

# Introduction

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Since the start of this millennium the European Union (EU) has been preoccupied with securing a new constitutional settlement with the primary purpose of making the EU a more accountable, democratic and relevant organisation in the lives of its citizens. Though the project for a Constitution for Europe was abandoned, the Treaty of Lisbon 2007 maintains many of the constitutional principles and values that were contained within the Constitutional Treaty and which arose from the Laeken Declaration and the Convention on the Future of the European Union. The Laeken Declaration 2001 noted that:<sup>1</sup>

The European Union derives its legitimacy from the democratic values it projects, the aims it pursues and the powers and instruments it possesses. However, the European project also derives its legitimacy from democratic, transparent and efficient institutions. The national parliaments also contribute towards the legitimacy of the European project. The declaration on the future of the Union, annexed to the Treaty of Nice, stressed the need to examine their role in European integration.

The significance of this statement is that it is recognition of not only the democratic credentials of national parliaments and that they remain constitutionally relevant institutions in the EU polity, but also that national parliaments have a definitive role to play in the future of EU integration. In the first formal recognition of the democratic credentials of national parliaments in the Treaty, Article 12 of the Treaty on European Union (TEU) provides that national parliaments will contribute 'actively to the good functioning of the Union'. In the post-Lisbon EU national parliaments are endowed with new prerogatives of subsidiarity monitoring which, under certain circumstances, may lead them to conclude that an EU legislative proposal breaches the principle of subsidiarity in Article 5 TEU and that it should be withdrawn. The challenge facing national parliaments since 1957, and which is explored in Chapters 1 and 2, is the ongoing process of Europeanisation which has witnessed a transfer of significant legislative competence to the EU. The

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<sup>1</sup> Laeken Declaration on the Future of the European Union, at 5.

primary effect of this Europeanisation is what has been termed a 'deparliamentarisation' of the EU. In short, the EU, while pursuing closer integration has, through Treaties since the Single European Act 1986, pursued an agenda of democratisation which has seen the rise of the European Parliament within the EU polity.

However, unlike national parliaments, which are the expressions of popular democracy in each Member State, the European Parliament does not share the democratic credentials of national parliaments and within the process of EU decision-making may be viewed as part of the legitimacy problem. To this extent, increased legislative powers for the European Parliament have not reduced criticisms of a deparliamentarisation; on the contrary, and as the discussion in Chapters 3 and 4 illustrates, with the increased use of Trilogues in the ordinary legislative process, the expansion of qualified majority voting (QMV), the growth of technocratic decision-making and the greater reliance upon soft law, national parliaments continue to face numerous challenges to their legislative competences. The formal recognition of subsidiarity monitoring by national parliaments in Protocols 1 and 2 of the Treaty of Lisbon offers new opportunities for national parliaments over which they are able to exert some control over the legislative process. There is no doubt that such competence monitoring contributes positively to the legislative process and that it may help to inject some improved democratic legitimacy into EU decision-making. The defining feature of subsidiarity monitoring is that Protocol 2 envisages that this takes place as a 'collective exercise'. Thus, if national parliaments can secure the relevant thresholds contained within Protocol 2 then the Commission may be required to reconsider the legislative proposal. This is significant because it marks a change from the pre-Lisbon position in which national parliaments focussed on securing the accountability of their minister to the parliament. Yes, competence has always been an important issue, but pre-Lisbon any concerns about the exercise of EU competences would be communicated via the minister in the Council. Protocol 2 creates a new political opportunity by permitting national parliaments to make representations concerning the compatibility of a legislative proposal with the principle of subsidiarity directly to the Commission. Does this make Protocol 2 a 'game changer' for national parliaments and alter their position within the EU polity? First, do the prerogatives of Protocol 2 afford to national parliaments some 'quasi-institutional' status within the legislative process? Secondly, are national parliaments now to be considered as a coherent bloc of institutional actors who are all pursuing the same agenda when reviewing EU legislation? Both these questions are explored in Chapters 5 and 6, as well as the question of whether by

engaging in subsidiarity monitoring national parliaments are providing improved output legitimacy to EU legislation. That is to say, if national parliaments conclude that a legislative proposal does not breach the principle of subsidiarity, will EU citizens be more accepting of it? The overarching issue that is therefore explored within Chapters 5 and 6 is whether subsidiarity monitoring helps to maintain the chain of legislative legitimacy to EU citizens which the Laeken Declaration identified as being absent.

