theory and emphasise its explanatory strength and its importance for the development of the European Union. Joerges & Neyer (1997), who propose a ‘deliberative supranationalism’, take a similar perspective and “believe that some core institutional features of the EC [EU] should be read as supranational versions of deliberationist ideals and interpreted with a view to compensating some shortcomings of the constitutional nation state” (Joerges & Neyer, 1997, p. 610).

To put it briefly, these institutional oriented works present an interesting approach to deliberative theory and highlight its relevance for any studies concerning the EU. They furthermore reveal valuable insights into the historical construction of core elements of its functioning, such as the European Parliament. Yet, the focus on integration processes and the ‘deliberative’ interpretation of institution-building in retrospect is rather concerned with the question of *why* the EU is constructed as it

¹⁶ But as the theory is still at an early stage of development, Parkinson & Mansbridge (2012) will probably acknowledge the fact that the ladder of abstraction cannot be climbed up and up and will further refine their concept of ‘deliberative systems’.

is. However, the focal point of this present contribution as well as the current debate is more on the question *what* the EU is today. May it legitimately be called a Deliberative Democracy?

The foregoing literature review set out to critically discuss the scholarly contributions of two strands of research that are of particular interest to this paper. First, it shed light on the ‘democratic deficit’ literature and the varieties of different concepts of democracy applied to the EU. Second, it outlined the approaches aiming at applying one specific theory of democracy to the EU, i.e. deliberative theory. This literature overview revealed that, on the one hand, the discussion on a potential ‘democratic deficit’ of the EU lacks coherence and comprehensiveness and is thus in need of a thorough reconsideration. Since it is argued in this paper that this endeavour will most fruitfully be conducted through the lenses of deliberative theory, the contributions aiming at applying this theory to the EU were also discussed. This second part of the literature overview revealed, on the other hand, that an encompassing measurement tool deduced from deliberative theory, i.e. a thoroughly defined concept of Deliberative Democracy, is still underdeveloped (for the EU) and has not yet succeeded in defining an appropriate scope of analysis.

IV. Aim

The discussion of existing literature on the EU’s ‘democratic deficit’ and on deliberative theory in connection with the EU has provided an encompassing overview of respective research. At the same time, given the aforementioned reasons, no approach has so far put forward an appropriate analytical framework which would be capable of capturing the EU’s democratic potentials and deficiencies. As has been illustrated, this has led to a complex, if not confusing, debate about the so called ‘democratic deficit’, to which “politicians on both sides [i.e. federalists and proponents of a Europe of nation states] refer to (...) to justify their cause” (Crombez, 2003, p. 103). Moreover, a successful application of the very fruitful deliberative theory has not yet been provided.

The present paper sets out to address the absence of such an adequate analytical tool and will make a first attempt to develop it, arguing that it is deliberative theory that lends itself best to the measurement of the EU’s democratic character. Therefore, it first and foremost aims at thoroughly specifying the concept of democracy inherent or proposed by deliberative theory, i.e. the concept of Deliberative Democracy. To this end, it will deduct the crux or the core assumptions from the theo-

ry and identify its constituent elements in the form of minimal or necessary conditions¹⁷. Accordingly, this paper sets out to provide an analytical framework comprising a checklist of indispensable variables (in the broader sense, similar to a simple index of democracy) that finally allows to conclude whether a political system¹⁸ (here, the EU) falls under the concept of Deliberative Democracy or not. It is assumed that these conditions display categorical or dummy variables, taking either the value 0 (absent) or 1 (present), and that, in order for a political system to be called a Deliberative Democracy, it has to show 1-values on every minimal condition.

By means of realising the main objective of this paper, i.e. carving out the concept of Deliberative Democracy through the identification of minimal or necessary conditions, it will subsequently be possible to conduct an empirical analysis and adequately and comprehensively investigate the EU through the lenses of deliberative theory. Accordingly, the paper poses the following question:

“Does the EU suffer a ‘democratic deficit’ measured against the democratic standards set by deliberative theory?” (or more precisely *“Does the EU suffer a ‘deliberative deficit’?”*)

In order to be able to approach this question, the following sub-questions can be formulated:

- (1) *“What are the special features of the governance structure of the EU (in comparison to nation states)?”*
- (2) *“Why does deliberative theory lend itself well for the investigation of the EU’s political system?”*
- (3) *“Which democratic standards does deliberative theory set?”*

However, as answering the question that guides the primary concern of this paper displays an endeavour too extensive for this paper, the application of the concept of Deliberative Democracy will be conducted spatiotemporally limited. Based on the example of the economic governance struc-

¹⁷ Mutz (2008), who also criticises the insufficient concept-specification in the context of research on deliberation, speaks of the need of these ‘minimal conditions’, too.

¹⁸ As concerns the definition of a political system, this paper will refer to the definition by D. Easton. According to him, a political system encompasses “those interactions through which values are authoritatively allocated for a society” (Easton, 1965, p.21; 1953, pp. 123-148). Hence, at the core of his definition is the generation of legally binding decisions for a geographically defined territory and a specific group of people. For further considerations regarding this systemic approach, see below. It is argued that – as political systems, in connection with adequately and systemically (not state-centred) derived democratic standards – the EU and democratic nation states are comparable. Unlike scholars such as Crombez (2003), the author will thoroughly distil the necessary conditions of a ‘Deliberative Democracy’ from the respective theory while constantly bearing in mind the intended scope of application (including the EU as a non-nation state).

ture that evolved in the course of the sovereign debt crisis in the EU (2009-2015), the paper intends to provide a first tentative illustration of the analytical framework's applicability and reveal the benefits of deliberative theory in the context of an investigation of the EU's democratic character. In this sense, the guiding question of this paper could be specified as follows:

“Does the system of economic governance that evolved in the EU in the context of the Eurozone crisis suffer a ‘democratic deficit’ measured against the democratic standards set by deliberative theory?”

(or more precisely “Does the system of economic governance that evolved in the EU in the context of the Eurozone crisis suffer a ‘deliberative deficit’?”)

Consequently, the outlined attempt explicitly does *not* wish to construct yet another normative framework of how the EU *ought* to look like and is thus not to be situated among the research of theory-building. As such, it is guided by the idea to touch upon the general debate between supranationalists or neo-functionalists and intergovernmentalists as little as possible; i.e. to avoid a dichotomous reasoning of more integration (in the sense of transferring more rights to supranational institutions or creating new ones) or no further integration (choosing harmonisation and intergovernmental cooperation instead).¹⁹ That said, the author will try to remain quite neutral or objective to the overarching debate on the *telos* of the EU. In fact, the paper intends to provide a *realistic* (in the sense that it sticks to the EU's current architecture and ‘legal *status quo*’), but *normatively grounded* analysis of the deliberative democratic character of the Union. Therefore, it is rather situated in the field of theory-application or -testing.

V. Theoretical Foundations

A. Preliminary Considerations

Before the concept of ‘Deliberative Democracy’ will be compiled and the cornerstones of the theory will be identified, it is necessary to discuss some preliminary considerations, which will pick up potential difficulties or pitfalls related to the approach taken here. First of all, the fundamental

¹⁹ Interestingly, some scholars argue that this dichotomy has become blurred in the course of the current crises. Bickerton *et al.* (2014), for example, argue that the policies during the crises are characterised by *integration without supranationalisation* – labelled as New Intergovernmentalism. They find that more fiscal integration is realised by means of more intergovernmentalist co-operation (e.g. the establishment of the European Fiscal Compact).

idea of the present paper, i.e. distilling empirical indicators of democracy from deliberative theory and thereby firmly linking theory with social facts, shall be addressed. Furthermore, essential arguments in favour of a deliberative theoretical perspective on the concept of democracy – especially for the case of the EU – will be brought forward. Subsequently, the intended application of the concept to the specific case of the EU as an entity *sui generis* has to be discussed.

(1) The normative grounding of a deliberative notion of democracy

In the course of the debate on a ‘democratic deficit’ of the EU the question might arise why one should even attempt to approach a possible solution by means of a normative theory. After all, the notion of democracy is far from being a clear and consensually used concept. Besides, as has been indicated before, consensus on this concept by the two main schools of thoughts, namely liberalism and republicanism, is not very likely to occur. Several arguments can be brought forward to support the view that the debate on the EU’s democratic character ought to be conducted on profound normative grounds. As Hüller (2005) puts it, empirical knowledge might well function as an initial impression of something being democratic or not. Nevertheless, this empirical knowledge will always be even more diverse than any normative claims, because it is usually inductively produced and therefore automatically limited to a certain population of (already existing) cases. In contrast to that, a normatively well grounded concept of democracy can be considered to be more easy to comprehend or reproduce than any mere empirical notion of it and thereby certainly help to untangle the debate on the ‘democratic deficit’ of the EU. In this sense, Abromeit (2004) also strongly advocates to utilise a notion of democracy that is *not* descriptive.

Moreover, a normative theory of democracy will be more flexible as regards the future validity of the identified variables and its application to ‘new’ or developing cases, which is of great relevance to the present study. In specific terms, as the ‘case’ of the EU is developing rapidly, without pursuing a thoroughly defined *telos*, and as the EU, at the moment, neither classifies as a nation state nor as an international organisation, this flexibility of normative theories is of course highly appreciated. Supporting this argument, Abromeit (2004) further endorses a notion of democracy that is *not* institutional, i.e. not being tailored to *one* specific regime type.

(2) Justifying deliberative theory as a theory of democracy

Given the fact that there does not – yet – exist a theory of democracy that is universally accepted, it seems important to provide at least some arguments which support the choice made in this paper. To this end, deliberative theory will first of all be contrasted with the two major schools of

thought in the field of theories of democracy, i.e. the republican and the liberal idea. In this context, the superiority of deliberative theory over these two strands of thought – as a mixture of both – will be formulated pursuant to Habermas. In a second step, several advantages of deliberative theory stemming from its procedural character shall be brought forward.²⁰

To begin with, the liberal ideal centers its argumentation around the individual, which is protected against the state and other citizens by means of negative rights, whereas the republican ideal only acknowledges an encompassing *societas civilis*, a political community in the Aristotelian sense in which individuals first of all claim positive rights (Scharpf, 2009). Furthermore, the democratic will-formation in the liberal conception can be described as competing individual interests that are aggregated to a (representative) political will, legitimised by means of fair electoral procedures (Habermas, 1994). In the republican ideal, on the contrary, “authority emerges from the citizens’ power produced communicatively in the praxis of self-legislation”, so that the idea of the popular sovereignty is maintained throughout the whole process (Habermas, 1994, p. 2). Accordingly, in the liberal conception, legitimisation follows a rather output-oriented logic, i.e. the state power is controlled against standards of efficiency and regulatory compliance, whilst legitimacy in the republican sense is very much dependent on the input of the citizens themselves.

According to Habermas (1994; 1996), deliberative theory cuts across these two grand schools of thought. On the one hand, the public will-formation process takes centre stage and, together with the public sphere, constitutes an arena of societal problem perception. On the other hand, the society is decentralised in the sense that the idea of the popular sovereignty withdraws from the central localisation, which it had been assigned to by the republican conception, and establishes itself in the democratic procedures of communication (Habermas, 1996). What is more, the principles of the rule of law are essential to deliberative theory, as it is dependent on the institutionalisation of the above addressed procedures of communication (Habermas, 1996). Legitimacy is then generated by means of a sophisticated interplay of the society, the public sphere and the political system, via which the communicative power has to be transformed into administrative power (Habermas, 1996).

