

Participatory Democracy in the Digital State: Comparative Administrative Law Perspectives from the European Union, Taiwan, and Vietnam

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Abstract

This article examines when digital participation becomes an institution of administrative legality rather than a technologically mediated invitation to comment. Using doctrinal analysis, functional comparative law, and institutional design analysis, it compares the European Union, Taiwan, and Vietnam. It identifies a gap between participation as channel availability and participation as reason-constraining public procedure. To close that gap, the article develops the TRACES test: Timeliness; Reach and representativeness; Adequacy of information; Contestability of digital mediation; Explanation linking inputs to outcomes; and Supervision and remedies. Applied comparatively, the European Union offers constitutionalised and cycle-based consultation but uneven inclusion and limited remedial force; Taiwan demonstrates hybrid deliberation and institutional brokers yet remains dependent on political sponsorship and civic-technology capacity; Vietnam possesses substantial constitutional and statutory foundations and expanding digital infrastructure, but duties are dispersed and weakly integrated with reason-giving and review. The article proposes a rights-based participatory administrative procedure for Vietnam, including two-stage consultation, hybrid access, platform transparency, consultation-impact statements, participation officers, independent quality review, and proportionate remedies for material procedural defects. Participation is treated neither as plebiscite nor veto, but as a disciplined obligation of publicly justified administration.

Keywords: participatory democracy, digital state, comparative administrative law, online consultation, civic technology, Vietnam.

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1. Introduction

Digital government is commonly evaluated through the vocabulary of service delivery: faster transactions, interoperable databases, paperless procedures, and lower administrative cost. That vocabulary is necessary but incomplete. Digitisation also determines when public problems become visible, whose knowledge enters an administrative record, how policy alternatives are framed, and whether a person can intervene before an official position hardens. In that sense, the digital state is not merely an administrative state equipped with new tools. It is an institutional environment in which the relationship between public authority and citizens is increasingly designed through portals, identity systems, data standards, ranking mechanisms, moderation rules, and automated forms of synthesis.

Digital participation therefore creates both democratic opportunity and a new layer of administrative risk. Online consultation can reduce the cost of participation, preserve a searchable public record, reach persons unable to attend a physical meeting, and expose regulators to local or technical knowledge that would otherwise remain dispersed. Yet the same interface can invite thousands of comments only after the decisive policy choices have been made. Petition thresholds can reward mobilisation without producing deliberation. Identity verification, recommendation systems, content ranking, clustering, and moderation can determine which views are visible without revealing the criteria by which they are processed. A formally open portal can accordingly reproduce inequalities of time, connectivity, literacy, disability, language, confidence, and organisational resources.³

The legal question is not, then, whether government has opened a digital channel. It is whether the institutional design of that channel creates a fair possibility of influence and subjects administrative power to public justification. Existing scholarship has made major contributions by distinguishing tokenism from citizen power, mapping the institutional varieties of participation, and analysing the evolution of electronic participation.⁴ It has also shown that the digital divide is not exhausted by physical connectivity and that platform architecture actively structures the public that appears to participate.⁵ What remains insufficiently integrated is an administrative-law account connecting the timing and representativeness of participation, the intelligibility of

³ Jan A. G. M. van Dijk, *The Digital Divide* (Polity, 2020), 1–16, https://www.politybooks.com/book/detail?book_slug=the-digital-divide--9781509534449; David Moats and Yu-Shan Tseng, “Sorting a Public? Using Quali-Quantitative Methods to Interrogate the Role of Algorithms in Digital Democracy Platforms,” *Information, Communication & Society* 27, no. 5 (2024): 973–1007, <https://doi.org/10.1080/1369118X.2023.2230286>; Ilaria Mariani et al., *Design Thinking as a Strategic Approach to E-Participation: From Current Barriers to Opportunities* (Springer, 2025), 89–102, <https://doi.org/10.1007/978-3-031-72160-1>.

⁴ Sherry R. Arnstein, “A Ladder of Citizen Participation,” *Journal of the American Institute of Planners* 35, no. 4 (1969): 216–24, <https://doi.org/10.1080/01944366908977225>; Archon Fung, “Varieties of Participation in Complex Governance,” *Public Administration Review* 66, suppl. 1 (2006): 66–75, <https://doi.org/10.1111/j.1540-6210.2006.00667.x>; Rony Medaglia, “eParticipation Research: Moving Characterization Forward (2006–2011),” *Government Information Quarterly* 29, no. 3 (2012): 346–60, <https://doi.org/10.1016/j.giq.2012.02.010>.

⁵ van Dijk, *The Digital Divide*, 27–55; Moats and Tseng, “Sorting a Public?,” 973–1007.

information, the contestability of digital mediation, the duty to explain, and the availability of supervision and remedies.

