

## A Tale of Two Europes: European Regions from Berlin to Lisbon

W. John Hopkins  
University of Canterbury  
[w.j.hopkins@canterbury.ac.nz](mailto:w.j.hopkins@canterbury.ac.nz)

### **Abstract**

*One of the lesser noted elements of the Lisbon Treaty (and Treaty on a Constitution for Europe that preceded it), was the limited but significant influence that Europe's regions were able to exert of the process. Regional successes at Lisbon included the inclusion of local and regional levels into the concept of subsidiarity and the right of the Committee of Regions (CoR) to challenge the Commission before the European Court of Justice (ECJ). This regional renaissance came as something of a surprise as although the early 1990s had seen the brief flowering of the concept of the "Europe of Regions", these hopes were to prove short lived. Even as regional governments in western Europe were flexing their political muscles, the European Union (EU) was looking to expand into areas where sub-national regional governance was weak or non-existent. This weakening of the regional tier, combined with the ineffective nature of EU regional access, particularly the Committee of Regions, led to disenchantment with the European project and turned some regional governments from Europhiles to mild sceptics. However, as the regional successes at Lisbon confirm, Europe's regions are back. This paper traces the rise and fall of the regional tier with particular reference to the changing nature of the expanded EU. As the paper explores, the expansion to the east has changed the very nature of the regional level with the eastern European Member States developing very limited forms of regional governance. In fact, the limited regional successes achieved at Lisbon obscures a continuing paradox within the EU. Although there continues to be pressure for greater regional involvement at the European level, the regional level is not a pan-European phenomenon. It is largely driven by autonomous "legislative" regions, which are a feature of western European states alone. This paper concludes by briefly examining this imbalance and its consequences in a post-Lisbon Europe.*

**Key Words:** Europe, regions, Lisbon, EU Constitution

### **Introduction**

The events of November 1989 which culminated in the fall of the Berlin Wall were to prove momentous for the governance of Europe. As the Communist bloc collapsed, the former states of COMECON looked to the stability of the European Union and within 15 short years, the majority of East European states had been brought within the (fractious) European family. The European Union's expansion had a profound effect on the operation of the Union itself and although much ink has been spilt discussing it, the final effects of the eastern expansion are yet to be fully understood. This article examines one small impact of the accession of the eastern states (the so called EU-10) plus East Germany on one particular aspect of the Union's governance structure, namely Europe's regional tier.

The development of federalism and strong regionalism in many western European states in the latter part of the Twentieth Century was an “unexpected” revolution.<sup>1</sup> It occurred with far less fanfare than the supra-national revolution with which it was intimately connected but, in constitutional terms, it was no less significant. It saw the creation of regional governments across the European Union to the extent that some form of regionalism became norm in the majority of EU-15 Member States with only France among the larger states not operating some form of regional government with legislative powers.<sup>2</sup>

Today, of the 15 pre-2004 EU states three are formal federations (Austria, Germany and Belgium), two have legislative regions across the entire state (Italy and Spain), while Portugal, the UK and Finland all have one or more legislative regions within their borders. Beyond this, a variety of “meso” regions possessing non-legislative powers has emerged, particularly in France and Scandinavia.<sup>3</sup> The exact nature of Europe’s regional tier and the reasons for its rise are too complex to be discussed in any detail here and are the focus of much academic work elsewhere.<sup>4</sup> This article focuses on the relationship between regional governments and the European Union particularly in the aftermath of the eastern expansion. It does so by briefly charting the rise of the western European regions to prominence in European affairs in the early 1990s and their subsequent and rapid decent to the periphery. This swift demise of the ‘Europe of the Regions’ has been followed by a recent re-emergence of ‘legislative’ regions as significant actors in the European game. This has seen these regions achieving a number of limited but significant gains through the Treaty of Lisbon, despite an environment that appears less favourable to the regional tier as a whole than that of the early 1990s. The reasons for the change in the role of regions in the EU can be traced, at least to some extent, to the changing nature of Europe itself, symbolised by the events of November 1989. These events and the subsequent EU membership of the former Communist bloc countries changed the dynamic of European Union politics as the centre of gravity shifted eastwards.

For the powerful regions, it has seen them largely isolated in the EU-15 states of western Europe. Although Eastern Europe is not without its regions, their weakness means that talk of a European regional ‘tier’ is even more problematic than it was in the heady days of 1992. The imbalance between the legislative regions in many western states and the weak form of regionalism practiced in the EU-10 has led to an uncomfortable asymmetry in Europe’s regional balance. Although the long-term legacy of these events for Europe’s tier remains unclear, this article aims to provide some thoughts on the future of regions in this new European reality.

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<sup>1</sup> W. R. Beer, *The Unexpected Rebellion: Ethnic Activism in Contemporary France*, New York, Columbia University Press, 1980.

