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RESEARCH ARTICLE

Cultural Policies as a Driver for a Participatory Transformation of Democracy in the European Union

ABSTRACT

Across Europe, culture is acquiring an increasing constitutional relevance by fostering experiments of bottom-up reflexive and self-organised participation able to bring policymakers closer to citizens. This paper adopts a European Union (EU) standpoint, observing how the EU could use cultural programs to support these practices and promote democracy and inclusion in the wake of the 'crisis of political representation'. The objective is to draw recommendations for EU institutions to connect with local communities by multiplying the opportunities of equality and inclusion without interfering with local democracy.

The investigation starts from an analysis – also through the case study of Italian constitutional transformations – of how the 'distrust' towards representation transformed the constitutional settlements of democratic participation. The study emphasises the need for new participatory forms and the relevance of spontaneous bottom-up initiatives in that direction, especially in the cultural field. Against this backdrop, the article will explore how EU cultural policies could be more inclusive so as to improve their social approach and trigger a direct dialogue with grassroots experiences.

KEYWORDS: Cultural and Creative Spaces; Participatory Democracy; Creative Europe; Constitutional Transformation; Crisis of Representation

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1. Introduction

This paper adopts a European Union (EU) standpoint, observing how – in the current constitutional transformations due to the so-called ‘crisis of political representation’ – the EU could use its cultural programs to promote democracy and inclusion by supporting culture and namely cultural and creative spaces.

Culture and cultural spaces are central in this essay because they have demonstrated to be a booster of bottom-up reflexive and self-organised initiatives that are key in the effort to improve EU democracy and narrow the gap between policymakers and citizens. Of course, cultural programs are not the only leverage that can be used to favour bottom-up participation and inclusion at EU level. However, this text is focused on that specific sector because its importance appears to be underestimated in both national (see para. 2.2) and EU budget choices (see para. 4.1). The article brings to light culture as the base of important experiments of grassroots participation. Therefore, it makes the case for an acknowledgement and support of its role by the EU.

Then, recommendations will be formulated for EU institutions to support such practices by fostering equality and inclusion without interfering with local democracy.

The analysis holds a constitutional law approach, addressing pressing questions and challenges related to the theory and practice of representation. In this framework, culture acquires a constitutional relevance as a fundamental right itself and as an essential driver of grassroots practices that are rethinking democratic mechanisms and proposing new participatory institutions through self-organisation. At the same time, constitutional law represents an essential contribution to cultural policies, able to connect them with participatory rights and improve the role of local communities in decision-making.

After the example of what was made by Practice Theory in the field of the International Relations (see Neumann 2002, 629; Adler and Pouliot 2011, 14 ss.; Cornut 2017, 4 ss.), this article will give relevance to the strengthening of relatively small participatory practices. These ‘micro-policies’ can have a deep impact in

constitutional systems, by elaborating new forms of political self-organisation and self-determination by means of concrete experimentations, trials and errors, and even successes and pitfalls of utopian aspirations (Latour 1983, 164–165).

This fact-based approach is deemed even more appropriate for this study because culture and participation are social rights¹, related to substantial equality. This assumption explains the need to focus not only on abstract rules, but also on their aptness to remove concrete barriers to economic, social, and political inclusion.

Two methodological consequences can be drawn from this choice.

Firstly, the intrinsic multilevel approach. Micro-practices of participation address crucial issues of democracy at all levels because they are the final point of impact of different measures and initiatives adopted by various authorities. Therefore, starting from practices also imposes a reflection about how these different levels can interact with each other in order to maximise the response to fundamental needs of society.

Secondly, the focus on practices imposes an interdisciplinary take. While being rooted in the field of constitutional law, the study holds a constant dialogue with policy studies in order to give specific attention the factual implementation of rules and their impact at micro-level.

In particular, this factual investigation is based upon the findings of the ongoing EU policy project *Cultural and Creative Spaces and Cities*² (CCSC). The project involved seven Urban Labs – i.e. different local experimentations of policy co-creation across Europe (Arreaga, Frías Hernández & Rodríguez 2020, 235–127) – studied by means of interviews, focus groups, co-creative events and field work, conducted in collaboration with practitioners and policy officers. Data were analysed and made comparable through qualitative indicators, based on shared values composing a Charter of principles of the project consortium³, including the local coordinators of the

¹ A deeper argumentation of this assumption will be presented in the subsequent part of the text.

² www.spacesandcities.com. Further information on the methodology can be found in Torre 2020, 12-31.

³ <https://www.spacesandcities.com/wp-content/uploads/2020/01/CCSC-Charter-of-Principles.pdf>.

Urban Labs themselves. Namely, these values pivoted around topics that are central in this research: ‘Culture as a common good’, ‘Urban commons’, ‘Bottom-up processes’ and ‘A new basis for the legitimisation of the EU’. The analysis was further developed through two co-creation events, involving researchers, multilevel policy-makers and cultural actors, exploring issues related to the EU impact on local policy-making.

This research will be articulated in three parts.

In the first part, the article will discuss the crisis of representation, as well as the reasons for its persisting indispensability. The research will elaborate on why spontaneous bottom-up initiatives deserve a special relevance in constitutional studies concerning the renewal of democratic forms. At the same time, it will outline possible risks and open questions of participatory processes.

In the second part, the theoretical issues examined in the first part will be analysed through a case study: the institutional reforms in the Italian legal context. Italy is chosen as a testing ground for at least two reasons. Firstly, this Country was among the most affected by the economic crisis in 2008 with harsh effects on inclusion and cohesion. The fallout of these events has been challenging equal political participation and, in turn, trust in representative democratic mechanisms. Secondly, and consequently, it is also symbolic in terms of constitutional transformations brought by the crisis of representation: at the time of writing, a referendum vote has just approved a reform that downsized the consistency of Italian Parliament. By now, it has the lowest ratio in the EU between numbers of Members of Parliament and inhabitants⁴.

The case study exemplifies that objecting the traditional forms of representation does not automatically lead to more democratic institutions; oppositely, they can have distortive outcomes if inequalities are left unaddressed. Moreover, the example also sheds light on how new forms of participatory democracy can stem from

⁴ Camera dei Deputati – Servizio Studi & Senato della Repubblica – Servizio studi, Riduzione del numero dei parlamentari. Il testo di legge costituzionale e il referendum ex art. 138 della Costituzione, August 19th, 2020, 48.

spontaneous civic initiatives, especially in the cultural field. In this context, the impact of the economic crisis itself highlights the role of the EU intervention, with its contradictions and opportunities.

Finally, the third part – building on the theory and the evidence of the Italian case – aims to investigate how the EU can support initiatives of spontaneous participation in the cultural field, by drawing potential recommendations on possible regulatory solutions.

