**A Democratic Exit?**

**Analysing the Parliamentary Dimension of Brexit**

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1. **The Contestation of Brexit**

The United Kingdom (UK)’s withdrawal from the European Union (EU) is a historic and momentous event, constituting the first time an EU member state activated Article 50 of the Treaty on European Union (TEU). Based on the outcome of a referendum held in Britain in June 2016, this decision occurred in a context of rising Euroscepticism and anti-European populism. Certainly, coming in the wake of the Eurozone sovereign debt crisis which had reached its zenith in the summer of 2015, and in the midst of the Syrian refugee crisis, the British people’s decision to leave the EU added to a sense of the European integration project being in terminal decline. While ‘Brexiteers’ in the UK celebrated their victory at the polls, elites in the remaining member states were haunted by the fear that other states may also opt to leave the Union, like dominoes falling.

Yet the years after the Brexit vote in 2016 painted a surprisingly different picture: in the UK, the governing Conservative Party continued to be riven by internal disagreement, leaving the government with a fragile majority in parliament, whose fragility was exacerbated by the outcome of the snap election called by Prime Minister Theresa May in June 2017 at which the Conservatives lost their parliamentary majority and had to rely on support from the Democratic Unionist Party in order to continue governing. But also beyond the Conservatives, the prospect of Brexit exposed a country deeply divided about the choices involved. Theresa May’s insistence that “Brexit means Brexit” could hardly hide the fact that fundamentally different ways of relating to the EU could be chosen after Brexit, from the ‘softer’ variants of remaining in a customs union with the EU, or even participating in the Market itself (like Norway does through its belonging to the European Economic Area) to the ‘hard’ versions of Brexit that would place the UK firmly outside the EU’s Internal Market and imply the setting up of tariff and non-tariff barriers between the two sides, though these could be moderated through a free trade agreement that would reduce or avoid such barriers in selected economic sectors.

As negotiations between the UK and the EU about the withdrawal arrangements and future relationship commenced, it quickly became evident that these were highly complex matters, with difficult decisions abound. Three issues in particular complicated matters significantly: first, participation in the Internal Market would require the UK to accept the continued jurisdiction of the Court of Justice of the EU – something that had been ruled out early as a ‘red line’ in the British negotiating position. Second, the ‘opting in’ of Britain into selected EU policies or institutions such as regulatory agencies was not deemed possible without a financial contribution to the EU budget – again something the British government could not conceive of. Third, achieving a ‘hard’ Brexit appeared to be incompatible with maintaining open borders between Northern Ireland and the Republic of Ireland, and was thus in conflict with the Good Friday Agreement as well as with the EU’s position in support of Ireland. Furthermore, there have also been serious concerns about the protection of citizens’ rights – EU citizens resident in the UK as well as UK citizens living in the other member states - in such a scenario.

The elusiveness of a simple choice in the Brexit process engendered much debate and disagreement in the UK: all the main political parties took up different positions, and not only the Tories but also Labour were riven by internal splits. The government of Scotland, where the majority of the population had voted in favour of remaining in the EU, took a position that was antithetical to that of the UK government, contending that only continued membership in the Internal Market and the customs union would be acceptable to them. And at a popular level, an increasing polarisation became evident, with a movement for a “People’s Vote” demanding a second referendum that might overturn the original vote in favour of Brexit, while radicalised Brexit supporters labelled those seeking even a partial membership in the EU as “traitors”.

Against the background of such fundamental dilemmas and such a divided country, the search for a decisive position supported by a majority remained elusive, and Brexit negotiations dragged on from the official withdrawal notification on 29 March 2017 until a specially convened European Council meeting in November 2018, just a few months before the final deadline for the UK’s withdrawal two years after the notification based on Art.50 TEU had been submitted by the British government.[[1]](#footnote-1) The fact that key ministers, such as former chief negotiator David Davis, resigned from the cabinet in the later stages of the negotiations, and actively campaigned against the government’s official position in the negotiations, added to the difficulties in achieving an agreement acceptable to all sided.

The difficulties on the British side were mirrored by an - arguably surprisingly - united European Union which maintained remarkable coherence and steadfastness throughout the negotiations. The governments of the remaining 27 member states – the EU27 as they became known – were represented in the negotiations by a European Commission “Task Force” under the leadership of Michel Barnier, former French minister and Single Market Commissioner. In accordance with the procedure spelt out in Art. 50-2 TEU, the European Council, i.e. EU27 Heads of states and governments, first defined the mandate providing the guidelines which Michel Barnier and the Brexit Task Force had to follow in the negotiations. Even though the costs and – to the extent to which these existed – benefits of Britain leaving the EU were unevenly distributed across the different member states, the EU27 persistently maintained a common line that regarded the four freedoms – the free mobility of goods, services, capital and persons – as indivisible. In other words, access for the UK to the Internal Market was off the table, unless it also included the free movement of people which had been explicitly ruled out by the British government. Equally strong was the assiduous support of the other member states and the European Commission for the Republic of Ireland on the issue of the Northern Irish border.