The discourse surrounding improved legislative legitimacy has tended to focus on the position of national parliaments in their capacity as the legislative institutions of the Member States. However, and as the Treaty of Lisbon recognises, the EU possesses a multi-level governance structure in which regions and sub-national governance are increasingly important. It must be borne in mind that in the discussions surrounding the exercise of EU competence and the application of Article 5 TEU, the EU will often be sharing competence, not with national parliaments, but with sub-national institutions. Article 5 TEU and Protocol 2 for the first time recognise that when assessing subsidiarity, regional consequences of EU legislative action must also be considered. In conjunction with this, Protocol 2 affords opportunities for subsidiarity review to the Committee of the Regions, as the representative of regional governance within the EU polity, in circumstances where its prerogatives are affected. As Chapter 7 explains, though the Treaty of Lisbon's acknowledgement of regional competences is important, the provisions of Article 5 TEU and Protocol 2 are limited because there is no EU-wide consensus of precisely what competences regional governance should have. Regional competences are heterogeneous across the Member States and largely depend upon domestic constitutional arrangements.

These variations across the Member States remain a barrier to the improved participation by sub-national institutions in EU affairs and one which participation by the Committee of the Regions in subsidiarity monitoring does not sufficiently remedy. The constitutional consequences of EU integration on national parliaments have been considered predominantly in a negative manner. In addition to concerns of deparliamentarisation, national parliaments have been portrayed as 'victims' or 'losers' of integration when their overall participation in EU affairs and the integration process is considered. The inclusion of Article 12 TEU and Protocols 1 and 2 was intended to remedy this perception. While it may be fair to conclude that national parliaments are no longer marginalised in the EU polity, and that the Treaty of Lisbon does formally recognise that their democratic credentials and traditions do have a formal role to play in EU integration, it would be incorrect to conclude

that national parliaments exist as some collective bloc that has acquired an institutional status. Under the Treaty of Lisbon national parliaments have been granted improved recognition of procedural rights to undertake competence monitoring, but this activity takes place against a background in which the EU is pursuing closer integration and harmonisation to solve the socio-economic challenges which it is facing. In particular, this entails the increased use of QMV and soft law to achieve Europeanisation, both of which, as the book explores, significantly impact upon the ability of national parliaments to influence EU decision-making. This provides a challenging political environment within which national parliaments will be operating. In writing this book I have had the benefit of many fruitful discussions with academic colleagues, parliamentarians and officials working within national parliaments and the EU institutions. Though we have not always agreed on the position of national parliaments in the EU, this discourse has helped my understanding of what is and, perhaps more accurately, what should be the constitutional status of national parliaments within the EU polity. In this respect I would like to acknowledge Professor Stephen Weatherill, Professor Mirosław Wyrzykowski, Professor Erika Szyszczak, Dr Phillip Kiiver, Paul Hardy, Dominic Rowles, Haris Kountouros, Loreta Raulinaityte and Ilmārs Solims. In particular, I would like to thank Dr Lorenzo Spadacini and Auke Baas for reading the manuscript and providing me with their very useful comments. I would also like to thank everyone at Edward Elgar who has supported me throughout this project and especially Ben Booth and Laura Seward. Finally, I want to say thank you to Basia and Agnieszka, who have been very patient and understanding with me while I have been writing *that* book. This book reflects the law and practice at 31 January 2013.