2. The Crisis of Representation as a Battleground for Constitutional Transformations

2.1. Crisis of Representation as a Crisis of Social Inclusion

Representation is a mechanism – somehow a ‘fictional’ mechanism (Kelsen 1924, 160) – allowing the presence of those who are absent in a decision-making process (Pitkin 1972, 8–9; Denquin 2013, 6). Therefore, it has an intrinsically ‘aristocratic’ aspect (Manin 1996, 189–190), since it legitimises representatives to exert decision-making powers with *erga omnes* effects (Leibholz 1973, 70 and following). However, in democratic regimes this aspect is supposed to be compensated by a ‘representative relationship’, through which representatives are held politically accountable – through the electoral renovation of representative charges – for their actions towards the constituency.

In a social State, the aim of representation is not only a practical one – the impossibility of gathering the whole constituency simultaneously – but also, and especially, a systemic one: to avoid an unmediated confrontation between unequal particular interests, which could lead to a predominance of those who are endowed with greater economic, cognitive, social or organisational capital (Innerarity 2015, 294).

Indeed, participation is a costly activity, requiring time and capitals that are hardly affordable for some people. This settlement is an intrinsic recognition that participation is a social right: a right that can only be enforced with a material intervention of the public authority. Another side of this acknowledgement is that

democracy imposes a duty to institutions, which is to overcome economic inequalities and provide everyone with the means for a social, economic and political inclusion.

Representative regimes respond to this task by regulating institutional organisation and decision-making in order to aggregate and represent the interests of these categories through parties and parliamentary groups, thus levelling the different stakeholders' weight in public decision-making.

This theoretical justification of political representation is widely accepted in theory, but still one of the most controversial issues in practices. Indeed, the legal affirmation of universal suffrage did not tackle the inequalities that needed to be addressed for everyone to be able to concretely participate in the economic, political and social life of the State. This failure is a substantial part of the 'crisis of representation' that is currently affecting EU countries.

Across Europe, the widespread 'distrust' (Rosanvallon 2006) of representative democracy was the outcome of a crisis of traditional parties and ideologies but is also connected to the above problems of representation. Namely, the global economic crisis exacerbated the unsolved contradictions of the social transformation of constitutions, by provoking the marginalisation of an increasing number of people.

Here the problem is observed in the context of the EU which is also facing growing perplexities concerning its so-called 'democratic deficit'. The alleged lack of legitimacy and responsiveness of EU institutions is a major concern for EU constituencies. EU bodies are perceived as less accountable, since not all of them are directly elected and their decision-making is hardly accessible due to its procedural complexity and supranational nature. Moreover, in the aftermath of the economic crisis, a sense of delusion accompanied the acknowledgement – especially in the most precarious categories – that the EU was renouncing to mitigate the hardest social backlashes.

To be sure, EU institutions have a weaker representative legitimisation than national institutions: while the European Parliament is directly elected by constituents, the Council, the European Council and the Commission only enjoy an indirect legitimisation. However, the argument of the 'democratic deficit' is also a controversial one, since many authors insist on the existence of democratic guarantees in the

EU system (Moravcsik 2002, 611 ss.). Moreover, scholars have highlighted the existence of processes of ‘informal governance’ able to involve civil society actors in decision-making, thus compensating the reduced electoral legitimacy of EU institutions (Kleine 2013, 3–7).

This last point is central in the constitutional approach that usually interprets the direct involvement of private stakeholders as an ambiguous phenomenon, entailing threats and opportunities for democratic regimes.

In the context of the EU, a part of the scientific literature has highlighted that the alleged inadequacy of the current institutional structures to manage economic development and new social demands (Crozier, Huntington & Watanuki 1975, 12 ss.) was an alibi for the introduction of a new political and regulatory rationality in decision-making at both national and supranational level. Rather than political accountability, market became the main instrument of interpretation and evaluation of existing rules (Weiss 2000, 796 ss). States are influenced by an ‘economic constituency’ (Ferrara 2006, 270–271), prevailing over the political one, who is able to pressure the public sector through the threat of withdrawing economic investments. Even beyond the mere *laissez-faire* (Nahamowitz 1992, 549), this pressure induced governments to shape their regulations according to the needs of the market, i.e. ‘to conceive the State as exponential of general and overall interests of capitalism’ (Ferrara 1979, 518) and to compete between each other in creating the most welcoming environment for private investments.

With the financial crisis in 2008, it was even clearer that market did not advocate for mere inaction and rather pressed for a complaisant action and regulation. For example, austerity required an analytic set of accounting rules that limited the power of States, especially in the social expenditure, and pushed to the privatisation of public debt. Along with a similar ratio, EU decision-making was burdened of very specific requirements and procedures (Garben 2018, 232) aiming at a ‘better regulation’, exactly with the objective of avoiding that various stakeholders, and especially

small and medium-sized enterprises, might perceive the EU as too distant and at the same time too intrusive in imposing regulatory burdens⁵.

This ideological and political turn is the framework under which private stakeholders have been involved as regulators and co-regulators through advanced legal mechanisms (Galgano 2009, 76 *contra* Cassese 2006). These decision-making procedures were able to relate with plural and everchanging forms of aggregation, articulating the involvement of different actors in different procedures with flexible modalities, able to change *ad hoc* and adjust to the circumstances. However, these mechanisms – being rooted in the market-oriented framework described above – do not tackle the basic democratic need of including everyone in decision-making and are rather directed to the involvement of the strongest and most influential private stakeholders⁶.

This analysis highlights, once again, that participation is still characterised by structural inequalities that do not disappear automatically when representation is questioned in favour of a more direct involvement of stakeholders. Rather, in the absence of a specific and overall regulation – attentive towards factual inclusion – the opposite is true.

2.2. Participation, Deliberation and Spontaneous Initiatives in the era of 'distrust'

The above reasoning should make clear that equality, rather than representation itself, is the main challenge of European democracies. Then, the main question to address is how representation – which is still an essential pillar of democracy – can be complemented with different forms of participation that are able to reach a greater responsiveness of institutions and inclusion of marginalised categories in decision-making.

In this essay, the issue is addressed by exploring the innovative potential of participatory democracy in the framework of representative constitutional structures.

⁵ European Commission, European governance - A White Paper, COM/2001/0428 final, OJ 287, 12/10/2001.

⁶ In the context of 'better regulation', see Alemanno 2015, 11-12; more generally, Bunea 2019, 127 ss.