The juxtaposition of the liberal and the republican conception of democracy on the one hand, and deliberative theory on the other hand, points towards some advantages of the latter approach – especially in the setting of the EU. With regard to the rejection of the liberal conception, it can be argued that the EU already seems to meet the liberal standards of democracy²¹, but, at the same time,

²⁰ For a preeminent summary of the philosophical development of the two schools of thought, liberalism and republicanism, see Scharpf (2009).

²¹ Hence, in the view of liberal scholars as, for example, Moravcsik (2002), the EU does not suffer from a ‘democratic deficit’.

the discussion of a ‘democratic deficit’ is omnipresent. This shows that these liberal standards by and large do not mirror the demands for democratic governance generated through the EU’s increasing powers and impact. Now, in line with e.g. Moravcsik (1998; 2002), one could claim that the EU does not pursue the objective to become a supranational, even nation state like and, in the republican sense, ‘fully democratic’ entity which surpasses mere economic integration. In this sense, it would be unjustified to consider any further (republican) claims of democratic standards, as this would mean that we give an answer to the *telos* question of the EU – which is not intended in this paper. However, as the EU is, at this point of time, already much more than a problem-solving, efficiency-granting and functional agency (compare, e.g. the ambitious objectives of Europe 2020) and this paper starts its reasoning from the very *status quo* of the EU, the argument can well be formulated that the liberal standards of democracy do no longer account for the stage of development of the EU. In fact, there is a need for more sophisticated standards of democracy that the EU is to be measured against.

Turning towards the republican ideal, it is to ask: does the preceding argumentation speak in favour of a pure republican conception of democracy or would such an approach be too rich in content for the current architecture of the EU? Obviously, the current *status quo* of the EU is far from the republican ideal (Scharpf, 2009). Its basic idea of solidarity and mutual understanding among the citizens and the emphasis on the common good of the polity pose severe challenges for the EU and are highly unlikely to develop in the near future. To illustrate, many scholars criticise the lack of a (homogenous) EU-wide media and public sphere, which, in fact, would build on the above mentioned key features of the republican conception of democracy (see Bijsmans & Altides, 2007; Koopmans & Erbe, 2004). This example shows that a fully republican democratic framework would demand too high requirements from the EU and hence, currently, does not lend itself for an investigation of the democratic character of the EU either.

Certainly, the aforementioned speaks in favour of a mixture of the two grand schools of thoughts, as proposed by Jürgen Habermas (1994; 1996).²² Such an approach does not only take into consideration the current state of democratic development of the EU – which corresponds rather to the liberal conception combined with first republican elements in some areas²³ and which will be the subject of investigation here – but also accounts for potential future developments. All in all, a mixture of liberal and republican standards might well lend itself as a basis for a measurement instrument of the current status of democratic development of the EU. Especially in contrast to the liberal conception, it will provide new and interesting insights (as concerns for example the aspect of input-

²² To some extent it might be debatable in how far Habermas succeeds in bringing together the two philosophical strands of liberalism and republicanism (for some arguments see, for example, Ottmann (2006)), but by and large this attempt is considered as having succeeded.

²³ See, e.g. the promotion of public goods in the Common Agricultural Policy or EU Structural Funds.

legitimacy²⁴) into questions of *where* and *why* higher democratic standards in the EU might be desirable.²⁵

After having emphasised the superiority of deliberative theory over the two grand schools of theory of democracy concerning its utilisation for the development of a measurement instrument of democracy in the EU, it will now be dealt with the advantages of deliberative theory's procedural character. Contrary to most other theories of democracy, deliberative theory takes a procedural rather than a substantive perspective on democracy. This methodological difference involves some crucial advantages of deliberative theory over other respective approaches. First and foremost, the procedural character of deliberative theory implies a certain degree of indefiniteness or flexibility as concerns its principles of democracy. More precisely, its democratic principles can be considered as being 'under constant construction'. As Habermas (1996) puts it, in the process of public will-formation norms and values are constantly exposed to repeated deliberation and justification "in the light of new information and arguments" (Habermas, 1996, p. 178). By way of example, regarding (what can be called) *classical liberal rights*, "the legal code itself remain[s] unsaturated" and has to "be interpreted and given concrete shape by a political legislature in response to changing circumstances" (Habermas, 1996, p. 125). This being said, deliberative theory defines democracy as a *procedure* (rather than an end in itself) and only predefines a minimal set of basic human rights and procedural rules (for its proposed form of communication, i.e. deliberation) (Habermas, 1996). Thus, it guarantees the uncertainty of the *output* of such a process and leaves open the actual content of democracy to the ones *concerned*.

For this paper, this flexibility constitutes several advantages. First, concerning its flexibility as regards time and space, the concrete content of deliberative theory may develop over time and its implementation or explication may result in slightly different forms of democracy – depending on the (e.g. cultural) context. This can be considered as an advantage for the following investigation inasmuch as the unit of analysis, i.e. the EU, itself underlies constant modification both regarding its vertical and its horizontal integration (cf. Eriksen & Fossum, 2002): Not only does the EU's legal character change very quickly (not necessarily regarding its primary, but certainly regarding its secondary law), but also is its *telos* rather undefined and new MS accede to the EU – a setting which questions any approach defining democracy by means of its outcome, rather than its procedures. Although this kind of flexibility might not be essential for finding an answer to the specific research

²⁴ According to Scharpf (1999), Schmidt (2013, p. 4) defines input-legitimacy as follows: "(...) input legitimacy refers to the participatory quality of the process leading to laws and rules as ensured by the 'majoritarian' institutions of electoral representation."

²⁵ This is *not* to say that deliberative theory is – normatively – to be considered the best theory of democracy after whose implementation the EU ought to strive.

question posed in the context of this paper – which concerns the investigation of the EU’s democratic character *at this moment* – it is definitely of great importance to the general and long-term validity of the broader and actual ambition of this paper, i.e. the development of a set of minimal conditions of the democratic character of a political system that might still be applicable in the near future and to other cases than the EU itself.

Second, it can be assumed that the *acceptance* of democratic procedures by the ones *concerned*, i.e. the European peoples within the EU, will be much easier to achieve than the acceptance of pre-defined democratic principles. If, additionally, as proposed by deliberative theory, such procedures encompass the involvement and participation of the people in the decision-making processes (see input-legitimacy), the acceptance of the decision outputs the people themselves have been involved in can be considered to increase dramatically (Habermas, 1996; Schmidt, 2013). Moreover, it can be assumed that the *acceptance* of democratic procedures (in comparison with substantive principles) is favourable for the multinational setting of the EU with a high diversification of (cultural) interests. Here, an open and unbiased conception of democracy that is apt to consider and integrate diverging perspectives on democracy in its processes will more easily find acceptance than pre-defined principles of democracy.

All in all, the investigation of the deliberative character of such a constantly changing research object is definitely facilitated by the application of a more flexible theory, which is not only apt to keep up with the development of time and space, but which is also more likely to be accepted by the constituency of the EU.

(3) The special features of the EU

As is evident from previous considerations, the EU displays an exceptional, probably even unique research subject. In what respects that is the case and in how far this is important for the present research project shall be elaborated in this section.

First and foremost, the following considerations revolve around the argument, which has been made in the literature review earlier in this paper, that the EU cannot be considered to constitute a nation state – even not a federal state. This mainly derives from the fact (which has been introduced before and can be regarded as *the* defining feature of any state (cf. Jellinek, 1929)) that the EU disposes of a supremacy of law without having the provision of exercising a monopoly on the use of force and the power to take decisions of last resort (Habermas, 2014). In this sense, the EU is very much dependent on its Member States and its principle of legitimacy can be more adequately de-

scribed as a *sovereignty of states*, rather than a sovereignty of the people (Grimm, 2015). Accordingly, Scharpf (2009) speaks of a *government of governments* and a two-step compliance relationship. What is even more striking, the EU (in stark contrast to the setting in any federal state) also sees itself confronted with a *two-step legitimating relationship* (Scharpf, 2009): “While in German federalism, citizens address their demands and their electoral responses to the higher (national) level of government, the higher level of the European polity is beyond the horizon of citizen’s expectations and political demands; it is not the target of public debates and party competition, and it is not vulnerable to electoral sanctions” (Scharpf, 2009, p. 180). To put it differently, Schmidt (2013, p. 9) elaborates that the “legitimizing criteria [i.e. input-, throughput- and output-legitimacy] are largely split between the EU and national levels of governance”. In this context, Eriksen & Fossum (2002, p. 42) felicitously summarise that “[t]he Community has no territory of its own, no taxing power no independent economic basis and it depends on Member States for implementation of its various legislative and other measures. It is not a body of organized citizens – the citizens’ access to the system of government is mainly indirect (...)”.

Here, concrete examples would be the limited power of the European Parliament in the appointment procedure of the European Commission (whose approval usually only displays a formal step) or the huge ‘gap’, which is also addressed by Scharpf (2009), between the EU and its constituency, resulting mainly from the lacking opportunities to exert influence on the EU’s decision making processes. Moreover, although the one directly elected institution of the EU (and thereby the most powerful link between the EU and its constituency capable of generating legitimacy), namely the EP, has constantly been equipped with more influence and a greater say, especially the Eurozone crisis policies have, to a large extent, been formulated at an intergovernmental level, whose individual representatives build on a national legitimacy, rather than on a European legitimacy (cf. Bickerton *et al.*, 2014).

These considerations strongly support the argument that the EU should be regarded as an entity *sui generis*, constituting a very complex, multi-level governance system, which is – especially with regard to questions of democratic legitimacy – only to a very limited extent comparable to nation states (Ipsen, 1972; 1973). The literature review revealed to what kind of problems the disregard of the EU’s unique nature may lead. The inadequate footing of the concepts often results in the finding that the EU does suffer from a ‘democratic deficit’, because either it is, on no account, capable of fulfilling the democratic standards set by fully consolidated nation states, or conceptual stretching is necessary in order to squeeze the EU into the respective framework. These kind of pitfalls are to be avoided in this paper.

To this end, some important preconditions of the conduct of such a research project need to be taken into account. First and foremost, it is to be said that the EU and nation states are very well comparable as concerns their democratic character – provided that they are treated as belonging to the same class of unit of analysis, which is the class of a political system (not the one of a state), and that the democratic standards applied are adequate for their investigation (not tailored to the subgroup of a nation state). Accordingly, in order to prevent what Ismayr (2008, p. 958) calls a naïve ‘Ver-Nationalstaatlichung’ (nationalisation or degrading to a nation state) of the EU through the back door of systems theory, it is not only the labelling of the classes that has to change, but the whole procedure of deducing the concept of democracy from a specific theory.

Therefore, in this paper, the reflections will *not* be developed from the unit of analysis of a nation state. It will also not directly be started from the very case of interest, i.e. the EU. Notwithstanding the aim of this contribution, tailoring the concept of democracy too tightly to the research subject it shall be applied to, would run the risk of drawing inductive conclusions and of generating some kind of self-fulfilling prophecy. In this context, this would mean distilling a concept of democracy, the EU will, in any case, perfectly correspond to. Instead, this paper will develop its arguments on a broader footing, chose a *systemic* approach and start from the more abstract unit of a political system. To put it briefly, it is about widening the scope of the class of units of analysis, i.e. the potential universe of cases, *and* widening the scope of the democratic standards so that they are applicable to the EU as well. This also corresponds more accurately to the primary objective of this paper, which is to develop minimal conditions that are not limited to a specific case or a specific point in time. Rather, it shall as well be applicable to other political systems and at another point in time.