This article addresses that gap through a comparison of the European Union, Taiwan, and Vietnam. It asks two questions. First, which legal and institutional conditions distinguish participation that is merely available from participation capable of contributing to legitimate administrative decision-making? Secondly, which lessons can Vietnam draw from the European Union and Taiwan without treating either experience as a transplantable template? The comparison is functional rather than taxonomic. It examines how three distinct legal orders address a common problem: enabling citizens to affect the formation of administrative policy and generally applicable norms in a digitally mediated environment. Comparative administrative law is especially useful here because apparently similar procedures may perform different functions once embedded in different constitutional structures, bureaucratic cultures, and systems of review.⁶

The article advances two linked claims. The first is that meaningful digital participation depends on responsive traceability: the authority must be able to demonstrate when participation occurred, whom it attempted to reach, what information was supplied, how contributions were filtered or aggregated, what changed as a result, and why other material arguments were rejected. Responsive traceability does not confer a veto and does not convert administration into a plebiscite. It converts non-binding participation from institutional courtesy into a disciplined form of public accountability.

The second claim operationalises responsive traceability through a six-part TRACES test: Timeliness; Reach and representativeness; Adequacy and intelligibility of information; Contestability of digital mediation; Explanation linking public input to the outcome; and Supervision, evaluation, and remedies. The test is both analytical and prescriptive. It permits comparison across differently structured systems while avoiding a crude ranking of platforms by user numbers. It also offers a drafting and audit framework for Vietnam's emerging participatory administrative law.

The study combines doctrinal legal analysis, functional comparison, and institutional design analysis. It focuses on participation in administrative policy formation and rule-making, not elections, general online political speech, or binding digital referenda. Official rules and observable institutional practices are treated separately because legal availability does not establish effective use. The legal materials are current to 10 August 2026. Section 2 develops the conceptual framework. Sections 3 to 5 examine the European Union, Taiwan, and Vietnam. Section 6 draws the comparative findings, and Section 7 proposes a rights-based reform architecture for Vietnam before Section 8 concludes.

⁶ Janina Boughey, "Administrative Law: The Next Frontier for Comparative Law," *International & Comparative Law Quarterly* 62, no. 1 (2013): 55–95, <https://doi.org/10.1017/S0020589312000553>; Mathias Siems, *Comparative Law*, 3rd ed. (Cambridge University Press, 2022), 23–47, <https://doi.org/10.1017/9781108892766>.

2. Responsive Traceability and the TRACES Test

Participation performs several functions in administrative law. It can protect an individual before an adverse decision, improve the evidential basis of a general rule, represent affected interests, expose distributive consequences, and enhance the democratic legitimacy of policy formation. These functions should not be collapsed. A hearing in an individual case is linked to procedural fairness and a legally specific position; consultation on a general norm is concerned more broadly with knowledge, representation, equality, and legitimacy. Both, however, reject the treatment of affected persons as passive objects of administration.

The classic distinction between information, consultation, and citizen power remains useful, but digital administration requires greater precision. A high number of submissions may reflect mobilisation rather than considered judgment. Conversely, a small, well-facilitated process may reveal conflicts and feasible compromises that a mass survey obscures. The design question is therefore not how to maximise participation in the abstract, but how to match the procedure to its public-law function while correcting unequal capacity to participate.⁷

Digital mediation changes that design problem. Searchability and asynchronous access can improve participation, but interfaces also allocate attention. Registration requirements affect entry; questionnaire architecture affects what can be said; recommendation and ranking affect visibility; automated clustering affects how disagreement is represented; and moderation determines what remains in the record. These choices are not neutral technical details. When they materially shape the evidential record on which an authority relies, they become part of administrative procedure.

The TRACES test specifies the minimum dimensions of a legally meaningful process. Timeliness requires participation before policy closure and, for major initiatives, at both problem-definition and draft-solution stages. Reach and representativeness require active identification of affected groups, hybrid access, accessibility, and disclosure of participation gaps. Adequacy requires intelligible information on the problem, legal authority, evidence, options, expected impacts, and genuine constraints. Contestability requires transparent rules for identity, moderation, ranking, clustering, deduplication, and any use of artificial intelligence, with human review and auditable records. Explanation requires an argument-level account of how material submissions were accepted, modified, or rejected and how they affected the final choice. Supervision requires independent quality review, accessible complaints, evaluation, and proportionate legal consequences for material procedural defects.

These dimensions are cumulative but context-sensitive. A low-impact local measure does not require the same procedure as a national regulatory reform. Nor does meaningful participation guarantee acceptance of the majority preference. Its legal value lies in reason-constraining administration: it expands the evidential record, exposes the authority's assumptions to contestation, and requires a public account of the

⁷ Fung, "Varieties of Participation," 66–75; Tina Nabatchi and Matt Leighninger, *Public Participation for 21st Century Democracy* (Jossey-Bass, 2015), 13–38, <https://doi.org/10.1002/9781119154815>.

decision. The appropriate benchmark is not whether participants prevailed but whether their relevant arguments could be seen, assessed, and traced to an explained outcome.