Brexit, then, was a divisive societal issue as well as a highly complex and technical matter in the hands of expert negotiators. However, the negotiations were conducted in the context of political accountability. As the EU27’s chief negotiator, Michel Barnier reported back to the Council at regular intervals. According to Art. 10 TEU, Council members, i.e. the responsible ministers, are accountable to their respective national parliaments. It follows that parliamentary scrutiny is another key dimension to Brexit as it represents a test of parliamentary scrutiny of the EU executive. At both the national and the European level, and in the UK as well as in the remaining member states, Brexit challenged parliaments to hold executive leaders and negotiators to account, to ensure a degree of transparency during the negotiations, to seek influence in some cases, and, in the case of the UK parliament, to establish a right to have a final say on the outcome of the process.

It is this particular aspect of Brexit that is the central focus of this volume. It addresses the critical issue of the democratic legitimacy of the Brexit process by raising a number of important questions: “How deeply and decisively have parliaments been involved in the process?”; “How effective has their scrutiny of the negotiations been?” and “To what extent have their formal powers matched their actual influence over the outcome?”.

Answers to these questions will allow us to assess the degree to which the decision-making around Brexit can be seen as democratically legitimate. Yet they also go beyond Brexit, raising much wider issues about the manner in which parliamentary systems and participatory processes in the EU are capable of dealing with extraordinary events and crises, and the impact that such developments have on the relationship between parliaments and governments more broadly. Brexit is, in this sense, an external and unexpected shock to parliamentary systems on both the national and the European level. Studying closely how this particular challenge has been dealt with by parliaments in different member states, and at the EU level, provides us with new insights about the way in which parliaments cope with such challenges, and even utilise opportunities that present themselves to reassert their role in EU affairs. This volume brings together research on this particular experience in the EU. But it is not just an examination of the interaction between Brexit and democracy, as the title suggests; it also adds to the broader literature on executive-legislative relations in the European Union and on parliaments’ role and democratic legitimacy in the EU more generally.

The contributions to this book investigate these issues empirically in a range of institutional contexts, and they do so from a variety of disciplinary backgrounds, with particular emphasis on constitutional and European law, and political science. The authors of the various chapters have studied distinct empirical environments, and particular aspects relevant to each system through a set of common questions based on the different dimensions to best highlight the various effects of parliamentary involvement in Brexit. This common frame guiding the empirical research presented in each of the contributions is developed below, after the following section provides a more general overview of recent developments with regard to parliamentary scrutiny in the EU in an attempt to contextualise this debate.

1. **Arenas of Parliamentary Scrutiny in the European Union**

Parliamentary involvement in Brexit is an important topic for scientific investigation not only because of the significance of Brexit itself, but also because it has occurred against the backdrop of a decade-long debate about parliamentary empowerment in the European Union. Traditionally, the main focus of those concerned with the EU’s democratic credentials has been the European Parliament (EP). The EP has indeed seen a steady increase in its powers through successive treaty reforms, with additional areas of EU decision-making transferred to co-decision and a progressive increase in the EP’s budgetary powers (Beach, 2007; Biesenbender 2011; Shackleton and Raunio, 2003; Dinan 2012). With the Lisbon Treaty, this equal status between the EP and the Council representing member state governments has been generalised as the Ordinary Legislative Procedure and now applies in the vast majority of legislative domains. Beyond legislation, the EP has become a key actor in other domains such as the conclusion of international agreements between the EU and third countries (Monar, 2010; Ripoll Servent, 2014), and the appointment of the President and the members of the European Commission (Christiansen 2015; Goldoni, 2016). In particular, the changes introduced by the Lisbon Treaty with regard to the appointment procedure of the Commission President and the subsequent creation of the *Spitzenkandidaten* process have significantly changed the dynamics between European Council, European Commission and EP (Christiansen, 2016; Shackleton, 2017).

However, even though the EP is now recognised as a powerful player in EU decision-making, critical questions have been asked about the mismatch between its formal powers and the capacity the EP has to actually translate these into influence (Christiansen and Dobbels, 2012; Fromage, 2018). There has also been some debate about the degree to which post-Maastricht reforms in general, and crisis decision-making in recent years in particular, have strengthened the intergovernmental aspects of the EU, to the detriment of the supranational institutions, including the EP (Bickerton et al., 2015; Rauh, 2018). As the European Council became the de facto decision-making body in the context of the sovereign debt crisis and the refugee crisis, solutions were frequently found through political agreements and new intergovernmental treaties concluded outside of the EU framework rather than following the traditional community method and rather than resorting to EU-law based solutions. In parallel, the Juncker Commission radically reduced the number of legislative initiatives in comparison to its predecessor under the headline of ‘Doing Less More Efficiently’ (Juncker, 2014). Consequently, the EP was not able to fully realise the influential role of an equal of the Council that successive treaty reforms had promised.

The increasing differentiation of the EU has also complicated the role of the EP: its central function as the democratic institution at the heart of the Euro-polity is somewhat compromised by the many opt-outs of individual member states, often in key policy-areas. The fact that neither the Eurozone nor the Schengen area aligns with the formal membership of the EU means that the EP is not readily acceptable as the only institution that provides the democratic legitimacy for decision-making in these cases (Cooper and Smith, 2017; Barrett, 2018), even if the European Commission regularly reaffirms the EP’s status of the sole organ for parliamentary legitimacy within the EU (*inter alia* Commission December Package). In fact, research has demonstrated that the dialogue between the EP and the ECB has established an effective accountability mechanism (Torres, 2013; Fromage and Ibrido, 2018) However, neither involving in its work MEPs elected in member states that have opted out of these policies, nor excluding these from such decisions – even though they have been elected to represent the common European interest (art. 14-2 TEU) – would seem to be a strategy that provides sufficient legitimacy for EU decision-making in a policy-area that has become increasingly politicised. Consequently, there have been proposals to set up new, dedicated democratic institutions that precisely match the jurisdiction covered by a specific policy area (Kreilinger and Larhant, 2016). The idea of a ‘third chamber’ next to Council and Parliament for the Eurozone has been proposed to overcome this dilemma (Calliess, 2015).