Second, as a theory of democracy, the discourse theory of democracy and law is chosen. Here, it will, for the most part, be referred to the theory developed by J. Habermas (mainly 1996), but it is also intended to consider more recent approaches that enrich or complement the original contributions by Habermas. As has been shown above, this approach is much more flexible and broader than other theories of democracy and thus, perfectly suitable for the endeavour of this paper. Not only does it lend itself for such a systemic approach, the application of deliberative theory will also very much facilitate the possibility to guarantee the broader scope and possibly even long-term validity of the variables identified. In this context, Abromeit (2004, p. 77) notes that a concept of democracy is required which is universal; at least in the sense that it does not anticipate a certain form of institutionalisation or a certain ‘type of structure’ democracy is bound to. Hence, a measure of democracy should be designed so that it, on the one hand, can grasp the democratic quality of *different* regime

types, on the other hand, is able to measure the *different* levels of democratic quality of political systems, belonging to the *same* type of structure.

B. The concept of Deliberative Democracy

In the following, the concept of Deliberative Democracy or the minimal conditions that are apt to grasp the democratic, more precisely, the deliberative character of a political system will be introduced. Since this paper will mainly focus on the theory of democracy proposed by Jürgen Habermas in his work *Facts and Norms* (1996), the basic assumptions of his contribution, i.e. the discourse theory of law and democracy, will shortly be laid down. This introduction will then justify the structure of the subsequent specification of the concept of democracy which follows the three main spheres of a political system, namely the (1) civil society, the (2) public and the (3) centre of binding²⁶ decisions. The division of the political system into these three main spheres is not only suggested by the theory itself, but will also serve to conduct a well-organised investigation.

The general idea of deliberative theory is summarised by Habermas (2014, p. 413) as follows:

“The deliberative paradigm offers as its main empirical point of reference a democratic process, which is supposed to generate legitimacy through a procedure of opinion and will formation that grants (a) publicity and transparency for the deliberative process, (b) inclusion and equal opportunity for participation, and (c) a justified presumption for reasonable outcomes.”

This idea is borne by the republican principle of self-legislation which represents the core of all democratic processes in a political system constituting a Deliberative Democracy and requires a “legal community that determines itself through the common practice of associated citizens” and that “determines for itself what rules should govern social interactions” (Habermas, 1996, p. 9; p. 79). The enforcement of self-legislation is guaranteed by means of the “institutionalization of (...) corresponding procedures and conditions of communication”²⁷ (Habermas, 1996, p. 289), i.e. the approximation to an ideal rational discourse at all societal levels. This specific kind of communication or, more precisely, the rational discourse, also called deliberation, pursues the objective of “reach[ing] an-

²⁶ In his discourse theory of democracy and law, Habermas (1996) originally utilises the term ‘political system’ for the centre of the democracy. Here, the administration, the parliament as well as the judicial system are located. However, as Habermas takes quite a state-centred view (at least when it comes to the definition of these political institutions), the original notion is abandoned and substituted by the notion of ‘centre of binding decisions’ (cf. de Vreese, 2007). Moreover, some adjustments are made in order to broaden the applicability of the theory. Dryzek (2009) uses the notion of an ‘empowered space’, which also displays a non-state-centred perspective.

²⁷ Following the contributions to the theory of speech acts by John R. Searle and J. L. Austin, Habermas considers human communication key to understanding human society. Therefore, in his early works, he devoted himself to the investigation of the structure of the language and formulated the *Universal Pragmatics*.

derstanding over problematic validity claims²⁸, i.e. to identify *action norms* “to which all possibly affected persons could agree”²⁹ (Habermas, 1996, p. 107). In order to establish such a consensus, deliberation follows demanding *conditions* of communication, which can be summarised under the idea of the *Ideal Speech Situation*³⁰. In this ideal discursive setting (conflicting) validity claims are exposed to negotiation and assessment through other participants. Since it is the ‘unforced force of the better argument’ that prevails in a rational discourse, a consensus among the discussants, which “rests on the intersubjective recognition of criticisable validity claims”, is possible and acceptable for every participant (Habermas, 1984, p. 17). This consensus, i.e. consensually agreed norms, can therefore be considered as constituting a legitimate and legitimised outcome.

Ideally, the corresponding ‘procedures and conditions of communication’ are institutionalised in a political system by means of the rule of law and an adequate system of rights. Provided their institutionalisation, these rules and procedures are, first, apt to establish an *impartial* public opinion- and will-formation in the peripheral (1) civil society (the very point of departure of all self-legislation), where “political matters, that is, matters relevant to the entire society and in need of regulation” are identified (Habermas, 1996, p. 299). These are then, second, further “distil[led] and transmit[ted] (...) in amplified form to the [(2)] public sphere” (Habermas, 1996, p. 367). Together, the civil society (the “ultimate author[s]”; Cohen & Sabel, 1997, p. 319) and the public sphere (as the transmission belt) constitute the input components of a political system. In the next step, the *communicatively generated power* by these input variables is to exert influence on the (3) centre of binding decisions and to be transformed in *administrative power* (that is, e.g. legislative decisions or political programs) through legislation (Habermas, 1996). The respective legal acts generated by means of this complex democratic procedure finally represent the output generated by the system and are ideally accepted by the people – who have to be considered as the initial authors of the very output. The overall idea of democratic governance, again mirroring the conception of self-legislation, is summarised in the *principle of democracy* as follows: “only those statutes may claim legitimacy that can meet with the as-

²⁸ In ‘Theory of Communicative Action’ (1984) Habermas distinguishes between three different *validity claims*, which are raised by a speaker performing a speech act. Each of the validity claims refers to a corresponding *world of reference*: The claim to truth refers to the objective world, the claim to justice refers to the social world and the claim to sincerity refers to the subjective world of the speaker (Habermas, 1984).

²⁹ This is also known as the discourse principle (cf. Habermas, 1996, p. 107). See also the notion of reciprocity introduced by Gutmann & Thompson (1997).

³⁰ The Ideal Speech Situation is characterised by the equal opportunity of the participants to be able to open a discourse at any time, bring up critique against and make unbiased opinions a subject of discussion as well as stay truthful throughout the discussion (freely adapted from Habermas, 1984). This being said, it is a space where neither power or force, nor the social status of the participant play a role.

sent (*Zustimmung*) of all citizens in a discursive process of legislation that in turn has been legally constituted” (Habermas, 1996, p. 110).³¹

After having sketched the complex process of self-legislation according to the discourse theory of law and democracy, the three essential spheres of deliberation, namely (1) *civil society*, (2) *public sphere* and (3) *centre of binding decisions* (see Figure 1) shall be investigated in detail. For each of the spheres one or more necessary conditions will be identified that are necessary for the respective sphere to live up to the normatively ascribed duties and in order for the whole political system to fall under the concept of Deliberative Democracy. It is to be emphasised that these necessary conditions will constitute *minimal conditions* in the sense that they all have to be present in order for the scrutinised case to correspond to the concept (cf. Mutz, 2008). Accordingly, this paper sets out to identify categorical variables that are constructed as dummies, taking the value 0 or 1 – being absent or present – and will *not* shed light on the *quality* of deliberation potentially developing beyond the presence of the minimal conditions.

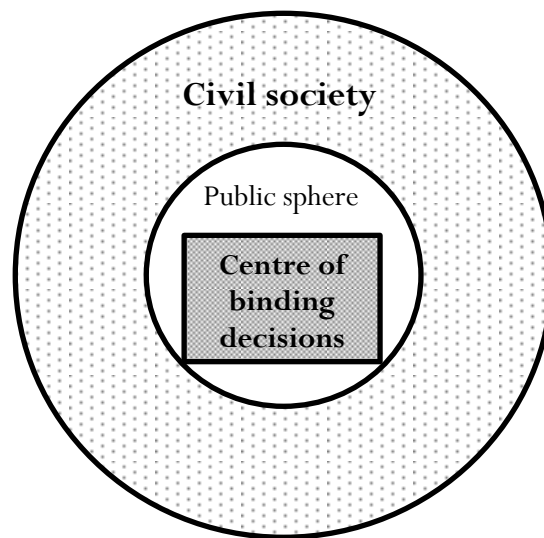


Figure 1. Three spheres of deliberation

(1) Civil society

³¹ Here, Habermas (1996, p. 122) speaks of a “circular process” of the genesis of rights. Or, as Cohen & Sabel (1997, p. 317) put it, “such arrangements [that is, democracies] are democratic just in case they ensure that the authorisation to exercise public power – and that exercise itself – arises from collective decisions by the citizens over whom that power is exercised”. See also Abromeit (2004).

As outlined before, in discourse theory, the civil society plays a vital role and, according to the idea of self-legislation, it is to be considered as representing the initiator or creator of the legislative outputs produced in a political system. It “is composed of (...) more or less spontaneously emergent associations, organizations, and movements that (...) institutionalize problem-solving discourses on questions of general interest inside the framework of organized public spheres” (Habermas, 1996, p. 367). As such, it could be regarded as the extension of the private sphere of the citizens which reaches out to become public.

The following section will investigate how the civil society – as the first essential part of the political system – ideally ought to be constituted in order to establish such an ‘institutionalised public opinion- and will-formation’ that is oriented towards the idea of the complex conditions of communications.

a. System of rights and the rule of law

In order to guarantee the enforcement of self-legislation, first and foremost, a system of rights as well as the principles of the rule of law are necessary. On the one hand, this basic legal structure consists of a set of human rights³², which the citizens and participants of a discourse have to confer on each other, on the other hand, it consists of further liberal rights. These should include the *freedom of assembly*, the *freedom of association* as well as the *freedom of speech*, since they will first of all provide the citizens with the constitutionally guaranteed opportunity to build up a network of associations and enter the opinion- and will-formation (Cohen & Sabel, 1997; Habermas, 1996). More specific participatory rights, such as active and passive voting rights, will then also guarantee that the citizens actually engage in the public discourse.

Besides, Habermas (1996, p. 369) points towards the importance of the legal protection of the private sphere of the citizens in order to allow for the emergence of “spontaneous public communication”.³³ In particular, these are the “rights of personality, freedom of belief and of conscience, freedom of movement, the privacy of letters, mail, and telecommunications, the inviolability of one’s residence, and the protection of families” (Habermas, 1996, p. 368).

b. Minimum standard of wealth

Another necessary condition for being able to enter the opinion- and will-formation – which is often overlooked, since, nowadays, in many parts of the world, it is taken for granted – is a minimum standard of wealth. Only if the citizens are not constantly suffering or fearing to suffer from

³² For the specific content of the system of rights, see Habermas (1996, pp. 122-123).