The comparison below evaluates formal legal foundations, institutional actors, platform design, and accountability mechanisms against TRACES. It does not assume that a supranational order, a consolidated democracy with a civic-technology ecosystem, and a socialist rule-of-law state should converge institutionally. Instead, it identifies complementary design choices and the conditions under which they may be adapted.

3. The European Union: Constitutionalisation Without Complete Procedural Enforceability

The European Union provides the clearest constitutional language of participatory democracy among the three systems. Articles 10(3) and 11 of the Treaty on European Union connect democratic life with openness, proximity, public exchange, civil-society dialogue, broad consultation by the Commission, and the European Citizens' Initiative. The Charter of Fundamental Rights separately recognises good administration and access to documents.⁸ Together, these provisions place participation within the constitutional identity of Union governance rather than treating it as an occasional managerial concession.

The institutional expression of those commitments is plural. The European Citizens' Initiative permits a transnational agenda-setting request once statutory conditions are met. The Commission's Better Regulation system uses calls for evidence, public and targeted consultations, feedback on proposals, impact assessment, evaluation, and a central multilingual Have Your Say portal. The 2021 Guidelines and the updated Toolbox organise consultation across the policy cycle and require planning around objectives, stakeholders, methods, timing, evidence, and feedback.⁹ This cycle-based architecture is the European model's principal strength: participation is linked to the production and testing of reasons rather than confined to a final comment box.

The legal position is nevertheless fragmented. Article 11 TEU does not give each participant a right to the substantive outcome requested. Nor are all consultation standards equally justiciable. Mendes has shown that the democratic promise of participation in Union rule-making depends on whether procedural commitments are

⁸ Consolidated Version of the Treaty on European Union, arts. 10(3), 11, *Official Journal of the European Union* C 202 (June 7, 2016): 13, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:12016M/TXT>; Charter of Fundamental Rights of the European Union, arts. 41–42, *Official Journal of the European Union* C 326 (October 26, 2012): 391, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:12012P/TXT>.

⁹ Regulation (EU) 2019/788 of April 17, 2019, on the European Citizens' Initiative, *Official Journal of the European Union* L 130 (May 17, 2019): 55, <https://eur-lex.europa.eu/eli/reg/2019/788/oj/eng>; European Commission, *Better Regulation Guidelines*, SWD(2021) 305 final, November 3, 2021, https://commission.europa.eu/document/download/d0bbd77f-bee5-4ee5-b5c4-6110c7605476_en?filename=swd_2021_305_en.pdf; European Commission, *Better Regulation Toolbox*, December 1, 2025, https://commission.europa.eu/document/download/9c8d2189-8abd-4f29-84e9-abc843cc68e0_en?filename=BR%20toolbox%20-%20December%202025.pdf.

understood as legal constraints rather than solely as techniques of good management.¹⁰ In practice, many safeguards operate through Commission guidance, internal quality control, political accountability, and cautious judicial doctrines on procedural invalidity.

Empirical and audit evidence also qualifies the image of open access. The European Court of Auditors found the Commission's framework to be of a high standard and participants' perceptions generally positive, while identifying weaknesses in outreach, target-group identification, language arrangements, questionnaire design, data processing, monitoring, and feedback.¹¹ Scholarship on Commission consultations similarly demonstrates that organised and well-resourced interests are often better positioned to participate and that consultation design can either reinforce or moderate this bias.¹² A central portal reduces search cost; it does not dissolve inequalities of expertise, language, organisation, or time.

The European Citizens' Initiative clarifies the relationship between participation and decisional authority. In *Puppinck*, the Court of Justice confirmed the Commission's broad discretion not to pursue legislative action after a successful initiative while maintaining the requirement that it set out its legal and political conclusions and reasons.¹³ The significance of the case lies in the distinction between voice and veto. Participation does not displace the institutional allocation of powers, but reason-giving is necessary if agenda-setting participation is to be more than symbolic.

Measured against TRACES, the Union is comparatively strong on Timeliness and Adequacy because consultation is embedded in the policy cycle and supported by standardised documentation. It is institutionally strong, though not uniformly successful, on Reach. Contestability is mixed: contributions and procedural guidance are visible, but large-scale aggregation and the weight accorded to competing submissions are not always sufficiently reconstructable. Explanation has improved

¹⁰ Joana Mendes, "Participation and the Role of Law after Lisbon: A Legal View on Article 11 TEU," *Common Market Law Review* 48, no. 6 (2011): 1849–77, <https://doi.org/10.54648/COLA2011072>; Joana Mendes, *Participation in EU Rule-Making: A Rights-Based Approach* (Oxford University Press, 2011), 17–44, <https://doi.org/10.1093/acprof:oso/9780199599769.001.0001>.