These limitations and concerns about future developments should however not distract from the EP’s remarkable rise to becoming a powerful player on the European level, a status that was further cemented by the stronger relationship that EP and Commission developed as a consequence of the EP electing the Commission President, and the subsequent ‘coalition agreement’ between the ALDE, EPP and S&D groups (Euractiv, 2014). It formed the basis for the intended cooperation between the two institutions during the five years of Jean-Claude Juncker’s term as Commission President.

Compared to the central role played by the EP in the post-Maastricht era, the involvement of national parliaments in EU affairs is a more recent and more complex affair. It is a development that also owes much to the Lisbon Treaty, both in terms of the origins of this instance of treaty reform in the 2002-2003 Constitutional Convention which directly involved national MPs in deliberations about the revision of the treaty, and in terms of the ‘revolution’ the new Treaty has engendered for parliaments (Raunio, 2011). Through the new provisions it contained, in particular the creation of the so-called Early Warning System – a novel procedure allowing national parliaments to scrutinise EU draft legislation for subsidiarity breaches – national legislatures for the first time gained a formal standing in the EU treaties (Kiiver, 2012). Even if the ‘yellow card’ procedure has rarely been activated in the first decade after Lisbon, it heightened the attention that national parliaments would give to European affairs and thus transformed quite fundamentally the relationship between Brussels and national chambers, and between them and their national governments (Gattermann and Hefftler, 2015; Auel and Christiansen, 2015).

The post-Lisbon era then has been a watershed for the European engagement of national parliaments which had not so long ago been considered as “losers” of the integration process (Maurer and Wessels, 2001). Even if the role of national parliaments at the European level remains largely advisory, and even if their involvement is uneven across the member states of the European Union, their direct interaction with the EU institutions has become more frequent and has involved an ever-increasing number of institutions (Fromage 2018). For instance, the 2010s have seen a remarkable rise in interparliamentary cooperation across national boundaries and governance levels in Europe and national parliaments have submitted more than 3000 contributions to the European Commission in the framework of the Political Dialogue. At the extreme end of this development, national parliaments rose to prominence in fundamental debates about limiting the transfer of competences to the European level in the mid-2010s, with the proposals for a ‘red card’ system allowing individual national chambers to block the adoption of unwanted European legislation. The potential introduction of an (indirect) right of legislative initiative in the form of a ‘green card’ has also been intensively debated (Groen and Christiansen, 2015).

While these extreme ideas did not translat into actual reforms at the time of Brexit, national parliaments do now conduct subsidiarity checks on draft legislative acts transmitted to them directly by the European Commission as a matter of routine. They have also become more deeply involved in the ratification of the trade and investment agreements the EU signs with third countries, in particular since the jurisprudence from the Court of Justice of the European Union has determined that so-called ‘mixed agreements’ require approval both at the European and at the national level (CJEU, 2017). Indeed, as the experience of the CETA agreement with Canada demonstrated, this development also extends to the Belgian regional parliaments while in other member states regional parliaments may need to be informed (Crespy, 2016).

Yet, also with regard to national parliaments the past decade has not been a story of unmitigated success. The Eurozone crisis, in particular, has had a mixed impact on the influence of national parliaments. In some countries – Germany is a case in point – the already strong standing of parliaments was further expanded in the context of the adoption or the constitutional review of the often controversial legislation that underpinned the EU’s crisis-management (Auel and Hoeing, 2016). However, in other domestic contexts the shift of decision-making to intransparent, intergovernmental fora such as the Eurogroup, and the empowerment of technocratic governance in the context of the Troika, meant that national parliaments became increasingly marginalized (Maatsch, 2015). Generally speaking, the crisis had the effect of exacerbating existing inequalities among the national parliaments in the EU: strong parliaments acquiring additional powers, and weaker parliaments becoming more powerless vis-à-vis their respective executives.

Despite such observations about the varied impact of European developments on national parliaments, and their uneven involvement in the process of scrutinising European legislation, the decade after Lisbon has seen a fundamental shift in the Europeanization of national parliaments. Rather belatedly, compared to other institutional actors, they have become part of the governance structure of the European Union, and even if their influence is not often evident, their presence in the EU has certainly been felt and increasingly visible (Christiansen *et al*., 2014). What matters more here than the direct role that national parliaments have played in Brussels is the degree of emancipation that has occurred in their relationship with national executives, with an improved access to information, greater opportunities to scrutinise and even mandate ministers attending Council meetings they have – at least in some member states (Gattermann *et al.,* 2013). This matters in a range of policy-areas and provides the background also to the way in which national parliaments have been able to engage with member state governments in the Brexit process.