³³ For a detailed justification of this argument, see Habermas’ comparison of private spheres between democratic and totalitarian societies (Habermas, 1996, p. 369).

poverty, will they be able or willing to engage in respective societal associations and deliberate with others about current problems. To put it briefly, the condition of a minimum standard of wealth will provide the citizens with more or less equal rights to engage and participate in a public discourse or will at least prevent the exclusion of certain citizens from the opinion- and will-formation by means of poverty. As Gutmann & Thompson (1997, p. 208) put it “[s]uch a social minimum would not ensure that each citizen is at the same level (...), [b]ut a social minimum would give each citizen the same claim on public resources, and in this significant sense provide a form of equal opportunity. This principle of equality of opportunity is also mirrored by the idea of the Ideal Speech Situation.

c. Social Capital / Solidarity

Apart from the guarantee of equal participation rights in legal and material or physical terms, an additional component is fundamental for the structure of the civil society. In particular, this is what Putnam (1995) labels Social Capital or what Habermas calls solidarity. According to Putnam (1995) both civic engagement and social trust are essential parts for a well-functioning democracy. As regards Habermas (1996; 2013), the corresponding concept he establishes, is constituted of an energetic civil society that is actively engaged in the network of associations (or, in a broader sense, in a ‘political context of life’) as well as a certain degree of solidarity towards fellow human beings. Accordingly, the discourse theory of law and democracy requires that the citizens make use of the two aforementioned conditions and actually open up and enter the public panels of deliberation and actively discuss and evaluate conflicting validity claims concerning societal problems (cf. also Kohler-Koch, 2010). Here, Putnam (1995, p. 2) argues that “networks of civic engagement foster sturdy norms of generalized reciprocity and encourage the emergence of social trust. Such networks facilitate coordination and communication, amplify reputations, and thus allow dilemmas of collective action to be resolved”. Hence, civic engagement may enhance social cohesion, social trust or solidarity among citizens, which, of course, will then also (reciprocally) have positive effects on the establishment of a network of associations (Gutmann & Thompson, 1997). It can be argued that it is the “socially integrating force of solidarity” (Habermas, 1996, p. 299) or social trust that holds the different parts of a society together, that fosters the ability of the discussants to empathise in somebody else’s argumentation (which is essential for the success of intersubjective rationality) and thus, enhances the success of a mutually agreed consensus of a deliberation.³⁴

³⁴ For another prominent perspective on solidarity, see Durkheim (1893/2014). He distinguished between mechanic and organic solidarity.

(2) Public sphere

According to Habermas (1996, pp. 360-415), the public sphere can be regarded as “an intermediary system of communication”, a “network for communicating information and points of view” that connects the peripheral civil society with the centre of binding decisions (cf. also Mansbridge *et al.*, 2012). As a transmission belt, the public sphere is expected to “amplify the pressure of problems but also convincingly and influentially thematize them, furnish them with possible solutions, and dramatize them in such a way that they are taken up and dealt with by parliamentary complexes” (Habermas, 1996, p. 359). Therefore, “the streams of communication are (...) filtered and synthesized in such a way that they coalesce into bundles of topically specified *public* opinions” (Habermas, 1996, p. 360). This public opinion, again, is characterised by the “rules of a *shared* practice of communication” (Habermas, 1996, p. 362), i.e. the demanding rules of deliberation, and has to “have an effect on the democratically regulated deliberations of democratically elected assemblies and assume an authorized form of informal decisions” (Habermas, 1996, p. 372).³⁵

In order to guarantee the proper performance of the duties assigned to the public sphere by deliberative theory, some conditions should be satisfied. Since the media is the most important component of the public sphere, it is this medium that should be focused on in the following argumentation (cf. de Vreese, 2007). What is more, many scholars consider the architecture of the (European) public sphere, and here, especially the media, as vital to the solution of a ‘democratic deficit’ of the EU (cf. de Vreese, 2007; Habermas, 2001; Koopmans & Erbe, 2004).

Apart from some essential preconditions already mentioned in the section of the civil society (most importantly, freedom of assembly, of association and of speech), in the context of the public sphere, it mainly has to be taken account of some important features regulating the role of the media. In particular, it is, first and foremost, the “[f]reedom of the press, radio, and television” (Habermas, 1996, p. 368) that guarantees a certain *plurality* of opinions. Second, Habermas (1996, p. 378 f.) notes that

“the mass media ought to understand themselves as the mandatary of an enlightened public whose willingness to learn and capacity for criticism they at once presuppose, demand, and reinforce; like the judiciary, they ought to preserve their independence from political and social pressure; they ought to be receptive to the public’s concerns and proposals, take up these issues

³⁵ de Vreese (2007, p. 5) summarises the functions of the public sphere as follows:“(...) it would have a transparency function (being a space for all social groups and opinions), it would have a validating function (being a space for voicing, debating and possibly revising one’s own opinion), it would have an orientation function (being a space for voicing and being confronted with opinions), it would have a legitimating function (being a space where opinions and policies are made visible, a forum for gaining (or not) public resonance and legitimacy), it would have a responsive function (being a space for policy makers to infer opinions of the citizenry), it would have an accountability function (being a space where power holders would be discussed and held accountable) and it would have a participatory function (being a space in which contributions would be encouraged)”.

and contributions impartially, augment criticisms, and confront the political process with articulate demands for legitimation. The power of the media should thus be neutralized and the tacit conversion of administrative or social power into political influence blocked”.

Hence, it is, above all, the function of a transmission belt and mouthpiece of the communicative or political power that the public sphere has to fulfil, which is possible by the enforcement of the freedom of the press – in political, legal and economic terms.

(3) Centre of binding decisions

While the public sphere is responsible for preparing and processing the societal issues and problems expressed in the public discourses and thereby generating a *communicative power*, it is the centre of binding decisions or the ‘empowered space’ (see Dryzek, 2009) which is finally capable of transferring this *communicatively generated power* into *administrative power* by means of making ‘collectively binding decisions’ (Habermas, 1996). This exclusive capability of the centre of binding decisions represents a *sanctioning power* “that possesses the means of legitimate force so as to ensure that legal norms are observed” (Habermas, 1996, p. 133). In line with the above introduced definition of a political system (pursuant to Easton (1953, 1965)), it is exactly this characteristic of the *enforcement of collectively binding decisions* that defines the scope of potential units of analysis (cf. Abromeit, 2004). As a result, it is not only traditional nation states that the identified set of defining variables will be applicable to, but also other political systems that have the power of legitimate force.³⁶

Localising the centre of binding decisions within such a political system is self-explanatory: It is right in its centre, surrounded by, first, the public sphere, and, second, the civil society. In systemic terms, it is to be found between the input and the output component: receiving the impulses by the input element and itself generating the output, in the form of legal acts. Taking into account the fact that, when studying questions of legitimacy, scholars usually do not examine the centre of binding decisions in detail, Schmidt (2013) introduces a new notion here. She labels this central component as the *throughput* module, which has to live up to certain standards in order to be capable of generating so called *throughput* legitimacy in a political system.

However, how exactly ought the impulses raised by the civil society and the public sphere be transformed and processed by the centre of binding decisions in order to meet the standards set by deliberative theory?³⁷ Again, several necessary conditions can be extracted from the discourse theory

³⁶ Abromeit (2004), Cohen & Sabel (1997), Mansbridge *et al.* (2012) as well as Thompson (2008) also consider these binding (collective) decisions as one of the central features of a deliberative system.

³⁷ This question has to be considered ever more urgent, since the centre of binding decisions (which is usually labelled political system) is often treated as a black box (Schmidt, 2013).

of democracy and law which guarantee that the output generated by the centre of binding decisions corresponds to the initial will of the input components.

a. Efficacy

In general, it can be said that, for the final step of the law-making process, it is vital for the overall functioning of the political system, i.e. the enforcement of self-legislation, that the (legal) decisions made by the centre of binding decisions are efficaciously implemented and enforced (Habermas, 1996; Schmidt, 2013). In this context, Habermas (1996, p. 386) notes that “the regulatory competence of the (...) [centre of binding decisions] fails if the implemented legal programs remain ineffective”. Only if their efficacious implementation is guaranteed, is it possible that the legal acts can ‘retroact’ on the civil society and are exposed to a thorough review. In this ideal process, it is not only guaranteed that the citizens are finally bound by their ‘own’ decisions, but also that they are provided with an effective tool of evaluating the actions taken by the centre of binding decisions.

More specifically, efficacy “of the (...) governance processes and the adequacy of the rules they follow in policy making” (Schmidt, 2013, p. 6) is necessary in order to guarantee a smooth, fast and straight decision-making process between the respective institutions and actors. According to Schmidt (2013), this enhances the *throughput* legitimacy of a political system. To put it briefly, a smooth and well-organised decision-making procedure within the centre of binding decisions will lead to a timely processing of the societal problems raised by the civil society.³⁸

b. Electoral Accountability

Another variable that is essential for the ideal functioning of a Deliberative Democracy pursuant to its normative standards is electoral accountability (Dryzek, 2009; Habermas, 1996; Scharpf, 2009; Schmidt, 2013). According to Scharpf (2009, p. 188), the principle of electoral accountability “implies that governments will be responsive to citizen interests and preferences, and that changing governments may have an effect on policies that are strongly opposed by popular majorities. [Moreover,] governments are under (...) obligation to use the powers of government for the common good of the polity”. In principle, the centre of binding decision “must remain sensitive to the influence of public opinion” in order to guarantee that its decisions can be “traced back to legitimate law” (Habermas, 1996, pp. 368-386).³⁹

Accordingly, in order for a political system to meet the standards of the discourse theory of democracy and law, it is necessary that the civil society, that is the constituency, has the opportunity to

³⁸ However, Schmidt (2013) also notes that by means of interaction effects throughput efficacy may have a negative impact on e.g. input-legitimacy.

³⁹ For another definition of accountability, especially in connection with the civil society, see Kohler-Koch (2010).

constantly hold the centre of binding decisions accountable. As noted above, this is easiest realised by means of elections. In this context, Gutmann & Thompson (1997, p. 144) argue that “[r]eiterated deliberation, punctuated by periodic elections, is the best hope for the principle of accountability” (see also Cohen & Sabel, 1997). Hence, elections in a representative democratic system do not only offer the possibility to directly deselect a politician, but, given this sanction possibility, they also, indirectly, urge the elected representatives to constantly reconsider and review their arguments.

Another important aspect here is the adequate representation of interests by means of free, equal and secret elections (cf. Habermas, 1996). Just as the public sphere is expected to generate a pluralistic public opinion, elections are to “ensure that all the relevant interests and value orientations can be brought to bear with equal weight in the bargaining process” (Habermas, 1996, p. 181). Therefore, the electoral system ought to be as little distorted as possible.

c. Openness and Inclusiveness

In order to really guarantee that the administrative power never becomes independent from the communicatively generated power and thereby preventing a ‘legitimation dilemma’, a Deliberative Democracy should also assure the openness and inclusiveness of the centre of binding decisions to the civil society and the public sphere (Habermas, 1996; Schmidt, 2013). This is, the deliberative system is to allow for and the empowered space is to be open to a pluralistic “range of interests and discourses” (Dryzek, 2009, p. 1382) of different parties, associations and citizens and not risk a biased one-sidedness with regard to a specific interest (Schmidt, 2013). Together with the electoral accountability, the decoupling of the centre of binding decisions from the civil society can thus be prevented and responsiveness and sensitivity guaranteed.

d. Transparency

Moreover, the decision-making processes within the centre of binding decision are to be transparent. In particular, Gutmann & Thompson (1997) emphasise the importance of the disclosure of information and the argumentation behind the respective decisions. Therefore, a certain degree of publicity is often considered to have positive effects on the functioning of a deliberative system (cf. Habermas, 1996; Schmidt, 2013). This will not only enhance the capability of the civil society to control and comprehend the decisions made, but it will also facilitate their recognition of the output. In this context, Schmidt (2013, p. 6) notes that “[t]ransparency is often seen as a prerequisite of accountability”.⁴⁰

⁴⁰ Although full transparency and especially publicity is normatively desirable, empirical research on deliberation has shown that, in practice, it often leads to un-intended consequences (Göler, 2005).

e. Checks and Balances

The discourse theory of democracy and law clearly advocates a “separation and balancing of powers” (Habermas, 1996, p. 173). Concerning their respective competencies, Habermas (1996, p. 186) notes “[w]hereas the legislature justifies and passes general programs and the judiciary resolves action conflicts on this statutory basis, the administration is responsible for implementing legal programs that are not self-executing but need to be carried out.” Based on this strict distribution of responsibilities, Habermas (1996, p. 174) further claims that any infringement of this separation may “violate the communicative presuppositions of legislative and legal discourses and disturb the argumentation-guided processes of reaching understanding that alone can ground the rational acceptability of laws and court decisions”.

f. Judicial System

It goes without saying that the liberal rights introduced earlier – both regarding those of the individual citizens (e.g. freedom of speech) as well as the public sphere (e.g. freedom of the press) and the centre of binding decisions (e.g. party competition) – require an independent and impartial judicial system that is apt to assure their enforcement (Habermas, 1996). Only if the respective actors can bank upon this enforcement, will they be able to perform the duties assigned to them by the discourse theory of law and democracy. Moreover, Habermas (1996, p. 264) highlights that there has to be a constitutional court that “must examine the contents of disputed norms primarily in connection with the communicative presuppositions and procedural conditions of the legislative process”. In addition to the resolution of potential conflicts between different actors, a constitutional court also represents some kind of self-protection of the will of the people.