¹¹ European Court of Auditors, "Have Your Say!": *Commission's Public Consultations Engage Citizens, but Fall Short of Outreach Activities*, Special Report 14/2019 (Publications Office of the European Union, 2019), 4–5, <https://doi.org/10.2865/440388>.

¹² Christine Quittkat, "The European Commission's Online Consultations: A Success Story?," *Journal of Common Market Studies* 49, no. 3 (2011): 653–74, <https://doi.org/10.1111/j.1468-5965.2010.02147.x>; Adriana Bunea, "Designing Stakeholder Consultations: Reinforcing or Alleviating Bias in the European Union System of Governance?," *European Journal of Political Research* 56, no. 1 (2017): 46–69, <https://doi.org/10.1111/1475-6765.12165>; Anne Rasmussen and Brendan J. Carroll, "Determinants of Upper-Class Dominance in the Heavenly Chorus: Lessons from European Union Online Consultations," *British Journal of Political Science* 44, no. 2 (2014): 445–59, <https://doi.org/10.1017/S0007123412000750>; Diana Gabriela Reianu and Dorin Mircea Dobra, "Digital Public Consultation and the Opportunities for Participatory Democracy: An Exploratory Study," *Social Sciences* 13, no. 12 (2024): 630, <https://doi.org/10.3390/socsci13120630>.

¹³ *Puppinck and Others v. European Commission*, Case C-418/18 P, ECLI:EU:C:2019:1113, judgment of December 19, 2019, paras. 69–71, 91–95, <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=celex%3A62018CJ0418>.

through synopsis reports and follow-up documents, yet often remains at category rather than argument level. Supervision exists through internal quality bodies, audit, political scrutiny, and judicial review, but the remedial consequences of defective consultation remain limited and context-dependent. The lesson for Vietnam is therefore not simply to build a single portal. It is to connect the portal to an ex ante policy cycle, a public record, and an enforceable duty of reasoned follow-up.

4. Taiwan: Hybrid Deliberation, Institutional Brokers, and Fragile Integration

Taiwan's model developed through a different institutional trajectory. The Constitution protects petition, complaint, litigation, election, recall, initiative, and referendum rights. The Administrative Procedure Act requires fair, open, and democratic administrative procedure and, for the formulation of regulations, provides for advance notice, disclosure of legal basis and essential content, a period for public comment, and the possibility of hearings. The Freedom of Government Information Law links access to information with public understanding, trust, oversight, and participation.¹⁴ These enactments supplied a procedural foundation before the most visible civic-technology experiments emerged.

The legal framework also reflects democratisation and changing conceptions of bureaucratic legitimacy. Baum explains the Administrative Procedure Act as part of a political transformation that opened an historically insulated bureaucracy. Bernstein's account of 'porous bureaucracy' shows administrators deriving legitimacy from continuing collaboration with legislators and publics, not only from autonomous expertise or faithful execution.¹⁵ This administrative culture helps explain why Taiwan's innovations cannot be reduced to software. They rely on relationships among civil servants, facilitators, civic technologists, experts, and organised stakeholders.

The government-operated Public Policy Online Participation Platform, commonly known as JOIN, combines policy discussion, supervision of major programmes, proposals, and contact channels. Under the governing directions, a proposal that secures 5,000 registrations of support within 60 days enters a formal handling and response process.¹⁶ The threshold creates a clear administrative trigger

¹⁴ Constitution of the Republic of China (Taiwan), arts. 16–17, <https://english.president.gov.tw/Page/94>; Taiwan, Administrative Procedure Act, February 3, 1999, as amended January 20, 2021, arts. 1, 154–55, <https://mojlaw.moj.gov.tw/ENG/LawContentE.aspx?LSID=FL000632>; Taiwan, The Freedom of Government Information Law, December 28, 2005, art. 1, <https://mojlaw.moj.gov.tw/ENG/LawContentE.aspx?LSID=FL037987>.

¹⁵ Jeeyang Rhee Baum, "Breaking Authoritarian Bonds: The Political Origins of the Taiwan Administrative Procedure Act," *Journal of East Asian Studies* 5, no. 3 (2005): 365–99, <https://doi.org/10.1017/S1598240800002046>; Anya Bernstein, "Porous Bureaucracy: Legitimizing the Administrative State in Taiwan," *Law & Social Inquiry* 45, no. 1 (2020): 28–51, <https://doi.org/10.1017/lsi.2019.29>.