This expression is an umbrella concept (Sintomer 2009, 133–172), covering different forms of ‘*interaction, within public procedures* – above all administrative, but also regulatory – *between society and institutions*, which aims to achieve, through both collaboration and conflict, a unitary result, attributable to both of these subjects, on a case-by-case basis’ (Allegretti 2010, 7). It involves a broad range of practices and instruments, with very different genesis and purposes, with top-down or bottom-up nature, stemming from movements claiming self-determination against undesired interventions in their local area (Boullier 2001, 45 ss), the defence of local participatory traditions, the presence of political powers in need of a new electoral base, the reaction to corruption and clientelism... Finally, there may be a different degree of intensity of citizen intervention, ranging from simple information, to consultation, to partnership, to actual involvement in decision-making processes (Arnstein 1969, 216–217).

The purpose of these mechanisms is to enlarge the toolbox of political rights. In objective terms, participatory democracy also entails a shift of mindset: people are not considered as a manipulable mass of citizen-users of a service, but as an active subject of public policies, bearing their own heritage of knowledge and theoretical-practical skills (Landemore 2011, 251). In a subjective sense, the informal nature of these procedures allows the involvement of those that are not part of the constituency entitled to voting rights.

This paradigm is intertwined, but not overlapping, with the one of deliberative democracy. Deliberative processes are based upon the consensus of all interested parties in a rational exchange of arguments. They aim to involve everyone who bears a qualified interest in the matter (Elster 1998, 8) and to trigger a rational exchange of arguments among these actors that would ensure a better decision-making by transforming everyone’s opinions and interests themselves (Blondiaux 2000, 331; Bouvier 2007, 18) through argumentation.

These forms were particularly developed at local level. Participation in local decision-making is empowering for citizens, because it is easier for them to have an impact on the public debate and, consequently, public policies. In parallel, cities and local areas are gaining an increasing centrality in the agenda and political scenario.

These ones are increasingly understood as the final point of impact of regional, State and even global policies (Harvey 2012), being the place where the enjoyment of rights is ultimately experimented and vindicated. Therefore, essential problems of contemporary democracies are more easily addressed by building up from local vindications and experiment with institutional changes at local level.

However, many questions need to be answered about how to regulate the concrete participatory practices in order to attain these results. In that sense, this research observes at least three kinds of challenges that communities need to address in the context of participatory processes.

The first one is that public administrations are often organised through a rigid bureaucratic structure which is highly formal and often sectoral⁷. This circumstance can be a prejudice in the dialogue with grassroots movements, since the social needs are inherently cross-sectorial, and therefore demand transversal responses from the Administration (Torre 2021, 36–37).

For example, the Italian model of ‘regulation on shared administration of commons’ is a virtuous example of a framework allowing a civic regeneration of urban spaces. Nevertheless, it constitutes a discrete *corpus*, even separated from the general regulation on the management of public property; oppositely, to produce an effective change in decision-making, it would need to be part of a whole strategy involving culture, urban planning and budget policies (*Rete Nazionale dei Beni Comuni Emergenti e a Uso Civico* 2019). In the Urban lab of Timișoara, Romania, the CCSC research showed that city funded cultural initiatives were hindered by legal uncertainties over the property of the land where a festival was to be organised, due to the fragmentation and lack of transparency of the registers of public property⁸. In all these instances, not only citizens, but also open-minded civil servants – willing to support participatory processes – can find obstacles in the approval and

⁷ Its limits are well analysed in O’Reilly (2010, 29 and following), even with some criticalities in the solutions proposed, that emphasised the need for a strong role of private parties, rather than a strong social intervention of the public sector.

⁸ The data emerged from an interview with the coordinator of the Urban Lab Ambasada within the CCSC project.

implementation of participatory policies. For these reasons, local institutions themselves often provide for mechanisms of connection between different sectors in order to facilitate both participation and innovation⁹.

The second type is given by political and cultural contingencies, that can undermine the collaboration between citizens and local government or between the latter and the higher levels of government.

Participation requires a strong political engagement from the administration, in order to invest appropriate resources for a more transparent decision-making and implementing the outcomes of participatory processes, especially when they raise topics that were not originally in the administration's agenda. In that sense, changes of political majority can negatively affect existing participatory experiments, as recently happened in Madrid with the participatory experience of Prado MediaLab, interrupted after local elections and now experiencing an uncertain future¹⁰. The same case of Timișoara – during the implementation of the project for the European Capital of Culture 2021 – highlighted that a well working experimentation can also depend on the alliances with higher levels of government, for example, with regard to transports an infrastructure for mobility towards the city.

Finally, the third and most structural challenge is linked to social barriers that impede participation, like the lack of time, energy or specialist knowledge¹¹ (Iossifidis 2020, 48). The deliberative paradigm assumes that everyone is able to master public speaking and the use of a specific language, while the reality shows that participation is also a matter of mediation between different languages and level of alphabetisation, even with the inclusion of non-verbal languages. Moreover, citizen initiatives struggle to keep the pace of administrations that decide and operate through remunerated staff and organised structures¹².

⁹ In that direction, see the experimentations of CoBoi, Region of Skane and City of Lund during the CCSC project (Torre 2020).

¹⁰ <https://wearethelab.org/>.

¹¹ Within the CCSC project, this was well explained in: Jacobson & Ershammar 2020, 4.

¹² The data emerged from an interview with the coordinator of the Urban Lab Ambasadà within the CCSC project.

In the most extreme cases, the lack of public investments for inclusion can transform participation in a delegation of public interest initiatives to private actors that are able to bear the burdens of philanthropy and, because of this economic power, also become privileged interlocutors for the administrations. For example, banking foundations who invest huge capitals in urban renewal and cultural initiatives – thus becoming the main drivers of these sectors – have a stronger negotiating power with regard to how urban policies are shaped¹³.

To address these questions, the essay starts from the assumption that no encompassing solution can be proposed at this stage, where broad, inclusive and egalitarian participation is still far from being achieved. Any attempt could not but be utterly abstract at this stage. Rather, a realistic goal is to investigate how law can lay the groundwork for fostering emerging dimensions of participation and enable them to create the conditions for a broader transformation of current democracy.

For this reason, the article will use the Italian case study – chosen for the reasons illustrated in the introduction – to illustrate how experiments of ‘participation through collaboration’ (Noveck 2010, 62 ss) and participation through self-organisation can allow individuals and organisations – especially at local level – to take part in the democratic life through the organisation of spontaneous initiatives of public interest.

3. Crisis of representation and Constitutional transformations. The Italian example

The trends described above will be analysed through the case study of Italian law. The transformation of the Italian Constitution is the legacy of a long institutional debate where the ‘distrust’, described above, has been used to weaken the legitimacy – and therefore the power – of the representative assembly. However, this path has not favoured participation, but rather the opposite, since the weakening of the legislative power has played in the hands of the executive power.

¹³ For a case study on Turin, see (De Tullio & Torre 2020).

In this context, bottom-up practices, also in the cultural sector, are observed as a possible engine of new participatory institutions stemming from grassroots self-organisation.