The deduced necessary or minimal conditions of a deliberative political system are summarised in the following table (Table 1).

Spheres of the political system			
	Civil society	Public sphere	Centre of binding decisions
Necessary conditions	<p>System of rights and the rule of law</p> <p>Minimum standard of wealth</p> <p>Social Capital / Solidar-</p>	<p>Media</p>	<p>Efficacy</p> <p>Electoral Accountability</p> <p>Openness and Inclu-</p>

	ity		siveness
			Transparency
			Checks and Balances
			Judicial System

Table 1. Necessary conditions of a deliberative political system

VI. Analysing the EU: A Deliberative Democracy?

In the following section, the extracted variables or necessary conditions defining a Deliberative Democracy (see Table 1) will now be applied to the case of interest, that is the EU. As indicated earlier, it will be focused on one policy field within a specific period of time, i.e. the economic and financial sphere of the EU between 2009 and 2015. With the outbreak of the economic and financial crisis in 2007/2008 and the following European debt crisis (2009), this specific policy field has been exposed to severe criticism as regards democratic legitimacy during the last couple of years (cf. Habermas, 2013; Scharpf, 2011; 2014a).⁴¹ Many have criticised the technocratic, opaque and informal way decisions have come about in the course of the Euro crisis and the rescue policies targeted at Greece (see, among others, Crum, 2013). To put it briefly, the EU's policies have ever more frequently and severely been accused to suffer a 'democratic deficit'. Against this background, the economic governance structure evolved in the course of the sovereign debt crisis⁴² characterises a very topical, relevant and interesting scope of application for the question raised in this paper. Moreover, focussing on a specific policy field, offers the advantage of conducting a slightly deeper analysis of the various variables and also shedding light on their potential interaction effects (cf. Mutz, 2008).

Hence, the rescue policies during the Eurozone crisis shall serve as an illustration of the applicability of the concept of democracy proposed by deliberative theory, which has been presented in detail in the preceding section. It is to show that the application of the discourse theory of democracy and law opens up new insights and vistas as concerns the question whether the EU suffers a 'democratic deficit' and that it lends itself well to analyse the current challenges the EU faces. By taking this deliberative perspective and reformulating the question on a 'democratic deficit' into the question on a 'deliberative deficit', it is not only possible to account for the unique institutional character of the Union, but also to focus more on the democratic *procedures* that interconnect the different elements of a political system.

⁴¹ For a very early investigation of the question whether the EMU suffers from a democratic deficit, see Verdun (1999).

⁴² For a comprehensive overview of the current system of economic governance, see Alcidi *et al.* (2014, pp. 14).

As it is only intended to give first insights in the analysis of the EU through the lenses of discourse theory and to broadly illustrate the applicability of this specific concept of democracy on the basis of the EU (strictly speaking the Eurozone crisis), this investigation does not follow one explicit research design. Rather, it will be adhered to the proposition by, among others, King, Kehone & Verba (1995) and Marks (2007) on triangulation, substantiating the empirical findings of recent scientific contributions with a wide range of sources – including up-to-date figures, EU documents and facts from newspaper articles.

A. Civil society

From the foregoing, it is clear that the EU in general has already developed beyond the liberal idea of democracy. Accordingly, as concerns the system of rights and the rule of law, the theoretical guidelines set by discourse theory in this context, can be considered as being met. A comprehensive list of human, liberal and social rights is warranted through the so called Charter of Fundamental Rights of the European Union (European Union, 2010). Thus, formally, the rights required by the discourse theory of democracy and law are thoroughly laid down in EU legislation. The successful enforcement of these rights has to be discussed elsewhere.

The picture is similar for the minimum standard of wealth within the EU. In principle and on a global scale, the level of welfare of the MS of the EU is quite high and the condition required by the theory can thus be considered as being fulfilled (Allianz, 2014). However, concerning the distribution of wealth, there can be found marked differences between the individual countries (Eurostat, 2015a) as well as between different societal groups within one MS (Eurostat, 2015b). According to the latest findings, the gap between the rich and the poor within one country has even increased in the course of the Eurozone crisis (Eurostat, 2015b). To what potential problems that might lead – especially in the interplay with other necessary conditions – will be discussed later.

Matters are quite different as concerns the variable pertaining to the concept of social capital or solidarity. In fact, in the course of the rescue measures, the lacking solidarity among the different *demoi* of the EU has often been claimed by scholars and politicians to constitute a severe weakness (Habermas, 2013; Scharpf, 2014a/b; Schimmelfennig, 2015). But, again, it is important to clearly define the standards which the case of interest is measured against. Regarding the deliberative standards distilled before, it is a “shared political lifeworld [or culture]” (Habermas, 2013, p. 3) that is necessary in order for a Europe-wide solidarity to develop. Only if the European peoples share a common problem perception and grant each other mutual recognition and trust will they be willing

to enter a pan-European discourse on societal problems and be able to empathise with the arguments of others (cf. Gutmann & Thompson, 1997).

However, in the case of the current crisis, recent figures of a study conducted by the Pew Research Center (2012) seem to justify those claims and prove the prevalence of distrust: Not only do countries consider Greece, which has been the target of the majority of rescue policies and instruments, as a major threat to economic well-being (Germany 71%, France 64%) with its popularity among EU Member States declining (favourability of Greece among the Poles has declined 28 points between 2010 and 2012), but also do more and more countries believe that their national economy has been weakened through economic integration (Czech Republic: 2009 37%, 2012 59%) and do not consider EU membership as positive anymore (in Poland, in 2009 63% considered it as positive, in 2012 only 48%). These figures reveal severe distrust among the individual MS of the EU and also of the MS towards (future) EU integration itself.

In addition, given the uneven distribution of wealth among the different MS, there is no question of the existence of a common perception or “similar frame of reference” (Risse & van de Steeg, 2003) of the issues concerning the sovereign debt crisis of some MS (Crum, 2013; Eurostat, 2015a). As long as some countries within the EU (e.g. Greece) are far from living up to the fiscal discipline required by, for example the Stability and Growth Pact and its reforms through the Six- and Two-Pack, whereas other countries, such as, above all, Germany even seem to prosper in the course of the crisis, it will remain extremely difficult for the peoples of the EU to consensually agree on and accept respective policy decisions (cf. Pew Research Center, 2012).⁴³ Although advocates of discourse theory largely agree that, in the first place, some disagreement is necessary for a deliberative discourse to work out (cf. Crespy, 2014), especially Habermas (1996) emphasises the importance of a minimum of shared perception (Mansbridge *et al.*, 2012).⁴⁴ At the moment, this is definitely not the case for the EU.⁴⁵

In the light of these arguments, it is difficult to attest a Europe-wide solidarity in the economic and financial sphere.⁴⁶ In order for the EU to fulfil the ideal standards of deliberative theory concerning the requirement of solidarity and social capital, it would be necessary to establish a transnational discourse on the current crisis management. Apart from a reinforced transnational civic engagement,

⁴³ At the moment, the implementation of a legally enshrined permanent ‘solidarity’ mechanism (e.g. in form of Eurobonds) is discussed. However, the establishment of such a transfer union or of a political union with an extended right of EU institutions to control national budgets seem to represent a very remote prospect.

⁴⁴ For an interesting debate on the level of disagreement between Habermas and Mouffe (2005; 2012), see e.g. Jeziarska (2011). This debate also touches upon the above introduced reflections on the question, whether the EU ought to be thought of as constituting a *demos* or different *demoi* (Nicolaidis, 2013; 2014).

⁴⁵ In fact, the opposition against (further) financial assistance to other EU countries on part of the so called donor countries or net contributors to the EU budget seems to rise – especially in Germany, but also in the Scandinavian and Baltic countries (Pew Research Center, 2012; Schimmelfennig, 2015).

⁴⁶ Actually, this trend can also be observed in the case of, for example, migration policies.

e.g. in the form of Europe-wide interest groups or parties, Habermas (2001) felicitously notes that a European public sphere is vital for such a discourse to develop. In how far this is a realistic scenario is discussed in the following section.

B. Public sphere

Apart from the basically warranted and enforced freedom of the press – albeit some outlier countries (currently, Hungary) – scholars consensually agree that the structure of the public sphere of the EU is far from fulfilling the theoretical requirements and living up to the ideal of deliberative theory (Bijmans & Altides, 2007; de Vreese, 2007; Freedom House, 2015; Koopmans & Erbe, 2004). On the contrary, they observe the “continuing predominance of the national political space as the arena for public debates” (Koopmans & Erbe, 2004, p. 97), the absence of EU affairs from the national media and the non-existence of a “widely used pan-European media” (Bijmans & Altides, 2007, p. 326). In conjunction with the low degree of Europe-wide solidarity, these circumstances do not pave the way for an ideal process of opinion- and will-formation according to the ideal of Deliberative Democracy – not to speak of the conditions of communications in an Ideal Speech Situation. In fact, if the citizens of the EU do not succeed in engaging in a common, Europe-wide discourse on social problems, the public sphere will lack the necessary input and have no adequate public opinion to generate (cf. Risse & van de Steeg, 2003). At the same time, if the media does not enhance the level of information on trans-European issues, the potential discourse participants lack essential information required for the generation of rational arguments. Already here, it becomes obvious that the idea of self-legislation within the EU is under severe pressure and that the different essential parts of a political system do affect each other in a complex way and are mutually dependent.

In the case of the economic and financial crisis, the frequency and quantity of EU-related news in national media, can definitively be considered to have grown. However, the manner which dominated the discourse is to be found as not adhering to the conditions of communication proposed by the discourse theory of law and democracy (cf. Mylonas, 2012). Again, the missing solidarity and lacking ability of the different European peoples to empathise with citizens from other MS reinforces national communication structures and exacerbates the (inadequate) quality of the discourse.