¹⁶ Taiwan National Development Council, *Directions for Implementing Online Participation in Public Policy*, revised April 11, 2018, pts. 7(2), 8(3)–(5), <https://theme.ndc.gov.tw/lawout/EngLawContent.aspx?id=62&lan=E>; Taiwan National Development Council, "About," Public Policy Online Participation Network Platform, accessed October 12, 2026, https://join.gov.tw/aboutus/index/en_US.

while preserving the authority's competence to accept, modify, or reject the proposal. JOIN is therefore more than an electronic mailbox, but it is not direct legislation.

vTaiwan illustrates a more experimental form of hybrid deliberation. Since 2014 it has combined online and face-to-face stages, often for contested questions in the digital economy. Pol.is allows participants to agree or disagree with statements and maps clusters and bridging propositions without conventional reply threads. Facilitated meetings can then concentrate on clarified disagreement and cross-group points of convergence. Research on Pol.is correctly cautions that the algorithm does not merely discover a pre-existing public; its classifications and visualisations help constitute the public that decision-makers see.¹⁷ The legal issue is therefore not whether an algorithm makes the final decision, but whether its role in constructing the consultative record is transparent and contestable.

A further institutional innovation is the Participation Officers network. Agencies designate officers to identify stakeholders, translate technical material, coordinate across ministries, organise collaborative meetings, and connect public communication with officials holding decisional authority.¹⁸ This responds to a weakness of platform-centred approaches: participation requires administrative labour and professional facilitation. Without institutional brokers, a portal may collect views while leaving no actor responsible for integrating them into decision processes.

Taiwan should not be idealised. The model's reliance on continuing collaboration among public officials, civic technologists, facilitators, experts, and organised stakeholders means that its depth and continuity depend on sustained institutional relationships.¹⁹ Outcomes are ordinarily non-binding, and the qualities of trust and collaboration are difficult to standardise. The JOIN threshold may privilege organised mobilisation, while deliberative depth varies by case.

Against TRACES, Taiwan is strongest where digital scale is combined with human facilitation. Reach is widened through multiple channels; Contestability can be enhanced by open tools and facilitated interpretation; Explanation improves when collaborative meetings generate point-by-point responses. Timeliness and Supervision are less uniform because many processes depend on sponsorship, issue selection, and administrative willingness. Taiwan's transferable lesson is thus institutional rather than technological: digital participation becomes influential when a designated public official owns the process, hybrid methods are available, and the authority's response is organised around publicly visible issues rather than raw vote totals.

¹⁷ vTaiwan, "Where Do We Go as a Society?," last updated December 2023, accessed October 12, 2026, <https://info.vtaiwan.tw/>; Moats and Tseng, "Sorting a Public?," 973–1007.

¹⁸ Public Digital Innovation Space, "What Is Participation Officers," *The Ultimate Guide of Participation Officers Network*, accessed October 12, 2026, <https://po.pdis.nat.gov.tw/en/po/>.

¹⁹ Bernstein, "Porous Bureaucracy," 28–51; Terrence Ting-Yen Chen, "Strong or Thin Digital Democracy? The Democratic Implications of Taiwan's Open Government Data Policy in the 2010s," *Big Data & Society* 11, no. 4 (2024): 1–12, <https://doi.org/10.1177/20539517241296038>.

5. Vietnam: Strong Normative Anchors, Dispersed Participatory Procedure

Vietnam already possesses a significant constitutional foundation for participatory administration. Article 28 of the 2013 Constitution provides that citizens have the right to participate in state and social management and in discussion and recommendation on national and local issues, while the State must create conditions for participation and publicly and transparently receive and respond to citizens' opinions. The 2025 constitutional amendments did not displace this guarantee.²⁰ The distinctive feature is the explicit conjunction of participation with a governmental duty to receive and respond. Properly developed, that duty can support a robust doctrine of responsive traceability.

Statutory law has progressively specified parts of the constitutional commitment. At the study's legal cut-off date of 10 August 2026, the 2016 Law on Access to Information remains in force and supports the informational precondition of participation; Law No. 01/2026/QH16, enacted on 23 April 2026 and effective from 1 September 2026, will shortly renew that framework. The Law on the Implementation of Grassroots Democracy structures disclosure, consultation, decision, and supervision in specified institutions and communities. The 2025 Law on Promulgation of Legal Normative Documents, as amended, and Decree No. 78/2025/NĐ-CP, as amended by Decree No. 187/2025/NĐ-CP, require publication and consultation in the law-making process; Article 2 of Decree No. 78 expressly regulates the solicitation of opinions and online posting of draft instruments.²¹ These norms show that public consultation is not foreign to Vietnamese public law.