3.1. Crisis of representation and Perspective Constitutional Reforms

The underlying assumption of the Italian Constitution, as conceived in 1948, is the centrality of the Parliament and the proportional electoral formula. Given the post-war fragmentation, a faithful representation of all parties was deemed vital to prevent, as much as possible, exclusions that could bring to further conflicts. However, over time, and across different political majorities, this system of mediation and representation and the parliamentary institution itself was delegitimised, being considered as the root of inefficient decision-making and waste of public money.

The first tangible outcome of this process is the change of the electoral law.

Since 1993, the proportional law was blamed for the inefficiency and instability of the Italian political system (Volpi 2015, 2–3) and substituted by formulas based on majority rules or majority bonuses. These laws encouraged political parties to coalesce before the elections; therefore, despite being in a parliamentary democracy, they gave the impression that votes were given directly to a governmental majority (Furlani 1957, 875; Chessa 2004, 40). Moreover, the electoral law of 2005 artificially strengthened parliamentary majorities by means of a disproportional majority bonus which was indeed censored by the Italian constitutional court in 2014.

Of course, the fragmentation of the political scenario was not resolved by the legal artifice of a new electoral law; moreover, parliamentary oppositions were marginalised in the democratic dynamics, due to the automatism of the majority bonus. The reform produced fictional majorities and a *fictio* of direct ‘investiture’ (Carlassare 2006, 201; Bilancia 2009, 1816; Caretti 2008, 5–6) of the government¹⁴. In turn, this façade was used in governmental rhetoric to weaken minorities and justify the dogma of ‘governability’, i.e. the idea that the political direction rewarded by the

¹⁴ See also Sartori 2002, 229, quoted in Barbera 2008, 879.

popular vote – embodied by the majority and the government – would not find institutional obstacles to its most complete implementation (Barbera & Fusaro 1997, 19; Bartole 2001, § 4; De Minico 2018, 51).

This trend has pushed numerous attempts of unsuccessful constitutional reforms¹⁵ that demonstrated the need for ‘small steps’, thus posing an end to broad strategies proposing all-encompassing modifications.

The present legislature is characterised by a different ideological approach to representation (Conti 2018, 5), but arguably also a continuity in the attempt to weaken the Parliament as a representative body. In particular, two reforms are emblematic in that sense.

The first one is the modification of the discipline of parliamentary groups, that discourages Parliamentarians from leaving their own group (Contieri 2018, 11–12), thus strengthening the grasp of party boards on them. This reform was implemented in 2017 by the Senate of the XVII legislature; however, the XVIII legislature proposed to insert this rule in a proper constitutional modification (Fraccaro 2018).

The second one is the reduction of Parliamentarians, that was proposed under the XVII Legislature and then again in the XVIII¹⁶. The second attempt learned from previous experiences and proposed a policy of ‘little steps’. Rather than being embedded in an all-encompassing reform – as in 2016 – the provision was voted, and approved by referendum, as an individual modification.

Such a vote, hitting the representative body *par excellence*, was emblematic of a distrust towards political representation. This was also clear in the main political

¹⁵ See the proposals elaborated by ‘Bozzi’ Commission (1983–85); the second Bicameral Commission, known as ‘De Mita-Iotti’ (1992–94); the third Bicameral Commission, so-called ‘D’Alema Commission’ (1997–1998); the constitutional law proposal of November 16th, 2005, No. 2544–D, G.U. 18/11/2005, rejected by a constitutional referendum in 2006; the proposal of constitutional revision of the Commission for Institutional Reforms, established by the President of the Republic, Giorgio Napolitano (2013); the so-called ‘Renzi-Boschi’ reform (constitutional law - then rejected by constitutional referendum - *Disposizioni per il superamento del bicameralismo paritario, la riduzione del numero dei parlamentari, il contenimento dei costi di funzionamento delle istituzioni, la soppressione del CNEL e la revisione del titolo V della parte II della Costituzione*, 16A03075, GU n.88 del 15-4-2016). See Pisaneschi 2015, 5–6; Villone 2014, 69–291.

¹⁶ The reform will be applied since the next election.

argument supporting the reform: economic efficiency, i.e. the reduction of public expenditures. Parliament was described as an *élite* which did not deserve its privileges.

After all, the mere reduction of the number does not have a clear constitutional *ratio*, other than the economic one. In terms of democratic legitimacy, it is an easy remark that the numeric reduction also reduces the pluralism within the Chambers, especially that of minorities (Luciani 2018, 1). On the other hand, numbers do not *per se* improve the quality of the Parliament's work if the functioning, decision-making and political practices remain the same (Tripodina 2020, 12, *contra* Fraccaro 2018); oppositely, a reduction of the organism can obviously impair its ability to sustain the workload required in a contemporary democracy.

In conclusion, the Italian case highlights that the 'crisis of representation' was an alibi – transversal across parties and legislatures – for the delegitimisation of the Parliament that was rather driven by concerns of economic efficiency and accountability to markets. As a result, the weakening of the legislative power did not correspond to a more inclusive participation, but only to an advantage for the executive power and the boards of the majority parties.

3.2. *The Role of Local Experimentations in Renewing Democracy*

The above illustration underlines that a well-working participation does not depend on the weakening of representative mechanisms. Rather, it should be based on a reinforcement of representation through new forms of participation able to include everyone and particularly marginalised categories.

In the Italian context, local participation was deeply innovated by self-organised civil society that fostered the establishment of a new administrative paradigm, i.e. 'horizontal subsidiarity'. In particular, this principle – recognised in the Italian Constitution since 2001 – refers to a duty of the public sector to support grassroots movements that respond collectively to social needs, through solidarity and mutual aid networks. These forms of action cannot, by themselves, influence the production of legally binding norms. Nevertheless, they are a form of political participation, since they collectively answer to aims of general interest (Albanese 2002, 66). Through their

spontaneous activities, they organise a public service by themselves and, at the same time, produce new forms of political organisation that propose their own policies and forms of intervention in public decision-making. Therefore, the recognition of these practices – contained in the reform of 2001 – is a permanent open door to bottom-up institutional innovation.

These participatory phenomena might have uncertain outcomes in official policies, when there is a poor dialogue between citizens and administration, since the formers are not formally part of any decision-making process; nevertheless, their advantage is that they can be put in practice ‘here and now’, and thus – in case of success – gain the legitimisation that is needed to vindicate recognition and support from the administration, in order to replicate and scale up the practices of reference.

In the Italian case, this is very evident in the debate about urban commons, which highlighted how the bottom-up management of goods and services of public interest allows the experimentation of new legal arrangements for democratic participation.