As concerns the concrete implementation of the theoretical requirements of a European public sphere, scholars firmly disagree. While discourse theory – as often – has to see itself confronted with the accusation of presenting an approach way too utopian (cf. de Vreese, 2007), especially more modern readings of deliberative theory emphasise that a fully homogeneous civil society and public sphere is no prerequisite in order for a transnational solidarity or a ‘solidarity among strangers’ to develop (Bohmann, 2005; 2012; Habermas, 2013). In fact, the democratic procedures and structures

of communication proposed by deliberative theory are characterised precisely by a universality resulting from its principle of intersubjective rationality that does, for example, not require the usage of the same language. Here, Bohmann (2004, p. 36) notes “[g]iven various linguistic and mass media limitations, this [European] public sphere would not be a unified one, but a public of publics in which various linguistic public spheres debate common issues, and through intermediaries translate across linguistic and cultural boundaries the results of deliberative processes in other publics”.

C. Centre of binding decisions

In the course of the economic and financial crisis, a significant increase of policy outputs – especially in the field of the EU’s ‘economic governance’ – could be observed (European Commission, 2015). A fortiori, these “turbo-speed legislative activities which are accompanied by hectic political activities and a fundamental transformation of the economic constitution” (Joerges, 2015, p. 12) raise the question whether the genesis of this increased output meets the standards of deliberative theory.

In particular and with regard to the efficacy of the procedures applied within the centre of binding decisions, the vast policy output also poses the question of how this rapidity could be achieved in a political system in which the decision rule of qualified majority vote (QMV) indeed seems to prevail, but (more demanding) unanimity among the MS is still required for some policy areas. Interestingly, many of the rescue mechanism created and financial and economic policy decisions taken, have been established by means of a mode described as “intergovernmental compromise” (Habermas in Oltermann, 2015) or “new intergovernmentalism” (Bickerton *et al.*, 2014). That is, most prominently, the European Fiscal Compact (‘Treaty on Stability, Coordination and Governance’) as well as the European Financial Stability Facility (EFSF) and its successor, the European Stability Mechanism (ESM) were established outside of European primary law.⁴⁷ On the one hand, the Eurozone governments had to bypass the opposition of the non-Eurozone members to be liable for countries whose currency is the Euro⁴⁸. On the other hand, while agreeing on reinforced cooperation, the MS whose currency is the Euro did not seem willing to transfer respective competencies to supranational institutions, but rather seemed to have striven for their continuous power as concerns decisions within the economic and financial policy sphere. Accordingly, they opted for establishing international or intergovernmental organisations or treaties under international public law (Bickerton *et al.*, 2014). Doing so, they were able to circumvent EU-wide unanimity rule and other demanding decision-making

⁴⁷ Only the so called Six Pack and Two Pack have strengthened the supranational side of the EU (Fabbrini, 2013).

⁴⁸ In particular, for the Fiscal Compact, the veto by the United Kingdom could be bypassed (de Witte, 2013).

requirements prescribed by different supranational institutions of the EU⁴⁹ – resulting in a smaller number of potential veto players (19 out of 28) (de Witte, 2013). However, Fabbrini (2013, p. 1018) notes that the members of the Eurozone still had to see themselves confronted with the challenge of achieving unanimous consent among them, which resulted in a problem-solving capacity “often ‘too late and too little’”.⁵⁰ All in all, the rescue policies of the EU cannot be described as being efficacious – the question regarding their effectiveness⁵¹ is to be answered elsewhere.

As Schmidt (2013) notes, the logic of efficacy (for which the unanimity rule displays the potential jeopardy of deadlock) often cuts across the logic of several input and output arguments. Most notably, it challenges the principles of electoral accountability, openness and inclusiveness. Apart from the general discussion on the rather low degree of electoral accountability when it comes to the appointment of the EU’s executive⁵², namely, the European Commission, the current structure of economic governance that developed in the course of the sovereign debt crisis also challenges the necessary condition of electoral accountability (Habermas, 2013; Joerges, 2015; Scharpf, 2014b).

First, the above outlined ‘intergovernmental centralization’ (Fabbrini, 2013) or ‘executive federalism’ (Habermas, 2013) may lead to the potential jeopardy that the decisions taken by the MS whose currency is the Euro (or who have agreed to reinforced economic and financial cooperation) alone (such as the Eurogroup, the Euro Summit and the board of the ESM) have an effect on the *modus operandi* of other EU institutions and thus, on other MS, who have not agreed on such alterations (Craig, 2014). In that case, the citizens of the non-participating MS would be entirely deprived of their (electoral) accountability and possibility to exert influence: the centre of binding decisions would be uncoupled from its citizenry.⁵³

Second, under the intergovernmental set-up of the most decisive executive actors in the course of the crisis, namely the European Council, the ECOFIN Council, the Eurogroup, the Euro Summit and also the IMF (International Monetary Fund) (cf. Craig, 2014), the respective representatives (i.e. the ministers of finance or the head of governments) dispose, if at all, of a ‘borrowed’ legitimisation derived from their national constituency and may, indirectly, be held accountable by their voters (cf.

⁴⁹ In the case of the European Fiscal Compact, only 12 out of (at that time) 17 (Euro-)MS had to ratify the Treaty in order for it to come into effect. In the case of the ESM, only 90% of the required MS had to ratify its enforcement. However, for the enforcement of the ESM, a treaty amendment was agreed unanimously among *all* MS.

⁵⁰ Even J.-C. Juncker, present President of the European Commission, and his colleagues confess: „At the height of the crisis, far-reaching decisions had often to be taken in a rush, sometimes overnight. In several cases, intergovernmental solutions were chosen to speed up decisions or overcome opposition.“ (Juncker *et al.*, 2015, p. 17)

⁵¹ Legally non-binding agreements such as the Euro-Plus-Pact, but, according to Fabbrini (2013), also legally consolidated agreements, such as the SGP (Stability and Growth Pact), do face the challenge of a compliance dilemma.

⁵² Here, Scharpf (2014b) notes that in the case of the European Commission, the prominent conditions of accountability are lacking.

⁵³ Moreover, Fabbrini (2013, p. 1022) emphasises that the current economic governance „operates under the control of the larger and creditor member states that impose their criteria to the small and debtor member states“.

Habermas, 2013). They do not at all have the chance of developing a legitimacy derived from a European constituency – nor can they be held accountable by means of elections. At the moment, this possibility is only given in the case of the EP – as the only directly elected EU institution. However, it has played a rather insignificant role in the decision-making procedures concerning the rescue policies (Fabbrini, 2013). Most notably, it results from the aforementioned that the elections to the EP (most recently in 2014) are *not* to be considered to have had any effect on the general policy orientation of the EU and that, hence, citizens were not able to express their approval or dissent with the decisions taken. In this context, it is obvious that there does not exist an ongoing process of interest intermediation as required for an inclusive and open political system (Schmidt, 2013). Accordingly, it can be stated that the political system of the EU does not live up to the requirements of electoral accountability, openness and inclusiveness when it comes to the economic and financial sphere.

Besides, the same can be found for the necessary condition of transparency. In this context, Mahony (2015) speaks, for example, of a “transparency vacuum” of the Eurogroup, who is not required to take minutes of its meetings, nor to publish any policy proposal. This low degree of publicity is definitely inconsistent with the Eurogroup’s influence on the recent policy measures taken.

Moreover, as concerns the requirement of checks and balances set by deliberative theory, it can be noted that, apart from the increasing ‘decoupling’ of the centre of binding decisions from the citizenry, the shift of supranational integration to more intergovernmental integration in the course of the sovereign debt crisis has also upset the balance of powers dominating the EU’s governance processes. In particular, as indicated before, the adherence to international public law implies the bypassing of the usual decision-making rules and control mechanisms. The Eurogroup, for example, “is democratically accountable to no one” and “cannot adopt legally binding decisions” (Mahony, 2015, p. 1). Moreover, its President (for the time being, J. Dijsselbloem) is formally not required to justify the group’s decisions in front of any other EU institutions, nor is there a formal way for other institutions to remove him from office (Mahony, 2015). To put it briefly, other EU institutions have no adequate measures of control at hand when it comes to one of the most influential actors in the current Eurozone crisis.

Moreover, even the strengthening of some supranational institutions, namely the Commission and the ECB (as part of the Troika) in the course of the crisis has not succeeded in letting the EU return to its equilibrium of powers. Rather, it reinforced the low degree of (electoral) accountability

and of opportunities of respective EU institutions to control the ECB⁵⁴, the Commission and the ECJ (European Court of Justice) (cf. also Bickerton *et al.*, 2014). Here, Scharpf (2009, pp. 181) states that “Member states, or the European Parliament, for that matter, have no voice when the ECB determines the course of monetary policy, when the Commission decides to prosecute certain practices of EU member states as Treaty violations, and when the ECJ uses its powers of interpretation to shape the substance of primary and secondary European law.”

With regard to the judicial system of the EU, the question arises how the ECJ, i.e. the highest court in the EU, has positioned itself vis-à-vis the establishment of the economic governance structure in the course of the Eurozone crisis. Interestingly enough, the ECJ seemed to have backed and strengthened the above described developments of the growing concentration of power in democratically less accountable institutions (e.g. ECB) and the increasing intergovernmental integration. In the *Pringle v Ireland* case the ECJ ruled that the ESM was compatible with the EU Treaties. In particular, it found that the provisions of the permanent euro rescue fund did not violate the so called ‘no bailout-clause’ (TFEU, Art. 125) (Beck, 2014). Doing so, the ECJ clearly advocated the establishment of the ESM – although doubts about its conformity with EU law remain (Beck, 2014). In another ruling, *Gauweiler and Others*, the ECJ supported the controversial bond-buying program of the ECB, the OMT (Outright Monetary Transactions), and thereby supported its policy decisions, which – due to the ECB’s independency – are completely withdrawn from any democratic control of both other EU institutions and the EU citizenry. In summary, Beck (2014) concludes: “The Court’s response to the Eurozone crisis suggests that where the Court is called upon to uphold treaty provisions which restrict – rather than expand – EU powers (...) the Court is not an impartial judge (...) [and] has adopted outwardly ‘political’ rulings.” Hence, the proper functioning of the judicial system of the EU according to deliberative theory is highly questionable.

D. Results

The results of the preceding application of the analytical framework based on the concept of Deliberative Democracy can be summarised as follows (see Table 2): The economic governance structure that evolved in the EU during the Eurozone crisis since 2009 does only fulfil two of the ten minimal or necessary conditions identified. Most notably, the liberal standards, i.e. the warranty of the system of rights as well as the rule of law, can be considered as being realised, while the standards that go beyond the liberal conception of democracy lag behind. Genuine republican ideals, such as

⁵⁴ The ECB’s power has only recently been strengthened by the ECJ. See case *Thesing and Bloomberg v ECB*, C-28/13 P, [2013] ECJ. The ECJ’s rulings on transparency are also to be considered at odds with the principles proposed by deliberative theory.

civic solidarity and input-legitimacy guaranteed through the citizens' participation, are by and large, insufficiently discernible in the EU's economic governance structure. This corresponds precisely to the reflections on the most suitable theory of democracy outlined before. Only the minimal standard of wealth, which would already be quite difficult to justify under the liberal concept, but has been acknowledged by some of its advocates (e.g. J. Rawls), was found to be present. However, it could be demonstrated that the uneven distribution of that wealth has led to serious impairments of other variables, such as civic solidarity.