1. **Brexit, Parliaments and Citizens**

Under Art. 50, the EP is formally required to consent to any agreement that the EU reaches with a state seeking to leave the Union, and this clearly provides the Parliament with influence also over the Brexit negotiations, even if, formally, its participation only intervenes at the ratification stage. As with other matters of a constitutional nature, this formal say on the withdrawal agreement has energised MEPs into having an influential role in the process. Soon after the UK government submitted its notification under Art.50, the Parliament’s Conference of Presidents set up a “Brexit Steering Group” composed of six leading MEPs and chaired by Guy Verhofstadt, leader of the ALDE group in the EP. Guided by this steering group, the EP attentively followed the negotiations and issued motions and opinions on a regular basis, and indeed determined its own ‘red lines’ that would need to be met in order for it to provide its consent to the eventual agreement (European Parliament, 2017). Consequently, this volume includes a thorough examination of the way in which the EP was involved in the Brexit process.

Next to this analysis of the EP’s participation, national parliaments, both from the UK and the EU27, are also considered. The role they played in scrutinising the Brexit process needs to be seen against the background of a post-Lisbon, post-crisis landscape of significant diversity across legislatures in the European Union described above. The manner in which national parliaments are formally empowered, institutionally capable and politically motivated to oversee the Brexit negotiations conducted by the executive branches differs from one member state to another, and thus requires the examination of the particular circumstances in individual domestic contexts. For this reason, this volume contains a number of case studies looking at the particularities of specific member states. These cases have been chosen with a view to study a range of different national systems – unicameral as well as bicameral; federal as well as unitary; debating as well as working parliaments – while also ensuring that those countries for which Brexit has a particular significance (e.g. Germany/manufacturing industry; Spain/Gibraltar; Luxembourg/financial services; Ireland/Northern Irish border; Poland and the Czech Republic/free movement of citizens) are examined.

A very special case in this regard is of course the United Kingdom itself – it is here that the anticipated impact of the decision to leave the EU was considered to be most far-reaching, and where the issue was most controversial and politicised. As discussed above, Brexit has not only seen a population divided, but also exposed divisions within the main political parties and indeed the political establishment more generally. It comes as no surprise, therefore, that it has also pitched the UK parliament against the government, and indeed put the two Houses of Parliament at loggerheads on various occasions. The situation in the UK is further amplified by the peculiar nature of the unwritten British Constitution which has given rise to disputes about the role of parliament in the context of Brexit, as well as by the importance of parliamentary sovereignty in the UK (Gordon, 2016). It took heated public debates, judicial challenges and backbench rebellions to overturn the government’s initial position that parliamentary approval for the UK’s withdrawal from the EU was not required.

In the process, the UK parliament has become a central focus for debates about the nature of Brexit, and the key location for ultimate decision-making in this matter. In recognition of this significance, three chapters in this volume are devoted to distinct aspects of the role of parliament in the UK decision-making process on Brexit. This includes examinations of both the House of Commons and the House of Lords, of the parliamentary scrutiny of the executive and of the internal politics in each House, leading to discussions of the role of committees and the nature of party politics. Taken together, these chapters demonstrate the massive influence that the UK parliament has had on the Brexit process and the shape of the final agreement.

Beyond this examination of the functioning of the European Union and its member states as a system of representative democracy on multiple levels, it also needs to be recognised that the Brexit process has also been impacted by elements of participatory democracy. In the UK, starting with the June 2016 referendum itself, a high degree of popular mobilisation, and indeed a new wave of populism, was engendered around this issue (Iakhnis *et al.*, 2018). Both the original success of UKIP and the wider “Leave” movement, and subsequently the momentum building in support of a second referendum – presented as a “People’s Vote” – demonstrated the manner in which parliaments ceased to be seen as the only relevant arena for democratic decision-making (Donnelly, 2018). While at the EU level there are no opportunities for referendums, the Lisbon Treaty introduced the new instrument of a ‘European Citizens Initiative’ (ECI) (Mayoral, 2011), and this book includes one contribution examining the manner in which the ECI and other instruments of citizens’ participation have been used in the context of Brexit.

1. **Conceptualising the Relationship between Brexit and Democracy**

The various arenas in which democratic scrutiny of Brexit decision-making could take place – the UK parliament, the national parliaments in the EU27, the EP and the mobilisation of citizens – are very diverse. The various institutions are all embedded in different constitutional settings, have developed their distinct political cultures and consequently operate with vastly different procedures, capabilities and motivations. Furthermore, Brexit has an uneven impact across the EU, be it with a view to the socio-economic consequences, with respect to questions of legal and constitutional principles, or with regard to issues of identity and values.

This high degree of diversity means that a single framework for analysis is neither warranted nor likely to be workable – something that is further challenged by the fact that this topic requires a multi-disciplinary approach involving both legal scholars and social scientists. Yet at the same time, it remains preferable to approach the study of parliamentary scrutiny across Europe in a systematic manner to be in a position to make not only country- or institution-specific statements about the impact Brexit has had, but also to identify general patterns.

The approach chosen here to overcome this dilemma is the identification of a set of common questions, as already indicated above, and the development of a number of conceptual dimensions across which the authors address a set of common issues and questions in their respective chapters. In particular, each chapter – as far as possible in the context of its specific subject-matter – addresses four distinct dimensions along which the involvement of parliaments in the Brexit process, and its impact on the institution, can be analysed.