The beginning of the ‘legal way’ to commons is usually identified in the ‘Rodotà Commission’s law proposal of 2007 and the immediately subsequent ‘Water Referendum’ of 2011 (Lucarelli 2011), accompanied by a popular law proposal – drafted from bottom-up by the Italian Forum of the Water Movements (*Forum Italiano dei Movimenti per l’Acqua*) – aiming to enact a participatory management of water as a common. Urban commoners, with a special role of cultural workers, took the legacy of this debate. Since 2011, communities have occupied theatres – firstly, Teatro Valle (Cirillo 2014) – and other abandoned and underused spaces, making them available to everyone as means of production and places for solidarity and mutual aid initiatives. These experiences have been called ‘emerging’ commons (Micciarelli 2014, 67), qualified as commons not because of their nature or function, but because of the direct role of the community in their management.

With these conflictual actions, ‘emerging commons’ have joined the international movements occupying squares, streets, public and private spaces in order to

claim decision-making power and protest against precarity and right to the city (Kioupkiolis 2017, 51 ss).

In the legal debate, the emerging commons even produced their own community-made legal forms, starting from the landmark case of l'Asilo (ex Asilo Filangieri) in Naples. This experience has begun in 2012 as an occupation of a city-owned building, aimed at opening the latter to cultural workers and inhabitants in general. Its assemblies are accessible for everyone, without the need for prior registration, and decide by consensus, with a complete ban of any exclusive use of the space: the use is only possible under strict criteria of sharing or rotation. These rules were written in a Declaration of urban civic and collective use, then formally recognised by the City of Naples through two Resolutions (Nos. 400/2012 and 893/2015) and extended to seven additional spaces (Resolution No. 446/2016). This legal arrangement – engineered by the community itself – is called ‘urban civic and collective use’, and set a legal and political precedent in the management of public property, consisting in a public law pattern, strengthened by grassroots participation (Micciarelli 2017, 159): the city recognises – and also materially supports – the self-government of an open and informal community, without selling or entrusting the good to any physical or legal person (De Tullio 2018). The material support provided by the city, by assuming the utilities and extraordinary maintenance, is exactly a tool for substantial equality in participation. However, it is also a consequence of the acknowledgement of what is usually not recognised: the ‘civic profitability’ of the experience, i.e. the social, political and cultural profitability, not directly related to an economic advantage.

In that sense, this new legal arrangement was emblematic of how a community can take the initiative through concrete actions and promote an alternative to a speculative government of the city and its spaces. What is more, the network of commons was also able to propose its own participatory forms and vindicated the appointment of two consultative organisms: the Observatory on Commons¹⁷ and the

¹⁷ <https://www.comune.napoli.it/flex/cm/pages/ServeBLOB.php/L/IT/IDPagina/38205>.

Council of Audit on Public Debt and Resources¹⁸ of the City of Naples. Both organisms were composed through a public call, aimed at selecting those who are expert in social, political and economic activism, and represented a new kind of administrative board, in a dialectical position with respect to administration, with the function of analysis, proposal and control on the protection of the Urban Commons.

Of course, this is only one case among the many urban commons existing in Italy. However, it is an example of many similar grassroots practices, where communities engage themselves in a ‘creative use of law’.

Namely, at the beginning of 2019, more than twenty among these organisations decided to build a ‘Network of Emerging and Civic Use Commons’¹⁹ (*Rete Nazionale dei Beni Comuni Emergenti e a Uso Civico*) to strengthen existing connection and obtain a stronger voice in the national political and legal debate. The Network, also in connection with other grassroots networks, has the aim to democratise knowledge and exchange interdisciplinary and practical tools – including legal and policy ones – to obtain recognition and support from local and national institutions, as well as transform institutions themselves. By now – through a series of five open assemblies gathered all across Italy – it is working on amendments to the existing proposals of law on commons and on coordinated proposals to amend the local Regulations on commons. This work is producing a whole political reasoning on commons – in connection with alternative economies and ‘conflictual mutual aid’, ecology, depatriarchalisation, and digital activism – as well as new strategies to transform policy-making.

In this context, these experiences of self-organisation innovate democratic participation at all levels: the local one, but potentially the national and the EU one, too. This multi-level grasp is a consequence of the fact that needs, as experienced by local communities, naturally cross the sectoral and jurisdictional barriers imposed by legal systems.

For example, in the case of urban commons, local authorities hold a position of proximity to these experiments and have at least the responsibilities of urban

¹⁸ <https://www.comune.napoli.it/flex/cm/pages/ServeBLOB.php/L/IT/IDPagina/39860>.

¹⁹ www.retebenicomuni.it.

administrators and owners of part of the real estate property. These competences allow them to give voice to civic experiences which – despite they are often small in size – are able to propose, starting from their own practices, new mutualistic and democratic methods.

However, it is also necessary to recognise that local institutions cannot be substituted for the national ones, as they have neither the scale nor the resources²⁰. Therefore – when the national government is inactive – the EU programmes represent one of the few sources of funding that local authorities can rely on to achieve cultural activities and initiatives for inclusion and participation. Hence, the substantial role of the supranational level goes beyond its formal scope, which is supposed to be only a support to the States' policies (art. 5–6 TFEU).

Clearly, this circumstance has an impact on the constitutional arrangement of local decision-making, with regard to both the role of representative institutions and the relationship with other territorial levels of government. The European cultural programs – which formally do not provide for sanctions – in fact have significant legal effects, exactly because of the budgetary constraints that limit the power of the local elected institutions. Where EU funding is among the very few means to implement cultural and participatory policies, the local entities are substantially forced to adapt themselves to the EU directions, if they want to fulfil their tasks with respect to the safeguard of culture and inclusion. Moreover, when a local institution decides to apply or to support a private party's application, this decision is hardly controllable by the constituency. Indeed, there are at least two filters: the criteria set out in the Decision and the technical discretion of the applicant.

Undoubtedly, this circumstance produces a transformation in the system of legal sources. This state of the art interrogates the jurist in depth: one can wonder whether it is preferable to pursue strict respect for local democratic forms – even at the cost of renouncing the satisfaction of social rights – or see the rights implemented, albeit based on the EU approach.

²⁰ In the Italian case, the limits imposed by budget rules were even deepened by the cut of transfers of resources from the central state to local level (Antonini 2015, 365–371).

4. Local Participation in the European Union's Cultural Programs

The case study demonstrated an emerging democratic role of cultural and creative spaces, which gives a true constitutional relevance to EU cultural programs aiming to support cultural and creative activities by financing both local institutions and cultural actors themselves. These programs have an unavoidable influence on decision-making; therefore, a reflection is needed on how this effect can be steered towards the objectives of broader inclusion and enrichment of – rather than competition with – local democratic processes.

In light of this observation, the attention on local practices situates this analysis at the crossroads of both internal and EU 'democratic deficit'.