In particular, the application of the analytical framework revealed that the ideal of self-legislation and the democratic procedures intended to generate and enhance the EU's legitimacy (mainly regarding its actors and institutions of the centre of binding decisions) do not function properly. Starting with the sphere of the civil society, "a supranational expansion of civic solidarity" (Habermas, 2011), a common frame of reference as concerns societal problems and the development of a transnational deliberation are not yet in sight. As a result, a EU-wide public sphere with a European media, which could take up the commonly perceived issues of the European people(s) and transmit them to the centre of binding decisions, is also missing. Therefore, the connection between the citizenry and the centre of binding decisions has to be considered as being interrupted, which triggers the decoupling of the latter from the first sphere. In the further course of the evaluation, it could be shown that this process of decoupling of the centre of binding decisions proceeds, since it falls short of, first, providing efficacious solutions to the problems caused by the Eurozone crisis, second, implementing respective procedures that would allow for the centre to remain open, sensitive and responsive to the citizenry, third, establishing adequate procedures of mutual control among its actors and institutions and, fourth, guaranteeing an independent judicial control of its governance.

Accordingly, the demanding circular process of self-legislation was found to be interrupted at several points and levels of the political system of the EU. As a consequence, it is to conclude that the here examined economic governance structure of the EU – and thus, the EU in general – does not fall under the concept of Deliberative Democracy and does not live up to the demanding normative democratic standards set by deliberative theory.⁵⁵ To sum up, the present investigation has shown by means of the example of the Euro-rescue policies that the EU suffers a 'deliberative deficit'.

Spheres of the political system	Necessary conditions	Value
--	---------------------------------	--------------

⁵⁵ For a future outlook of the development of the EMU, see Crum (2013).

Civil society	System of rights and the rule of law	1
	Minimum standard of wealth	1
	Social Capital / Solidarity	0
Public sphere	Media	0
Centre of binding decisions	Efficacy	0
	Electoral Accountability	0
	Openness and Inclusiveness	0
	Transparency	0
	Checks and Balances	0
	Judicial System	0

Table 2. Values of the EU's economic governance structure

VII. Concluding remarks

This paper set out to develop an adequate analytical framework which is apt to investigate the democratic, more precisely, the deliberative character of the EU. Therefore, it devoted attention to a theory of democracy, i.e. deliberative theory which – due to its procedural character – was expected to reveal new and interesting insights as concerns the democratic architecture of the EU and to provide a fresh perspective on the question whether the EU suffers a ‘democratic deficit’.

In order to approach this task, first of all, previous literature dealing with the ‘democratic deficit’ of the EU and research applying deliberative theory to the EU was discussed. This literature review revealed that, on the one hand, the discussion on a potential ‘democratic deficit’ of the EU lacks coherence and comprehensiveness and, on the other hand, that an encompassing measurement tool deduced from deliberative theory, i.e. a thoroughly defined concept of Deliberative Democracy, is still underdeveloped (for the EU).

As a consequence, in a second step, the concept of democracy proposed by deliberative theory was specified by thoroughly distilling empirical minimal or necessary conditions from the normative requirements. In this context, a systemic approach was taken in order to broaden the potential scope

of application to different political systems – especially with regard to the *sui generis* character of the EU. In the end, the concept of Deliberative Democracy, encompassing ten indispensable conditions in the three spheres of civil society, public sphere and centre of binding decisions, was specified.

In a third step, the analytical framework's applicability was tentatively demonstrated based on the example of the system of economic governance that evolved in the course of the Eurozone crisis. As the respective policy fields have come under severe pressure during the last couple of years regarding issues of lacking democratic accountability and legitimacy, the case selection proved not only its genuine and high topicality, but also lent itself well for the illustration of the benefits of deliberative theory. By means of the thorough exploration of the idea of self-legislation, it could be shown how the different requirements proposed by discourse theory are mutually dependent and to what effects a missing necessary conditions might lead. In the case of the EU, it was found that the demanding circular process of self-legislation is interrupted at several points and that it therefore does not fall under the concept of Deliberative Democracy. To conclude, the investigation has shown that the EU suffers a 'deliberative deficit'.

However, unlike other attempts trying to give an answer to the question whether the EU suffers a 'democratic deficit', this paper has provided a proper and decent theory-driven analytical framework, which explicitly mirrors the pure normative requirements set by a specific theory of democracy. Most notably, this approach succeeded in adequately shifting the potential scope of application from nation states to political systems (and thus, also the EU) in general. This could be achieved by taking a systemic approach, but, at the same time, preventing a mere 'Ver-Nationalstaatlichung' of the case of the EU (Ismayr, 2008), rigorously taking account the special features of the EU. Moreover, the perspective taken here also shed light on the mutually dependence of the different conditions and substantiated the argument that the EU's 'democratic deficit' cannot be understood or grasped by one single variable.

As such, the present investigation provides European Union research with a thoroughly specified analytical framework. After further development and refinement of the minimal conditions (especially concerning their translation in smaller, empirically measurable indicators and respective data generation) and a comprehensive analysis of the whole EU governance system across all policy fields, it would, for example, be very interesting to compare the results of this deliberative analytical framework with other indices of democracy. Especially due to its systemic perspective and its focus on democratic *procedures*, this set of variables offers the possibility to investigate a political system of interest from a holistic angle – in the sense that it intends to explain the *interconnectedness* of the differ-

ent spheres and components of a political system. Here, the idea of self-legislation proved as a very helpful tool.

Finally, as concerns the future perspective of democracy in the EU, it could be demonstrated that, in order for the EU to fulfil the necessary conditions of a Deliberative Democracy and to cast off the 'democratic and deliberative deficit', it has to develop tremendously. Here, the question arises if that is only possible by means of an 'ever closer Union' or if other ideas, such as the development of a 'core Europe', will prevail. In the end, this is a normative question, which should be exposed to a public opinion- and will-formation in the form of a EU-wide deliberation.

References

- Abromeit, H. (2004). Die Messbarkeit von Demokratie: Zur Relevanz des Kontexts [The measurability of democracy: On the relevance of the context]. *Politische Vierteljahresschrift*, 45(1), 73-93.
- Alcidi, C., Giovannini, A. & Piedrafita, S. (2014). Enhancing the Legitimacy of EMU Governance. CEPS (Centre for European Policy Studies) Special Report, No. 98.
- Allianz (2014). Global wealth report. Retrieved from https://www.allianz.com/v_1411404269000/media/press/document/Allianz_Global_Wealth_Report_2014_en.pdf
- Beck, G. (2014, December 10). ECJ legal rulings designed to help the Eurozone are threatening the accountability of European governance. *EUROPP (European Politics and Policy)*, LSE. Retrieved from <http://bit.ly/1vBc0nG>
- Bickerton, C. J., Hodson, D., & Puetter, U. (2014). The New Intergovernmentalism: European Integration in the Post-Maastricht Era. *JCMS (Journal of Common Market Studies)*, forthcoming.
- Bijsmans, P., & Altides, C. (2007). 'Bridging the gap' between EU politics and citizens? The European Commission, national media and EU affairs in the public sphere. *European Integration*, 29(3), 323-340.
- Bohman, J. (2012). Representation in the deliberative system. In Parkinson, J. & Mansbridge, J. (Eds.), *Deliberative Systems: Deliberative Democracy at the Large Scale* (pp. 72-94). Cambridge University Press.
- Brüggemann, M. (2005). How the EU constructs the European public sphere. Seven Strategies of Information Policy. *Javnost-The Public*, 12(2), 57-73.
- Cohen, J., & Sabel, C. (1997). Directly-deliberative polyarchy. *European Law Journal*, 3(4), 313-342.

- Craig, P. (2014). *The Eurogroup: Legitimacy, Democratic Accountability and Decision-Making*. Retrieved from https://polcms.secure.europarl.europa.eu/cmsdata/upload/9136ec5a-63a4-4fd5-bcbb-cff1309c35c1/Prof%20Craig_EPEuroGroup.pdf
- Crespy, A. (2014). Deliberative democracy and the legitimacy of the European Union: a reappraisal of conflict. *Political studies*, 62(S1), 81-98.
- Crombez, C. (2003). The Democratic Deficit in the European Union. Much Ado about nothing?. *European Union Politics*, 4(1), 101-120.
- Crum, B. (2005). Tailoring representative democracy to the European Union: does the European constitution reduce the democratic deficit?. *European Law Journal*, 11(4), 452-467.
- Crum, B. (2013). Saving the Euro at the Cost of Democracy?. *JCMS*, 51(4), 614-630.
- Dryzek, J. S. (2009). Democratization as Deliberative Capacity Building. *Comparative Political Studies*, 42(11), 1379-1402.
- Durkheim, E. (2014). *The division of labor in society*. New York: Free Press. (Original work published 1893)
- Easton, David (1953). *The Political System*. New York, Alfred A. Knopf.
- Easton, David (1965). *A Systems Analysis of Political Life*. New York, John Wiley & Sons, Inc.
- Eriksen, E. O., & Fossum, J. E. (Eds.). (2002). *Democracy in the European Union: integration through deliberation?*. Routledge.
- Eriksen, E. O., & Fossum, J. E. (2012). Representation through deliberation – The European case. *Constellations*, 19(2), 325-339.
- European Commission (2012). *A blueprint for a deep and genuine economic and monetary union: Launching a European debate*. Communication from the Commission, EUR-Lex 52012DC0777, 1-52.

- European Commission (2014). *Public opinion in the European Union*. Standard Eurobarometer 82. Autumn 2014. Retrieved from http://ec.europa.eu/public_opinion/index_en.htm
- European Commission (2015). *Economic and financial affairs. EU economic governance*. Retrieved from http://ec.europa.eu/economy_finance/economic_governance/index_en.htm
- European Court of Justice (ECJ). *Pringle v Ireland*, C-370/12, [2012] ECJ.
- European Court of Justice (ECJ). *Gauweiler and Others*, C-62/14, [2015] ECJ
- European Union (2010). *Charter of Fundamental Rights of the European Union*, 2010/C 83/02. Retrieved from http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.C_.2010.083.01.0389.01.ENG
- Eurostat (2015a). *GDP per capita, consumption per capita and price level indices*. Retrieved from http://ec.europa.eu/eurostat/statistics-explained/index.php/GDP_per_capita,_consumption_per_capita_and_price_level_indices
- Eurostat (2015b). *GDP at regional level*. Retrieved from http://ec.europa.eu/eurostat/statistics-explained/index.php/GDP_at_regional_level
- Fabbrini, S. (2013). *Intergovernmentalism and its Limits: assessing the European Union's answer to the Euro crisis*. *Comparative Political Studies*, XX(X), 1-27.
- Fishkin, J. S. (2010). *Response to critics of when the people speak: the deliberative deficit and what to do about it*. *The Good Society*, 19(1), 68-76.
- Føllesdal, A., & Hix, S. (2006). *Why there is a democratic deficit in the EU: A response to Majone and Moravcsik*. *JCMS*, 44(3), 533-562.
- Freedom House (2015, May 05). *Europe's Looming Press Deficit*. Retrieved from <https://freedomhouse.org/blog/europe-s-looming-press-freedom-deficit#.VbCWH0U0FKo>
- Fung, A. & Wright, E. O. (2003). *Deepening Democracy: Institutional Innovations in Empowered Participatory Governance*. London and New York: Verso.