First, a *constitutional dimension*, relating to the way in which the unique challenge of Brexit interacts with long-standing tensions in the relations between executives and legislatures (Fromage *et al.*, forthcoming). A focus on this dimension includes chapters addressing questions such as “How does the executive-legislative relationship play out over Brexit?”; “Does Brexit provide opportunities for parliaments to gain new influence over EU affairs, or does it lead to (further) marginalisation?” and “Does the practice of parliaments’ involvement in the process match our expectations in terms of their constitutional powers?”

Second, a *procedural dimension*, concerned with the nature of the process of the Brexit negotiations, the interactions between the various actors involved in this process, and the rules governing this process. This entails the need to address questions such as “To what extent are MPs and MEPs able to influence the process and the direction of negotiations, as opposed to merely having a vote on the outcome?”, “What is the balance between formal and informal arrangements in the scrutiny of Brexit?”, and “Do the procedural rules empower or disenfranchise parliaments?”

Third, a *party-political dimension*, focused on the degree to which political parties play a significant role in the context of Brexit. This facilitates an examination of interactions that goes beyond the image of parliaments as single actors, and opens up perspectives on divisions within parliaments as well as linkages across different institutions and multiple levels of governance. It involves raising questions such as “To what extent do majority/governing parties and opposition parties approach Brexit scrutiny differently?”, “Does Brexit provide opportunities for opposition parties to exert influence they might otherwise not have?”, “To what extent is Brexit an opportunity for Eurosceptic parties to mobilise opposition to the EU, or for pro-European parties to marshal support for further integration?”

And, fourth, a *national and territorial interest dimension* which comprises the issue of actors – parliaments, party groups or individual MPs – projecting views in the context of Brexit that reflect particular interests specific to the state or the territory they represent. This focus leads to questions such as “Does the activity of national parliaments reflect the configurations of national interests of individual states, or of regional interests within these?”, “Does the involvement of parliamentary actors help to shape the national interests being considered vis-à-vis the UK?”, and “Is there any evidence of organised interests within member states, or at the European level, advancing particular societal or commercial interests?

These four dimensions, and the set of questions associated with each of them, provide a common thread that will be pursued throughout the contributions to this book. At the same time, the various chapters will address the particularities of the specific cases at hand, and provide an in-depth analysis of the manner in which the EP and national parliaments have reacted to the challenge of Brexit. In the following section the contribution made by each chapter will be briefly summarised, before a concluding section then highlights some of the aggregate findings and offers a discussion of the future outlook with regard to executive-legislative relations in the EU after Brexit.

1. **Contributions to this Volume**

The analysis conducted through the contributions of this book is structured around the arenas of parliamentary scrutiny of Brexit introduced above: in the first part, the role of the two Houses of Parliament in the UK are being discussed; in the second, the focus is on national and, in some cases, regional parliaments in the remaining EU member states; and the third part is devoted to developments at the EU level, and specifically the European Parliament and Citizens’ participation in the EU arena.

The first part of the book, addressing the role of the UK parliament in the Brexit process, consists of three contributions. Louise Thompson and Ben Yong (2019, in this volume) discuss in their chapter the type and quality of parliamentary scrutiny with a particular focus on the passage through parliament of the European Union (Notification of Withdrawal) Bill in the 2016-17 session. Their analysis demonstrates the ambiguity of the concept of scrutiny, and its contingency upon a legislature’s constitutional and procedural rules, as well as the stances of particular actors – including government, opposition, parliamentary committees and outside observers. Their analysis finds that the quality of parliament’s scrutiny of the bill shifts, depending on who is asking the question, their objectives, the object of their scrutiny and the forum in which the question is being asked.

Richard Whitaker, Philip Lynch and Adam Cygan (2019, in this volume), in their chapter, explore the wider issues concerning the role of Parliament in amending Brexit-related legislation. Frawing on extensive data from interviews with participants, they explore in particular the role of House of Commons select committees in the Brexit process. Their research finds that while the executive-legislative relationship has not fundamentally changed, divisions within the two largest political parties and the government’s minority status after the 2017 general election have meant that the executive has had to make concessions to its own backbench MPs on both sides of the referendum debate, in order to ensure the passage of legislation. Select committees have been influential at times through common themes emerging in some of their reports and their ability to highlight issues not previously on the agenda. At the same time, however, they have also been undermined to some degree by divisions between committees on the leave-remain and core-periphery dimensions and within the Brexit committee.

In the third chapter of this first part, Julie Smith (2019, in this volume) explores the changing dynamics of parliament-executive relations in light of Brexit, focusing primarily on the role of the upper chamber, the House of Lords. Here the government does not have majority, thanks to the unusual methods of appointing peers, many of whom sit as cross-benchers, outside the normal party system. The chapter examines the government’s ability to get legislation through the Lords, with particular reference to the EU Notification of Withdrawal Act 2017 and the EU (Withdrawal) Act of 2018.