In that sense, the participatory logic of the EU, in its relationship with local communities, has to take into account the transformations of the traditional representative mechanisms, as highlighted above. An enhancement of the role of European Parliament – which is the EU's elected institution – would improve the connection between EU and local community. However, it would not be enough, given the crisis of representation itself. Even less could grassroots interests be represented by national governments, which can even be politically adversarial to local entities, as happens when local governments are composed by political majorities different from the national ones.

Rather, there is the need for a direct support of experiences of spontaneous participation, as the ones described in para. 3.2. These policies would entail a clear and strict definition of participation itself in cultural programs in order to shift from a logic of 'participation as consultation' – adopted in the Structured Dialogues and other EU programs on participation – to the construction of spaces of dialogue and encounter between the community itself and institutions at all levels (Cremer 2021, 124 ss.). Such a definition should be completed by a proactive effort of the EU to expand its outreach outside of the circles of the 'usual suspects', i.e. individuals and organisations that have already been in contact with EU programs and networks, and therefore are more likely to be included again. In the cultural sector as well as in other ones, an action of inclusion should target the excluded ones in first stance. Then, each

EU call should start from an active mapping of bottom-up practices that are potentially transformative, that are in need of support, and that have not been involved in any program before. Many of these actors might not even know the existence of the opportunities brought by the EU, unless an action of communication and democratisation is done by EU institutions themselves.

In that sense, supporting bottom-up experiments – and accept to be surprised by them – could be an opportunity for EU to give away a part of its power in order to gain new legitimacy by adopting a listening approach and preserving spaces of bottom-up institutional transformation. This objective would be in line with the needs of cohesion and EU-local connection highlighted in the Council's Work Plan for Culture itself.

Hence, the working hypothesis of this research is that the EU should compensate its democratic gap through a direct involvement of local communities as creators and protagonists of participatory processes. This is only possible if two steps are addressed. The first one is to tackle the precarity of the cultural sector as a factor of social and political exclusion. The second one is to rethink cultural programs in order to mainstream strict guidelines for participation in them and aim to listen, recognise and fund local civil society organisations engaged in bottom-up participation.

4.1. Safeguarding Culture as a Social Right in the European Union

The first step – EU support to culture and social rights – needs to be examined in the broader context of the protection of social rights in the EU law system. Indeed, culture is analysed here as both an enabler of social rights – then also a precondition for the effective enjoyment of participatory rights – and a social right itself.

Culture, in its anthropological sense, is a toolbox for sense-making, for everyone to give meaning to their life and their (social) environment (Gielen & Lijster 2015). It shapes the government of territories because it defines visibility and conforms our physical, social and political living space. In that way, culture can multiply the forms of expression, change human relationships, improve health and create

inclusion. For these reasons, it was correctly defined as a labour of care towards society (D'Andrea & Micciarelli 2020).

In addition to that, culture is also a social right itself, exactly as participation: it is not sufficiently protected by the sole market and requires the public sector's social intervention. In that sense, culture is also emblematic of the same inequalities that also affect participation: the sector experiences a huge precarity of labour and marginalisation from market-oriented policies. In light of this situation, the 'non-interference' of public authorities is not enough to safeguard the free cultural expression because it only protects the cultural expressions that can survive autonomously. Instead, it fails to empower precarious, experimental or marginalised manifestations, that do not find enough resources in the market.

In other words, a 'cultural politics' is needed to avoid that the market law becomes the sole discipline of the sector.

Therefore, there is a double thread linking culture, inclusion, and participation, and – given this connection – it is no coincidence that culture was the base for the creation of innovative responses to the 'crisis of representation'.

For these reasons, culture is recognised in the EU both as a value itself²¹ and a multiplier of other values²², such as, on the one hand, economic development and, on the other hand, participation and social inclusion²³.

However, the sector is under the States' exclusive competence: the EU cannot use norms of harmonisation – unless justified by other legal bases, as the Single

²¹ Council conclusions on the Work Plan for Culture 2019-2022, 2018/C 460/10, 21/12/2018.

²² Cfr. Council conclusions on cultural and creative crossovers to stimulate innovation, economic sustainability and social inclusion, 2015/C 172/04, point 4. Concerning inclusion, see also: European Parliament Resolution of 12 May 2011 on Unlocking the Potential of Cultural and Creative Industries (2010/2156(INI), 2010/2156(INI), 2012/C 377 E/19).

²³ Communication from the Commission to the European Parliament, the European Council, the Council, the European Economic and Social Committee and the Committee of the Regions 'A New European Agenda for Culture', {SWD(2018) 167 final}, 22/5/2018, pp. 2-4. On the two profiles, see respectively the OMC reports: The Role of Public Policies in Developing Entrepreneurial and Innovation Potential of the Cultural and Creative Sectors, Report of the OMC Working Group of Member States' Experts, 2018, pp. 96 ss.; Participatory Governance of Cultural Heritage, Report of the OMC Working Group of Member States' Experts, 2018, 57. The recommendation was preceded by the Conclusioni del Consiglio sulla governance partecipativa del patrimonio culturale, 2014/C 463/01, 23/12/2014.

Market – but only acts that encourage cooperation and support Member States' actions (Art. 6 TFUE).

The relatively small amount of resources invested in culture is also a key indicator, given the social nature of cultural rights. In 2018, the European Parliament's Commission on culture warned about the scarcity of resources allocated to culture, asking for them to be even doubled²⁴. The European Commission itself recognised that culture generated 5,3% of GDP, and that – due to the scarcity of funds – 'a large number of good applications are rejected'²⁵ in cultural programs.

These data affect not only the number of actors that can enjoy a protection from the EU, but also the more general direction of cultural policies. Indeed, the scarcity of funds generates programmes characterised by a highly competitive nature, which undermines exchange and confrontation and, above all, increases access barriers, which can only be overcome by those who have specialist expertise in drafting applications. Moreover, the absence of a structural investment makes it unrealistic to support fragile, precarious and excluded realities, which need more resources and exposes the financier to greater risks. It is no coincidence that funding programmes impose co-financing or require candidates to provide credit guarantees and/or demonstration of economic sustainability (Acosta Alvarado 2020, 8–9). Therefore, they benefit especially actors who are already established in the market or in other programmes.

As an alternative, the EU tends to finance projects that are supported by the voluntary action of citizens and inhabitants. Therefore, the value generated by the project is increased by the unpaid labour of active communities, that acts as a multiplier of efforts and resources and enables to fulfil meaningful actions without remunerating all the work that is provided in the process. For example, people can be

²⁴ European Parliament – Committee for Culture and Education, Opinion to the Interim Report on the Multiannual Financial Framework 2021-2027 – Parliament's position with a view to an agreement, PE 626.946v02-00 A8-0358/2018, COM(2018)0322 – C8-0000/2018 – 2018/0166R(APP), 7/11/2018. Cfr. Ciancio 2018, 34.