- Göler, D. (2006). *Deliberation: Ein Zukunftsmodell europäischer Entscheidungsfindung? Analyse der Beratungen des Verfassungskonvents 2002-2003* [Deliberation: a future model of European decision-making? Analysis of the consultations of the Constitutional Convention]. Europäische Schriften; 84. Baden-Baden: Nomos-Verlags Gesellschaft.
- Goodin R. E. (2005). Sequencing deliberative moments. *Acta Politica*, 40(2), 182–96.
- Grimm, D. (2014, August 10). Die Stärke der EU liegt in einer klugen Begrenzung [The EU's strength is a wise limitation]. *Frankfurter Allgemeine Zeitung*. Retrieved from <http://www.faz.net/aktuell/feuilleton/debatten/europas-zukunft/europa-debatte-die-staerke-der-eu-liegt-in-einer-klugen-begrenzung-13090815.html>
- Grimm, D. (2015). Zum Stand der demokratischen Legitimation der Europäischen Union nach Lissabon [On the state of the EU's democratic legitimisation after Lisbon]. In Abbas, N., Förster, A., & Richter, E. (Eds.), *Supranationalität und Demokratie* [Supranationality and democracy] (pp. 17-36). Springer Fachmedien Wiesbaden.
- Gutmann, A. & Thompson, D. F. (1997). *Democracy and disagreement*. Cambridge, Massachusetts: Belknap Press of Harvard University Press.
- Haas, E. B. (1964). *Beyond the Nation State: Functionalism and International Organization*. Stanford: Stanford University Press.
- Habermas, J. (1984). *The theory of communicative action. Volume I*. Boston: Beacon.
- Habermas, J. (1994). Three normative models of democracy. *Constellations*, 1(1), 1-10.
- Habermas, J. (1996). *Between facts and norms*. Translated by W. Rehg. Cambridge, MA: MIT Press, 165, 21.
- Habermas, J. (2001, June 28). Warum braucht Europa eine Verfassung? [Why does Europe need a constitution?]. *Zeit Online*. Retrieved from http://www.zeit.de/2001/27/Warum_braucht_Europa_eine_Verfassung_

- Habermas, J. (2011, November 10). Europe's post-democratic era: The monopolisation of the EU by political elites risks reducing a sense of civic solidarity that's crucial to the European project. *The Guardian*. Retrieved from <http://www.theguardian.com/commentisfree/2011/nov/10/jurgen-habermas-europe-post-democratic>
- Habermas, J. (2013, May 07). Democracy, Solidarity And The European Crisis. *Social Europe*. Retrieved from <http://www.socialeurope.eu/2013/05/democracy-solidarity-and-the-european-crisis-2/>
- Habermas, J. (2014). *The Crisis of the European Union: A Response*. John Wiley & Sons.
- Hix, S., & Høyland, B. (1999). *The political system of the European Union*. London: Macmillan.
- Holzinger, K. (2001). Verhandeln statt Argumentieren oder Verhandeln durch Argumentieren? Eine empirische Analyse auf der Basis der Sprechakttheorie [Bargaining instead of arguing or bargaining through arguing? An empirical analysis on the basis of speech act theory]. *Politische Vierteljahresschrift*, 42(3), 414-446.
- Hüller, T. (2005). *Deliberative Demokratie. Normen, Probleme und Institutionalisierungsformen. Europäisierung: Beiträge zur transnationalen und transkulturellen Europadebatte* [Deliberative Democracy. Norms, problems and forms of institutionalisation. Europeanisation: contributions to the transnational and transcultural debate on Europe]. Münster: Lit-Verlag.
- Ipsen, H. P. (1972). *Europäisches Gemeinschaftsrecht* [European Community Law]. Tübingen.
- Ipsen, H. P. (1973). Über Supranationalität [On supranationality]. In Ipsen, H. P. (Ed.), *Europäisches Gemeinschaftsrecht in Einzelstudien* [European Community Law in individual studies] (pp. 87-112). Baden-Baden.
- Isernia, P., & Fishkin, J. S. (2014). The EuroPolis deliberative poll. *European Union Politics*, 15(3), 311-327.
- Ismayr, W. (2008). *Die politischen Systeme Westeuropas* [The political systems of Western Europe]. Springer.

- Jellinek, G. (1929). *Allgemeine Staatslehre* [General Theory of the State]. Berlin: Springer.
- Jensen, T. (2009). The democratic deficit of the European Union. *Living Reviews in Democracy*, 1, 1-8.
- Jeziarska, K. (2011). Radical democracy redux. *Politics and subjectivity beyond Habermas and Mouffe*.
- Joerges, C., & Neyer, J. (1997). Transforming strategic interaction into deliberative problem-solving: European comitology in the foodstuffs sector. *Journal of European public policy*, 4(4), 609-625.
- Joerges, C. (2015). The European economic constitution and its transformation through the financial crisis. *ZenTra Working Papers in Transnational Studies No. 47 / 2015*.
- Juncker, J.-C., Tusk, D., Dijsselbloem, J., Draghi, M. & Schulz, M. (2015). Completing Europe's Economic and Monetary Union. Retrieved from http://ec.europa.eu/priorities/economic-monetary-union/docs/5-presidents-report_en.pdf
- King, G., Keohane, R. O., & Verba, S. (1995). The importance of research design in political science. *American Political Science Review*, 89(02), 475-481.
- Kohler-Koch, B. (2010). How to put matters right? Assessing the role of civil society in EU accountability. *West European Politics*, 33(5), 1117-1141.
- Koopmans, R., & Erbe, J. (2004). Towards a European public sphere? Vertical and horizontal dimensions of Europeanized political communication. *Innovation: The European Journal of Social Science Research*, 17(2), 97-118.
- Lord, C., & Tamvaki, D. (2013). The politics of justification? Applying the 'Discourse Quality Index' to the study of the European Parliament. *European Political Science Review*, 5(01), 27-54.
- Mackenzie, M., & Warren, M. E. (2012). Two trust-based uses of minipublics in democratic systems. In Parkinson, J. & Mansbridge, J. (Eds.), *Deliberative Systems: Deliberative Democracy at the Large Scale* (pp. 95-124). Cambridge University Press.

- Mahony, H. (2015, May 05). The rise of the untransparent 'Eurogroup'. *EUobserver*. Retrieved from <https://euobserver.com/economic/128582>
- Majone, G. (1998). Europe's "democratic deficit": the question of standards. *European Law Journal*, (4), 5-28.
- Mansbridge, J., Bohman, J., Chambers, S., Christiano, T., Fung, A., Parkinson, J., Thompson, D. F. & Warren, M. E. (2012). A systemic approach to deliberative democracy. In Parkinson, J. & Mansbridge, J. (Eds.), *Deliberative Systems: Deliberative Democracy at the Large Scale* (pp. 1-26). Cambridge University Press.
- Marks, G. (2007). Introduction: Triangulation and the square-root law. *Electoral Studies*, 26(1), 1-10.
- Moravcsik, A., & Katzenstein, P. J. (1998). *The choice for Europe: social purpose and state power from Messina to Maastricht* (Vol. 1). Ithaca, NY: Cornell University Press.
- Moravcsik, A. (2002). Reassessing legitimacy in the European Union. *JCMS*, 40(4), 603-624.
- Mouffe, C. (2005). *On the political*. Psychology Press.
- Mouffe, C. (2012). An agonistic approach to the future of Europe. *New Literary History*, 43(4), 629-640.
- Mutz, D. C. (2008). Is deliberative democracy a falsifiable theory?. *Annual Review of Political Science*, 11, 521-538.
- Mylonas, Y. (2012). Media and the economic crisis of the EU: The 'Culturalization' of a systemic crisis and Bild-Zeitung's framing of Greece. *tripleC: Communication, Capitalism & Critique. Open Access Journal for a Global Sustainable Information Society*, 10(2), 646-671.
- Nicolaïdis, K. (2013). European democracy and its crisis. *JCMS*, 51(2), 351-369.
- Nicolaïdis, K., & Youngs, R. (2014). Europe's democracy trilemma. *International Affairs*, 90(6), 1403-1419.

- Oltermann, P. (2015, July 16). Jürgen Habermas's verdict on the EU/Greece debt deal – full transcript. *The Guardian*. Retrieved from <http://www.theguardian.com/commentisfree/2015/jul/16/jurgen-habermas-eu-greece-debt-deal>
- Ottmann, H. (2006). Liberale, republikanische, deliberative Demokratie [Liberal, republican, deliberative democracy]. *Synthesis philosophica*, 21(2), 315-325.
- Parkinson, J. (2012). Democratizing deliberative systems. In Parkinson, J. & Mansbridge, J. (Eds.), *Deliberative Systems: Deliberative Democracy at the Large Scale* (pp. 151-172). Cambridge University Press.
- Pew Research Center (2012). European Unity on the Rocks. Greeks and Germans at Polar Opposites. Retrieved from <http://www.pewglobal.org/files/2012/05/Pew-Global-Attitudes-Project-European-Crisis-Report-FINAL-FOR-PRINT-May-29-2012.pdf>
- Putnam, R. D. (1995). Bowling alone: America's declining social capital. *Journal of democracy*, 6(1), 65-78.
- Risse, T., & Van de Steeg, M. (2003, June). An emerging European public sphere? Empirical evidence and theoretical clarifications. In *International conference: Europeanisation of public spheres, political mobilisation, public communication and the European Union*. Science Center Berlin.
- Sandholtz, W., & Sweet, A. S. (Eds.). (1998). European integration and supranational governance (Vol. 26). Oxford: Oxford University Press.
- Sartori, G. (1970). Concept misformation in comparative politics. *American political science review*, 64(04), 1033-1053.
- Sbragia, A.M. (ed.) (1992). *Euro-Politics: Institutions and Policy-Making in the New European Community*. Washington, DC: Brookings Institution.
- Scharpf, F. (1999). *Governing in Europe, Effective and Democratic*. Oxford: Oxford University Press.

- Scharpf, F. (2002). The European Social Model: Coping with the Challenges of Diversity. *JCMS*, 40(4), 645-70.
- Scharpf, F. W. (2009). Legitimacy in the multilevel European polity. *European Political Science Review*, 1(02), 173-204.
- Scharpf, F. W. (2011) 'Monetary Union, Fiscal Crisis and the Preemption of Democracy'. *MPIfG [Max-Planck-Institut für Gesellschaftsforschung] Discussion Paper 11/11*.
- Scharpf, F. W. (2014a). Legitimierung, oder das demokratische Dilemma der Euro-Rettungspolitik. [Legitimation, or the democratic dilemma of the Euro rescue policies]. *Wirtschaftsdienst*, 94(1), 35-41.
- Scharpf (2014b). After the Crash. A Perspective on Multilevel European Democracy. MPIfG Discussion Paper 14/21
- Schimmelfennig, F. (2015, July 21). Ein Parlament für die Eurozone [A parliament for the Eurozone]. *Zeit Online*. Retrieved from <http://www.zeit.de/politik/2015-07/waehrungsunion-eurolaender-institutionen>
- Schmidt, V. A. (2013). Democracy and legitimacy in the European Union revisited: Input, output and 'throughput'. *Political Studies*, 61(1), 2-22.
- Steenbergen, M. R., Bächtiger, A., Spörndli, M., & Steiner, J. (2003). Measuring political deliberation: a discourse quality index. *Comparative European Politics*, 1(1), 21-48.
- Thompson, D. F. (2008). Deliberative democratic theory and empirical political science. *Annual Review of Political Science*, 11, 497-520.
- Verdun, A. (1999). The institutional design of EMU: a democratic deficit?. *Journal of Public Policy*, 18(02), 107-132.
- de Vreese, C. H. (2007). The EU as a public sphere. *Living Reviews in European Governance*, 2(3).

de Witte, B. (2013). Using International Law in the Euro Crisis. Causes and Consequences. ARENA Working Paper, No. 4.

Zweifel, T. D. (2002). ... Who is without sin cast the first stone: the EU's democratic deficit in comparison. *Journal of European Public Policy*, 9(5), 812-840.