The second part of the book contains five chapters dealing with national parliaments in the remaining member states, with special emphasis on those member states that are likely to be particularly affected by Brexit – and hence where parliaments could also be expected to play a major role. Vanessa Buth, Anna-Lena Högenauer and Petr Kaniok (2019, in this volume) present in their chapter the results of comparative research on the role of the German, Czech and Luxembourgish parliaments in the Brexit process. The three cases exhibit a high degree of diversity in terms of these member states’ geographical location and size, and thus also assess the developments in member states with different levels of governmental influence in the Brexit negotiations. The focus of this comparative study is on the formal powers of the respective parliaments, their actual mobilization and the key dynamics that mark their scrutiny of the Brexit negotiations.

Subsequent chapters provide insights derived from in-depth single country case studies. Vivien Sierens and Nathalie Brack (2019, in this volume) examine how Brexit has been addressed by national and regional parliaments in Belgium. The chapter is structured around four key questions corresponding to four dimensions of parliamentary scrutiny: first, the constitutional dimension, how does the executive-legislative relationship play out over the issue of Brexit in Belgium? Second, the procedural dimension, what is the impact that parliaments can have on EU affairs in general, and on Brexit in particular? Third, the party-politics dimension, do political parties emphasize the same issues across different levels and depending on their role as government or opposition parties? And, fourth, the national interest dimension, how does the attention paid by regional and federal parliaments reflect the configurations of national interests in a multi-level setting?

Karolina Borońska-Hryniewiecka (2019, in this volume) deals in her chapter on Poland with a member states that faces with Brexit the loss of one of its most important EU partners, and is politically and economically deeply affected by the departure of the UK. The research on the actual engagement of the Polish parliament in these procedures reveals that its role in the process is limited to mere monitoring and receipt of governmental information, despite the parliament’s fairly strong scrutiny powers in EU affairs. The analysis shows that while the members of parliament are not able to influence the process by mandating the executive, the level of politicization of Brexit in the parliamentary arena is quite high, with the governing and opposition parties exploiting the topic for their own political gains.

Ireland is arguably the member state most directly and extensively affected by Brexit, be it through the anticipated economic impact of Britain leaving the Single Market or the implications of changes at the border with Northern Ireland. Gavin Barrett (2019, in this volume) examines in his chapter how this prospect has been reflected in the activities of the Irish legislature, the Oireachtas. Raising questions about the influence that Oireachtas members have been able to exercise on the Government position on Brexit, and whether the legislature brought any added value to this process. This chapter seeks to answer such questions while examining the constitutional, procedural and party-political dimensions of Brexit in Ireland.

A final case study from among the EU27 is provided by Antonio Bar Cendón (2019, in this volume) on the Cortes, the Spanish Parliament. The chapter studies how government-parliament relations have played out over Brexit, reveals how the Joint Committee for the EU has centralized these relations and discusses how limited the Parliament's influence on the Government's position in the negotiations with the EU has been. It also underlines that the position of the political parties with respect to Brexit did not show great differences – the common position being one of rejection – and how the Cortes sought to gather information about public opinion and particular interests through the appearances of experts, professionals, public officials and representatives of various social groups summoned to appear before the Joint Committee.

The final part of the book moves the level of analysis to the European Union. Two chapters here focus on the European Parliament. First, Monika Brusenbauch Meislová (2019, in this volume) presents in her chapter research on the role of the EP in the Brexit process and outlines the opportunities and challenges that this implies. the analysis focuses firstly on how the EP has reacted institutionally to Brexit (i.e. in terms of setting up special committees or working groups) and secondly on the relationship between the EP and other EU institutions, reflecting on the inter-institutional balance and dynamics in the withdrawal process. Moving then on to the extent to which the EP is able to influence the withdrawal process as opposed to only giving or withholding its consent to any final deal negotiated between the British government and the European Commission, it also examines the balance between the EP’s formal and informal role(s) in the Brexit process.

If the previous chapter is concerned with the impact that the EP has had on Brexit, the following chapter by Jan Claudius Völkel (2019, in this volume) is focused on the reverse question, namely the impact that Brexit has had on debates in the EP. Taking as an empirical testing ground the attitudes of Members of the European Parliament (MEPs) to relations between Europe and the countries of the Middle East and North Africa, i.e. the so-called MENA region, the chapter reveals how debates in Britain between “remainers” and “leavers” also reverberated among the 73 UK MEPs. Brexit supporters promoted fundamentally different ideas about the growing challenges in the EU’s southern neighbourhood compared to those who supported Britain’s EU membership. UK MEPs were particularly disunited about whether borders for refugees should be opened or closed, whether Muslims posed a threat or an enrichment for Europe’s societies, and whether closer cooperation in EU justice and home affairs led to higher or lower security.

In a final chapter that moves the analysis beyond the realm of parliaments, Natassa Athanasiadou (2019, in this volume) examines the available mechanisms for citizens and representative associations to scrutinise and participate in the Brexit negotiations at the EU level. Effective citizen scrutiny and participation presuppose transparency and access to information. The chapter therefore first identifies what means have been used to inform the public throughout the process. Subsequently, the different institutional forms of EU citizens’ direct participation in the context of the Brexit negotiations are examined. As an overall aim, this chapter assesses the standards which the Brexit negotiations have set and the shortcomings which remain with respect to openness, transparency and citizens’ involvement at the EU level.