²⁵ Mid-term evaluation of the Creative Europe programme (2014-2020), Report from the Commission to the European Parliament and the Council, COM(2018) 248 final, 30/4/2018, in <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52018DC0248&from=EN>, p. 5.

invited to produce ideas in workshops, hackathons, contest of ideas, participatory artworks and many other occasions where they give their time and competences for the sake of general interest or other individual incentives.

In sum, the resources mostly allow one-off interventions which rely on the prior existence of mechanisms that multiply the value invested: those of the market and/or those of voluntary participation²⁶.

In that sense, the safeguard of culture and participation in local communities attains a broader and systemic discussion in the EU law: the protection of social rights. The first step for the EU should be to go towards a shift of mindset able to put social rights, and their enforcement, on the top of the agenda.

Currently the approach of EU Treaties appears to be rather the opposite.

In principle, the EU seems to promote individual and social cohesion as fundamental values (Art. 3 Treaty on the Functioning of the European Union - TFEU) and points towards the improvement of working and living conditions. However, these values are not intended as a project of 'substantial equality' and are rather a counterbalance to the most extreme effects of the Single Market. Indeed, social policies have always been a Member States' exclusive competence (art. 5 TFEU): the EU cannot operate through a formal harmonisation of national laws, but only with acts of encouragement to cooperation and support to Member States' actions.

This choice became part of a strategy where 'soft law' is presented as a means for 'better regulation' (Garben 2018), along with the subsidiarity and proportionality principles (Art. 5 Treaty on European Union-TEU). The objective of 'better regulation' was to introduce a form of legal intervention and, at the same time, avoid being considered too intrusive by the civil society, especially the small and medium enterprises which could distrust the EU rule-maker because of its distance from the local contexts.

²⁶ The OMCs on culture have underlined the relationship with both needs, even if there is the risk that culture is conceived as instrumental to the other values (Psychogiopoulou 2018, 271).

The non bindingness of these policies has been supported through different arguments, based on the claim that a full and coercive safeguard would have been impossible, or at least would have required longer negotiations (O’Hagan 2004, 384). Flexibility has been deemed necessary in multilevel systems (Laffan, O’Donnell & Smith 2000, 201); moreover, along with an approach based on ‘little steps’, some authors have underlined that even a ‘soft’ provision can be the basis for further developments and agreements (Cini 2001, 195; Simmons 2013, 281) or a ‘manifesto’ that can legitimate a given policy approach (Luther 2018, 54–56).

However, many scholars claim, on the contrary, that soft law is structurally insufficient to ensure social rights, which require – by definition – institutional intervention, directly tackling the factors of inequality (Seeleib-Keiser 2019). Rather, the soft law approach has been considered as an expression of ‘neo-voluntarism’ (Streeck 1995), where States keep the power of deciding whether to cooperate and how (Rogowski 2019, 289).

The debate was not pacified by the approval of the European Pillar of Social Rights (EPSR)²⁷, despite the statements of principles contained in the declarations (Juncker 2019). Different authors highlight that the Strategy provides a limited advancement in terms of safeguard of human rights (Augenstein 2018, 261; Bonciu 2018, 65–66; Giubboni 2018, 562–563; Grohs 2019, 28), or even a retreat, in comparison to the fact that social rights had been already introduced – among other rights – in the so-called ‘Nice Charter’, namely in Title IV and Artt. 31 and 34 (Cozzi 2018, 518)²⁸.

This context radically hinders any democratic effort, since it shows a renunciation to eliminate the roots of exclusion.

This problem cannot be entrusted to cultural programs or participatory tools and methodologies. Rather, it needs to be tackled through structural measures,

²⁷ European Commission Recommendation of 26.4.2017 on the European Pillar of Social Rights, C(2017) 2600 final; Council of the European Union, Proposal for an Interinstitutional Proclamation on the European Pillar of Social Rights, 13129/17, 20/10/2017. The Interinstitutional Proclamation, in particular, expressly excludes any expansion of EU’s power in social policies (Ibid., consid. 18).

²⁸ Charter of Fundamental Rights of the European Union, 2000/C 364/01, 18/12/2000.

like the identification – and financial support – of minimal standards of protection of social rights at EU level (Vesan & Corti 2018, 130; Seeleib-Kaiser 2019, 233–234), even with a shared taxation specifically targeted at the equalisation among social categories and territorial communities (Ferrera 2018, 581).

4.2. Rethinking Cultural programs for Local Participation

The second step – mainstreaming citizens’ involvement in funding programs – requires funding and recognition as forms of support and legitimisation of social actors, as well as fostering networks of mutual help and learning among the cities and their communities. This objective entails the need to create a broad framework enabling and supporting experimentations as well as recognising them as potential beneficiary of EU cultural programs.

In that sense five recommendations are proposed in this paper.

The first recommendation is to change the requirements of funding programs – and namely of Creative Europe, the biggest EU cultural program – to facilitate the access of small and grassroots organisations. A major barrier, in that sense, is the requirement of legal personality provided to access grant applications, since many social initiatives stem from informal communities in first place. An abolition of this requirement would allow cultural programs to fund informal communities directly; in the meantime, the EU could use mechanisms of cascade funding to support them through an intermediary subject. A second major barrier is represented by financial stability requirements, that actually exclude the most precarious categories, since they require to grant a co-funding or to obtain a guarantee. The basic values of equality and inclusion would impose an abandonment – and even a reversion – of such rules. EU is not a private investor, but an institutional funder, committed to values of cohesion and social inclusion; therefore, it should not seek a return of investment, but rather privilege individuals and organisations that experience financial instability, along with criteria of ‘positive discrimination’.

The second recommendation is to introduce simplified and flexible accounting rules. The present accounting requirements drain resources from the already

limited cultural budget, and especially from the cultural work itself (Gielen 2020, 29), and are unaffordable for smaller cultural actors. Moreover, they do not acknowledge that projects – as highlighted in the Italian case study – need to risk and experiment in order to produce innovation in culture and participation. In that sense, transparency and openness of implementing processes towards local community should be considered as an essential element for the accountability in the use of public EU funds. Complex reporting rules rather privilege specific expertise on accounting, while a comprehensive report is not *per se* a guarantee of the social value of the project.