The digital legal environment also changed materially in 2025-2026. The Law on Personal Data Protection entered into force on 1 January 2026, and the Law on Digital Transformation entered into force on 1 July 2026.²² These statutes create

²⁰Vietnam, Constitution of the Socialist Republic of Vietnam, November 28, 2013, art. 28, <https://dha.nnd.bocongan.gov.vn/hienphap2013>; Resolution No. 203/2025/QH15, June 16, 2025, art. 1, <https://datafiles.chinhphu.vn/cpp/files/vbpq/2025/6/nq-sua-doi-hien-phap.pdf>.

²¹ Vietnam, Law on Access to Information, No. 104/2016/QH13, April 6, 2016, <https://chinhphu.vn/?pageid=27160&docid=184568>; Vietnam, Law on Access to Information, No. 01/2026/QH16, April 23, 2026, arts. 30–31 (effective September 1, 2026), <https://vanban.chinhphu.vn/?pageid=27160&docid=218098>; Vietnam, Law on Implementation of Grassroots Democracy, No. 10/2022/QH15, November 10, 2022, as amended by Law No. 97/2025/QH15, June 27, 2025, <https://vanban.chinhphu.vn/?pageid=27160&docid=207718>, <https://vanban.chinhphu.vn/?pageid=27160&docid=214586>; Vietnam, Law on Promulgation of Legal Normative Documents, No. 64/2025/QH15, February 19, 2025, as amended by Law No. 87/2025/QH15, June 25, 2025, <https://vanban.chinhphu.vn/?pageid=27160&docid=213327>, <https://vanban.chinhphu.vn/?pageid=27160&docid=214592>; Vietnam, Decree No. 78/2025/NĐ-CP, April 1, 2025, art. 2, as amended by Decree No. 187/2025/NĐ-CP, July 1, 2025, art. 1(1), <https://xaydungchinhsach.chinhphu.vn/toan-van-nghi-dinh-78-2025-nd-cp-quy-dinh-chi-tiet-mot-so-dieu-luat-ban-hanh-van-ban-q-uy-pham-phap-luat-119250408202647634.htm>, <https://datafiles.chinhphu.vn/cpp/files/vbpq/2025/7/187-ndcp.signed.pdf>.

²² Vietnam, Law on Personal Data Protection, No. 91/2025/QH15, June 26, 2025, effective January 1, 2026, <https://vanban.chinhphu.vn/?pageid=27160&docid=214590>; Vietnam, Law on Digital Transformation, No. 148/2025/QH15, December 11, 2025, art. 47(1) (effective July 1, 2026), <https://datafiles.chinhphu.vn/cpp/files/vbpq/2025/12/148-luat-qh.pdf>.

relevant system conditions for identity, data processing, interoperability, and digital public administration. Their significance for participation is twofold. Digital channels can be embedded more systematically in state operations; at the same time, the processing of participant identities, behavioural data, and automated classifications must be legally bounded. Participation design must therefore be privacy-protective by default rather than treating personal-data safeguards as an afterthought.

The central weakness is not the absence of all participation rules but their dispersion and uneven integration. Vietnam does not yet have a general statute governing non-judicial administrative procedure across policy formation. Duties differ by sector, level, and instrument. Consultation may occur after the basic policy choice has narrowed; drafts may be published without an intelligible statement of alternatives and impacts; reports may aggregate comments without explaining the treatment of material arguments; and a procedural defect rarely has a clear, proportionate remedial consequence. Digitalisation can scale these weaknesses: a portal may increase the quantity of submissions while leaving timing, representativeness, moderation, synthesis, and response legally under-specified.

Evidence from governance measurement reinforces the concern. PAPI findings record expansion in e-governance alongside persistent divides in access and use across gender, ethnicity, residence, and other social conditions; mountainous and highland areas continue to lag in engagement, transparency, and e-governance.²³ Earlier socio-legal research on Vietnamese law-making likewise demonstrated that public participation is shaped by institutional channels and the localisation of global procedural norms, rather than by formal rules alone.²⁴ Digital-only consultation would consequently risk converting an access inequality into an inequality of administrative voice²⁵.

Vietnam's performance against TRACES is therefore mixed. Timeliness is legally required in some rule-making processes but not consistently staged before policy closure. Reach is potentially national but remains limited by digital and organisational divides. Adequacy varies because technical drafts are not always accompanied by plain-language problem statements, options, or impact evidence. Contestability is the least developed dimension: the legal framework rarely specifies moderation, deduplication, ranking, automated summarisation, or audit logs. Explanation has a constitutional

²³ United Nations Development Programme, "New PAPI Report: Government Reforms Offer Historic Opportunity to Enhance Local Governance for All," April 15, 2025, <https://www.undp.org/vietnam/press-releases/new-papi-report-government-reforms-offer-historic-opportunity-enhance-local-governance-all>; Centre for Community Support and Development Studies (CECODES), Real-Time Analytics (RTA) and United Nations Development Programme (UNDP), *The 2024 Viet Nam Provincial Governance and Public Administration Performance Index (PAPI 2024): Measuring Citizens' Experiences* (2025), xiv–xv, 20–25, https://www.undp.org/sites/g/files/zskgke326/files/2025-04/papi_2024_report_eng_final.pdf.