1. **Conclusions and Outlook**

Taken together, the contributions to this volume provide a comprehensive overview of the manner in which the Brexit process has been scrutinised in the various arenas. While for practical reasons not all member states could be included in this account, developments in the key member states and an appropriate cross-section of different national systems were analysed. The UK parliament and the EP are special cases in this regard due to the significance that Brexit has for these two institutions in particular, and the contributions to this book indeed demonstrate that it is also in these cases that the impact of parliamentary involvement has been greatest. In both Westminster and Brussels/Strasbourg, political agency turned the narrow involvement that parliaments formally had into genuine influence. The UK parliament travelled furthest in this regard – from initial attempts by government to avoid parliamentary involvement altogether to ultimately having a decisive role in the final outcome.

Looking at the questions that were raised above, the contributions to this volume show that we have not witnessed any upheavals in terms of constitutional change. Instead, the experience of Brexit has largely confirmed the existing arrangements – the experience of parliamentary scrutiny remained within the formal confines of constitutional stipulations. National parliaments have made use of their powers to varying degrees, but there had been no perceived need or apparent desire to expand on these. Only in the UK itself, where the flexibility of the unwritten constitution and the reference to the royal prerogative provided the government with an opportunity to take decisions without reliance on parliamentary approval, was there a test of constitutional principles. On the one hand, a minority of MPs was defeated in their attempt to allow parliament to direct the government’s negotiating strategy (Cygan *et al.,* 2019, in this volume). On the other hand, parliament was eventually empowered to have a “meaningful vote” on the outcome of negotiations, ensuring that debates in parliament, and the majorities available for different Brexit scenarios, became influential in guiding the process. In the case of the EP, the challenge for MEPs was to find a way of turning the requirement of giving consent on the final agreement into actual influence in shaping the negotiating stance of the EU27. MEPs succeeded in doing so through a variety of means, thus demonstrating their long-held ability to be innovative in the use of their formal powers (Brusenbach, 2019, in this volume).

Similar observations can be made with regard to the procedural dimension outlined above. Brexit, however extraordinary as an event, did not fundamentally change the arrangements that parliaments adopted internally, or their relations with the executive. In the national parliaments of the EU27 it was dealt with according to the normal procedures for the scrutiny of EU affairs already in place, whereas in the UK the relations between parliament and government, and between upper and lower chambers, played out in terms of the – often uncertain – majorities for or against the government. However, in the UK, the absence of a fixed definition of parliamentary scrutiny meant that there was considerable contingency in the way in which the government was held to account over its stance in the Brexit negotiations (Thompson and Yong, 2019, in this volume).

Yet, the existence of such contingencies implies that party politics – and in particular disagreements between governing majority and opposition – might have had special significance. In the UK, the parliamentary scrutiny of Brexit certainly had a strong party-political dimension, not only because opposition parties to a large extent voted consistently against the government. This also gave the House of Lords a distinctive role, given that here the government did not have a majority (Smith 2019, in this volume). In the Commons, party politics mattered a lot, especially when after the June 2017 general election, the government relied on the support of the DUP, and therefore this party’s particular agenda gained significantly in terms of its influence on the government’s negotiating strategy. However, the overarching impression arising from the study of the way in which the House of Commons handled Brexit was the internal divisions in the main political parties, and crucially among the Conservative members. The depth and extent of these divisions led to a situation in which the usual government/opposition split was to a large extent overlaid with a soft/hard Brexit positioning of MPs across all the parties in the chamber.

Elsewhere, however, the contributions to this volume show that party politics was not a major factor in either national legislatures or in the EP. On the whole, political parties across the spectrum supported governments in their stance with regard to Brexit, or at least did not challenge the position that was adopted (Buth *et al.,* 2019, in this volume). In some member states, debates about Brexit in national parliaments fuelled existing politicisation of the European issue in the chamber – the Polish *Sejm* being such a case (Borońska-Hryniewiecka, 2019, in this volume). But by and large national consensus on Brexit prevailed across the EU27, and similarly the EP also maintained a large cross-party majority in favour of its adopted positions.

The limited role that party politics appear to have had in the Brexit process indicated that national interest (or, in the case of the EP, the common European interest) has been a stronger determinant of parliamentary behaviour than party politics. MPs and MEPs appeared to have concluded that Brexit was not an issue worth contesting, given the national and indeed wider European interest at stake. In the UK, the same could be said about the House of Lords which, due to its unelected character, was also in a position to stress more the interests of the country as a whole rather than emphasise party political differences, as was the case in the Commons (Smith, 2019, in this volume). One special case here is that of Belgium, where the division of society into distinct linguistic communities is reflected in parliamentary institutions at both the regional and the national level. Here, parliamentary debates about Brexit brought the different *regional* perspectives on Brexit to the fore (Sierens and Brack, 2019, in this volume).

When considering what Brexit teaches us about parliamentary scrutiny of EU affairs after Lisbon, it should first be noted that the three groups of parliaments considered in this volume – UK, EU27 and the EP – are in significantly different positions. Only the UK parliament and the EP have a strong say: as shown by the chapters on the EU27 parliaments included here, their powers have remained fairly limited so far, even if they have shown great interest in the Brexit negotiations. This is because the EU27 parliaments do not have to give their consent to the ‘divorce agreement’: They will only be involved when the future ‘mixed agreement’ regulating the future EU-UK relationships is concluded. As exemplified by the Irish and the Spanish cases, even where member states have significant interests at stake, their parliaments have not mobilized as much as could have been anticipated; they have not made a full use of the tools they have at their disposal and have mostly been reactive rather than proactive (Barrett, 2019, in this volume). By contrast, for the UK parliament, a lot has been at stake and both of its chambers have been actively scrutinising, and seeking to influence, the negotiations.