The third recommendation is to develop guidelines for participation as mandatory requirements for local institutions that want to apply for and participate in EU-funded programmes. With regard to these guidelines, the EU should also act as an impartial overseeing authority, similar to those provided in the paradigmatic model of the French ‘*débats publics*’ (Rui 2007, 104 ss.). These guidelines should set minimum qualitative thresholds for collaborative agenda-setting, transparency, data sharing, inclusion, non-discrimination and the appropriate allocation of time and resources. Local institutions should also be required to provide specific motivations when they do not implement the outcomes of a participatory process. These measures would be a necessary counterbalance of the requirements of stability and efficiency imposed in the same programs to local institutions: a way to compensate the heteronomy of EU standards – imposed in cultural programs, as described above – with an empowerment of local communities in the agenda-setting as well as the deliberation and implementation of the project proposal.

The fourth recommendation is to acknowledge that ‘participatory processes are labour-intensive, and as such necessitate some kind of compensation’ (Iossifidis 2020, 52), or indemnisation. The *ratio* of such a remuneration would be the substantial equality, i.e. the need to bridge the gap between grassroots initiatives and strong vested interests, who have specific resources for lobbying.

Such compensation ‘could be in the form of in-kind support in training and consulting’ (*Ibid.*), or happen through the allocation of public asset, as in the case of the ‘urban collective and civic uses’, described above (Cozzolino & Parenti 2020, 18).

Therefore, the EU could provide the local institutions and communities with a legal framework and an appropriate training allowing to entrust a part of the municipal/regional real estate property to self-organised and self-governed collectives of inhabitants and/or cultural and creative workers. Indeed, as demonstrated by the Italian ‘emerging commons’, spaces are resources that can be used by communities and workers to develop policies and networks of mutual aid, with a strong transformative potential.

Of course, this could not be a way to substitute the social intervention needed to fund cultural labour, nor would it bridge the social gap that hinders participation, in the sense highlighted above. Nevertheless, it would be an essential support to commons and other grassroots movements, since it is one of the ways through which institutions can support social needs without interfering with their self-determination.

Finally, the practical and political expertise that citizens bring in participatory processes should be valorised in addition to the academic one, and remunerated where possible, because of its contribution to better policy-making.

Fifth and last one, the EU can support local institutions by proposing a range of legal tools that they can use to allocate public and private spaces to cultural participatory initiatives. Such a measure would allow civil servants to overcome different obstacles mainly related to budgetary rules that encourage the privatisation of public property as a means of generating revenue for local institutions.

In that sense, the EU can draw from the experiments of many local institutions and communities that have developed different tools. Sometimes this involves ad hoc tools provided in local regulations, such as the Italian ‘pacts of collaboration’ for the shared care, regeneration and administration of commons or the assignment for community management made with Can Batlló in Barcelona²⁹ based on its civic profitability and valorising the social return on investment. In other instances, these legal instruments are the result of the creative use of legal tools provided by private law, all of which are especially useful when a good is privately owned. For example,

²⁹ See <https://www.facebook.com/canbatllo/>.

instruments such as Heritable Building Rights or Community Land Trusts have been used to impede the sale of the good on the speculative real estate market and to impose affordable house rents.

In the long term, the most complex question concerns the procedures for grant-making. Indeed, the logic of public granting requires transparency and impartiality of selections. Usually, these criteria are pursued through an evaluation based on parameters defined *a priori* by the EU. However, community-led experiments are by definition not identifiable *ex ante* and from top-down: the criteria of their recognition can only come by the community itself.

This apparent paradox can only be addressed if the process of recognition and evaluation of grassroots practices is entrusted to grassroots practices themselves. In that sense, an interesting example can be found in the agroecological field, which has developed Participatory Guarantee Systems (PGS), for example for organic products (FAO 2018). These forms of certification are based upon mechanisms of trust among networks of producers and consumers, which are built first of all as a way to exchange knowledge and build solid relationships (Cuéllar Padilla 2010, 3–4). In these systems, common standards are defined within each network – through a technical evaluation and a negotiation of values – and enforced through regular visits in each other’s fields, that give place to a certification. The aim of the certification is to favour the encounter and mutual learning, rather than merely controlling: sometimes even the sanctions are also meant as a way to provide solidarity aid to farmers that have experienced involuntary violations (Ibid., 11). In that way, these systems provide a federated certification based on trust that some States have recognised as equivalent – in terms of impartiality and reliability – to the third-party certifications which are based, instead, on the identification of *a priori* requirements and the validation of an independent expert.

The lesson learnt from these cases is that being external to an experiment does not mean necessarily to be an expert of the field; rather, the opposite is true, since only participants themselves can assess how helpful an experience is in terms of participation. In these cases, with the same logics of open-source software, the

quality is not guaranteed by secrecy and impartiality, but by the social control enacted by networks of producers and users. It is time, then, that new criteria – similar to these ones – are recognised by EU programs and taken as a point of reference for funding who are meant to support participation.

Of course, transporting the institution of PGS to the cultural field is a question, more than an answer, since it needs to address different issues, such as: how the systems can work on transnational scale, where there is no proximity among the actors involved (Cavallet, Canavari & Neto 2018, 10); how to ensure the openness of the networks, which is the real guarantee of the system; how to identify the relevant networks.

Moreover, in the present scenario, fragmented by precariousness and competition, specific funding would be needed for pilot programs aiming to foster networks of trust and mutual aid that can enact forms of PGS. In that sense, even smaller grants – reaching a wider number of actors – would grant resources that organisations can invest in creating networks and agreeing on common standards. The EU could employ its own human resources to facilitate and support these processes, in order to lighten the material burdens of networking and create the preconditions for a mutual connection among grassroots cultural actors.

5. Conclusions

The above reflections show that culture and grassroots participation are now ineluctable fields of interest for constitutional law, being pivotal in the dynamics of representation. Namely, spontaneous collective engagement in activities of general interests – even if in small-scale experiments – can represent a deep and widespread transformative force in local communities. Self-organisation, especially in the cultural sector, has demonstrated to be able to create new legal tools and new institutions by building up from participatory artistic, social and political practices. Culture is the base of these initiatives, keeping open spaces of possibility and making new social and political imaginaries possible.

In particular, the work focused on the role of EU cultural policies which are central, not mainly because of their legal instrumentation, but especially due to economic incentives that EU programs entail for local institutions and grassroots organisations. Given this context, recognising the autonomy and reflexivity of grassroots experiments can be a way to integrate local representation – without interfering with it – by actively supporting actors that undertake a daily work for the fulfilment of social rights and institutional innovation through cultural activities. Such a path involves a rethinking of the EU system of social protection, as a necessary precondition for an inclusive democracy and therefore a necessary answer to the ‘democratic deficit’ of the EU.

Conclusively, the paper addresses the current ‘crisis of representation’ through a community-led approach to participation. In that sense, it understands the empowerment of social initiatives as a ‘needs-based approach’ to a multilevel participation, able to tackle EU’s democratic deficit as well as the subjection of national constitutions to contrasting pressures of the market and the citizens’ ‘distrust’.

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