²⁴ John Gillespie, "Localizing Global Rules: Public Participation in Lawmaking in Vietnam," *Law & Social Inquiry* 33, no. 3 (2008): 673–707, <https://doi.org/10.1111/j.1747-4469.2008.00118.x>.

²⁵ Toan Khanh Tran Pham and Quyen Le Hoang Thuy To Nguyen, "Impact of E-Government on Citizen Engagement: The Role of Government Reputation and Digital Divide," *Journal of Information, Communication and Ethics in Society* 22, no. 4 (2024): 419–33, <https://doi.org/10.1108/JICES-08-2023-0109>.

anchor and sectoral expression but is not yet a uniform argument-level duty. Supervision exists through appraisal, inspection, oversight, and administrative litigation, yet no coherent materiality standard connects consultative defects to reopening, correction, suspension, or invalidity.

The opportunity is substantial. Unlike a jurisdiction that must first establish a normative basis for participation, Vietnam can build on Article 28's response duty, the law-making regime's consultation practices, the new digital-transformation framework, and expanding public infrastructure. The reform task is to connect these elements into a general participatory administrative procedure that makes the constitutional duty operational, reviewable, and technologically specific.

6. Comparative Findings: Participation as a Chain of Administrative Accountability

The comparison produces three principal findings. First, channel availability is not a sufficient measure of democratic quality. The European Union demonstrates that constitutional and procedural institutionalisation can make consultation predictable, but organised-interest bias and weak argument-level feedback can persist. Taiwan demonstrates that civic technology can structure disagreement constructively, but influence depends on facilitators, administrative ownership, and political integration. Vietnam demonstrates that constitutional rights and expanding digital infrastructure can coexist with fragmented procedural duties. Across all three systems, the relevant unit of analysis is therefore not the portal but the complete chain from agenda formation to reasoned decision.

Secondly, responsive traceability requires institutional complementarity. No single device supplies all TRACES dimensions. Central portals reduce search costs; targeted outreach corrects representational gaps; plain-language dossiers support informed contribution; open-source or documented aggregation improves contestability; participation officers connect communication to administration; consultation-impact statements supply explanation; and audit and review create supervision. A system that imports only the most visible technology is likely to miss the legal and organisational conditions that made it useful.

Thirdly, participation should be enforceable without becoming a veto. Excessively weak law permits ceremonial consultation; excessively rigid law may produce defensive formality and delay. The appropriate solution is a materiality-based model. Courts and oversight bodies should ask whether a defect deprived affected groups of a fair opportunity to participate, concealed decisive information, distorted the consultative record, or made it impossible to understand how material arguments were treated. Minor defects should be curable; serious defects should trigger reopening, suspension, or, where the defect could plausibly have affected the decision, annulment or remittal.

The most transferable European lesson is cycle integration; the most transferable Taiwanese lesson is the use of hybrid deliberation and institutional brokers; Vietnam contributes an unusually explicit constitutional foundation for a duty to receive

and respond. Combined through TRACES, these elements support a model of participation as a chain of administrative accountability rather than as digital plebiscitary input.

7. A Rights-Based Reform Architecture for Vietnam

Vietnam should develop a general chapter on participatory administrative procedure in a future law on administrative procedure or, pending such legislation, in a government decree applicable to significant policy proposals, strategies, plans, and generally applicable administrative norms. The trigger should be functional: a procedure is required where a measure has broad, unequal, long-term, or technologically mediated effects, imposes material compliance costs, or affects constitutional rights. The initiating authority should publish a participation plan identifying the decision, legal basis, stage, affected groups, methods, timetable, responsible officer, data-processing arrangements, and form of final response.

First, consultation should normally be two-stage. At the agenda stage, the authority should disclose the public problem, baseline evidence, statutory constraints, and plausible options before selecting a preferred solution. At the draft stage, it should publish the proposed text or measure, an accessible summary, the principal impact pathways, and focused questions. Emergency or accelerated procedures should require a public statement of necessity and a post-adoption review. This sequencing would operationalise Timeliness and reduce the common risk of inviting views only after policy closure.

Secondly, the law should impose an equality-oriented duty of Reach. The authority should map affected and under-represented groups; provide accessible formats and reasonable language support; combine online submission with in-person, postal, telephone, or assisted digital channels; and undertake targeted outreach where general publication is unlikely to be representative. The final report should disclose participation gaps and explain mitigation. Participation should never be conditioned on unnecessary disclosure of identity. Where verification is justified, pseudonymous public display and privacy-preserving authentication should be the default, consistent with the 2025 personal-data regime.