Beyond this, as shown by Thompson and Yong (2019, in this volume), it is difficult to assess the effectiveness of parliamentary scrutiny because in the absence of a clear definition of scrutiny, its impact eventually depends on what the objectives of the scrutineers were in the first place.

Furthermore, executive-legislative relations in the context of Brexit also differ significantly between the UK and the EU27. In the UK, the relationship between Parliament and government has been tainted with several controversies and disagreements, both as to the way in which the withdrawal negotiations should be conducted and concluded, as well as concerning the nature of the future relationship between the UK and the EU. In fact, Parliament tried to avoid ‘an executive power grab’ (Whitaker *et al.*, 2019, in this volume). By contrast, in the EU27, Brexit has not (yet) been a subject of major disagreement between parliament and government; perhaps it will turn into one once the negotiations about the future relationship with the UK start. This notwithstanding, the EU27 parliaments have played an active role in scrutinizing their government’s actions and, for some of them, in trying to act as policy shapers.

It follows thus that the executive-legislative relations in EU affairs have not been significantly altered by the Brexit negotiations, despite their high salience and the serious consequences these bear for the future of the EU as a whole. A common understanding of the national interests has been maintained, and no major cleavage between majority and opposition has, thus far, emerged in several of the member states analysed here, with the notable exception of Poland where Brexit has been heavily politicised (Borońska-Hryniewiecka, 2019, in this volume). In fact, in Belgium it is parliamentarians from the majority that have been most active in posing questions to the executive (Sierens and Brack, 2019, in this volume). In sum, as noted by Buth, Högenauer and Kaniok, those parliaments have not ‘used Brexit as an opportunity to extend their powers vis-à-vis government’ (2019, in this volume).

With a view to the future, it is interesting to note that the governments of the EU27, and of the UK alike, may gain more powers in the post-Brexit era. As measures will need to be adopted swiftly to deal with the – anticipated as well as unintended – consequences of Brexit, parliaments may be sidelined in the process. In fact, some parliaments already began during the negotiations to empower their respective governments to adopt the measures necessary to guarantee a smooth post-Brexit period, leading to a relative strengthening of the executive vis-à-vis the legislative branch. The French parliament, for instance, already prepared prior to the conclusion of the Brexit negotiations a delegation of power to the government for it to adopt the necessary measures, even if their adoption affects the legislative domain (“domaine de la loi”). This legislative proposal, additionally, followed the accelerated legislative procedure. It follows that the status quo we have observed so far may be challenged in the post-Brexit environment, and that therefore the executive dominance that had prevailed pre-Lisbon may return.

It is interesting to note that the EP’s role is peculiar in that regard: Since it has to approve the ‘divorce agreement’, it has been able to play an important role, even if no formal provisions existed in this sense. In fact, it has seized this opportunity to reaffirm its position in international negotiations and may prove to be an influential actor in future relations between the EU and the UK.

At the time of writing, in late 2018, it is uncertain what demands the governance of future EU-UK relations will place on national parliaments. It may well be that it will merely amount to the occasional ratification of intergovernmental treaties in fields such as security, trade, investment or regulatory cooperation – bringing with it opportunities for parliamentary scrutiny as well as certain risks that such powers to approve third party agreements may also throw a spanner into the works of a smooth cooperation between the EU and the UK.

Then again, future EU-UK relations may also be a much more continuous engagement, with selected parts of EU legislation applying to the UK, either for a particular duration or indefinitely. This will mean, especially for the UK parliament, a serious test of its capacity to scrutinise such legislation since the method of its adoption will most likely be less transparent than anything that had hitherto been produced in the EU context. The fact that the British people will not, after Brexit, be represented in, and by, the EP, would make the effectiveness of the scrutiny exercised by the Commons and the Lords under such a scenario particularly important from a democratic perspective.

It remains to be seen what the nature of future EU-UK relations will be, and how parliaments in the UK, in the EU27 and on the EU level will be involved in it. But it can be confidently concluded already at this stage that the need for parliamentary scrutiny does not end with the formal withdrawal of the UK from the European Union. Instead, the new relationship that the UK as non-member will (seek to) forge with the EU in the future will further increase the complexity of the EU governance, and hence constitute new challenges for parliaments to push for the transparency of decision-making and to hold executives to account. Indeed, the UK is likely to become an extreme case of the wider pattern of ‘external governance’ which sees the EU projecting its rules beyond its own borders (Lavenex and Schimmelfenning, 2009). Brexit has been a momentous event for Europe, also from the perspective of parliamentary scrutiny. Yet the demands on parliaments at both the national and the European level to reconcile Brexit and democratic governance do not end with the withdrawal of the UK from the EU. The greater challenges for parliaments to ensure the legitimacy of this relationship may still lie ahead.

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1. According to Art. 50-3 TEU, the negotiations between the seceding state and the EU are limited to last for a maximum of two years, unless a prolongation is agreed unanimously by European Council members. [↑](#footnote-ref-1)