Thirdly, each major consultation should have a public participation dossier. The dossier should include the legal mandate, problem definition, evidence, options, distributional and rights impacts, consultation questions, non-negotiable constraints, and the criteria by which submissions will be assessed. Technical drafts should be accompanied by a plain-language version. A person cannot participate meaningfully where the authority reveals the text but withholds the problem, evidence, or alternatives that generated it. This requirement gives practical content to Adequacy.

Fourthly, platform governance should be regulated as administrative procedure. Rules on registration, moderation, prohibited content, ranking, duplicate treatment, translation, clustering, and publication should be disclosed before the consultation opens. Where automated tools or generative artificial intelligence assist summarisation, the authority should publish their function, preserve the original submissions, test for

systematic omission or distortion, and require accountable human validation. Participants should be able to challenge removal, misclassification, or exclusion of a material submission. Audit logs should record substantive changes to the dataset and analytical method. These safeguards operationalise Contestability without prohibiting useful technology.

Fifthly, the competent authority should publish a consultation-impact statement together with the decision. It should describe whom the process reached, identify the principal arguments and evidence, disclose the method of analysis, state what changed, and give reasons for rejecting material alternatives. A response matrix may group genuinely repetitive points, but it should preserve minority arguments that expose a rights impact, implementation risk, or evidential weakness. The statement should be signed by the decisional authority, not merely by a communications unit. This would convert Article 28's duty to receive and respond into a concrete obligation of Explanation.

Sixthly, Vietnam should establish administrative capacity and independent quality control. Each ministry and provincial authority should designate trained participation officers, drawing on but adapting Taiwan's broker model. Their function would include stakeholder mapping, method selection, accessibility, inter-agency coordination, and maintenance of the participation record. A central unit - institutionally separated from the sponsoring department - should audit selected high-impact consultations against TRACES, publish findings, and maintain model clauses and technical standards. Performance indicators should measure representational reach, response quality, policy change, and participant comprehension rather than raw submission totals. International experience confirms that democratic innovation requires durable institutions, not isolated experiments.²⁶

Finally, remedies should be proportionate and accessible. A participant should be able to request correction of the public record, reasons for exclusion, or reopening where a material procedural obligation was breached. Supervisory bodies should be empowered to recommend cure, extend the consultation, require a new impact statement, or suspend adoption. Administrative courts should recognise a material consultative defect where the breach substantially impaired participation, concealed relevant evidence, or severed the traceable link between input and decision. The remedy should ordinarily be remittal and cure; invalidity should be available when the defect is serious and could plausibly have affected the outcome. Such a standard preserves administrative capacity while preventing digital consultation from becoming legally inconsequential.

These reforms are mutually reinforcing. A portal without a participation plan remains episodic; outreach without adequate information remains uninformed; transparent aggregation without reason-giving remains inconclusive; and explanation without review remains discretionary. TRACES should therefore be adopted as an

²⁶ Graham Smith, *Democratic Innovations: Designing Institutions for Citizen Participation* (Cambridge University Press, 2009), 1–27, <https://doi.org/10.1017/CBO9780511609848>; OECD, *Innovative Citizen Participation and New Democratic Institutions: Catching the Deliberative Wave* (OECD Publishing, 2020), 11–25, <https://doi.org/10.1787/339306da-en>.

integrated statutory test and as a checklist for legislative drafting, internal appraisal, inspection, judicial review, and future empirical evaluation.

8. Conclusion

Digital participation can democratise administration only when technology is subordinated to public-law principles. The comparison of the European Union, Taiwan, and Vietnam shows that neither constitutional recognition, platform innovation, nor digital scale is independently sufficient. The European Union supplies a mature policy-cycle architecture but still struggles with unequal access and remedial force. Taiwan demonstrates the value of hybrid deliberation, open tools, and participation officers, while also revealing the fragility of arrangements dependent on sponsorship and civic capacity. Vietnam has a strong constitutional response duty, an increasingly detailed consultation framework, and new digital and data-protection statutes, but lacks an integrated general procedure connecting participation to reasons and review.

The article's principal contribution is the concept of responsive traceability, operationalised by the TRACES test. Timeliness, Reach, Adequacy, Contestability, Explanation, and Supervision direct attention away from the number of online interactions and toward the legal capacity of participation to shape, test, and hold public decisions accountable. For Vietnam, the immediate priority is not to replicate a foreign portal. It is to enact a rights-based participatory administrative procedure that stages consultation early, preserves hybrid access, governs digital mediation, requires consultation-impact statements, professionalises facilitation, and supplies proportionate remedies. Participation then remains non-binding as to outcome but legally consequential as to the quality, transparency, and legitimacy of administrative decision-making.

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