<sup>2</sup> Even in France, Corsica operates a very limited form of regional autonomy, while the non-European French territories all possess some form of legislative autonomy.

<sup>3</sup> The term region has always proved difficult to define. Sharpe in particular avoided it altogether, instead referring to “meso” governments which operate between the national and the local levels. This is the definition used in this paper, although it remains problematic. L.J. Sharpe, *The Rise of Meso Government in Europe*, London, Sage, 1993.

<sup>4</sup> See for example W. J. Hopkins, *Devolution in Context: Regional, Federal and Devolved Government in the European Union*, London, Cavendish, 2002; M. Keating, *The New Regionalism in Western Europe: Territorial Restructuring and Political Change*, London, Edward Elgar, 2000; J. Loughlin (ed.), *Subnational Democracy in the European Union: Challenges and Opportunities*, Oxford, OUP, 2001.

## The Rise of the Third Level – The Treaty on European Union

By the 1990s, the parallel developments of the European Union and European political regionalism were beginning to clash. By 1992, Germany, Spain, Portugal, Italy and Belgium all possessed strong regional governments, with weaker non-legislative regions emerging in France. Many of these governments viewed the European tier as a political ally in their struggle for autonomy against the national state. However, in many cases, the EU also presented a significant challenge to the autonomy of these emerging regional governments. The problem for the regions stemmed from the fact that European policy continued to be treated by Member States as an extension of international affairs. As such internal governance structures were seen as being of little relevance. This did not reflect the reality of European Community Law and particularly its impact upon domestic constitutions. The early case law of the European Court of Justice had explicitly developed the concepts of Supremacy and Direct Effect as the key principles of European Community Law (much to the astonishment of some Member States),<sup>5</sup> leading Lord Denning to make his famous analogy that European Community Law was like an incoming tide, it could not be held back, not even by the Constitutional limits of Member States.<sup>6</sup>

These developments came at a significant cost for the nascent regional governance structures. Regional autonomy was now subject to European, as well as national, legal limitations, but regional governments had no influence on their creation. The German *Länder* had achieved some success in addressing this issue domestically during the ratification process of the Single European Act (SEA).<sup>7</sup> However, the regional tier in 1986/87 was still emerging and the German regions had few meaningful allies outside their borders. Although five of 15 Member States possessed a regional tier with legislative powers (Germany, Italy, Belgium, Portugal and Spain) and a sixth had established a potentially significant non-legislative regional tier (France), only in Germany and Italy were the regions established constitutional actors. In practice, given the limited powers of the Italian *Regioni*, the German *Länder* were the only regions capable of exerting meaningful pressure on their national governments in this period. The European Union was thus a lonely place for regions in 1986. In contrast, by 1992, the Regional level began to look positively crowded.

The SEA episode was very much the warm up act for the main event at Maastricht six years later. Buoyed by the limited success, the German *Länder* now set their sights a little higher. In addition, learning from the efforts of the German *Länder* in 1986, many other regional governments began lobbying key decision makers (particularly the Member States) at an early stage in the negotiating process. It was during this period that Europe's regions, now styling themselves as Europe's 'third level' of government,

<sup>5</sup> Van Gend en Loos v Nederlandse Administratie der Belastingen [1963] ECR 1, Costa v ENEL [1964] ECR 58.

<sup>6</sup> Bulmer Ltd. v. J Bollinger SA [1974] 2 All ER 1226.

<sup>7</sup> For further discussion of this episode see, W. J. Hopkins, 'The Future of Sub-National Governments in a Supra-National World -- Lessons from the European Union March', *VUWLR* Vol. 38, No. 19, 2007; and C. Jeffrey, *The Länder Strike Back: Structures and Procedures of European Integration Policy in the German Federal System*, Leicester University, Discussion Papers in Federal Studies, FS 94/2, 1994.

emerged as a significant force. The term emerged from the *Länder* themselves who began creating a loose alliance of regional governments from across Member States, with the aim of progressing a pan-European regional agenda.

The establishment of this regional front at an early stage in the European negotiating process meant that the nascent 'third' level achieved significantly more from the Treaty on European Union (TEU) than it had from the SEA. There were a number of reasons for this. The TEU with its quasi-constitutional tone was, by its very nature, more susceptible to the kind of structural change that the regions envisaged. This could be contrasted with the technical nature of the SEA (although the SEA was in fact no less constitutional in practice). In addition, the longer, more public negotiation process of the TEU lent itself to third-party influence on the final outcome. In this favourable environment, inter-regional co-operation was particularly effective. Regional demands were often voiced through Member States, rather than at the EU level, but were no less effective for this. The German government, for example, made the running on the creation of the Committee of the Regions, while the Belgians raised the issue of subsidiarity. In both cases, the actual pressure had come from the regional level as a whole. The regions thus developed a twin track approach of ensuring collective co-ordination while also advancing their demands through those individual Member States, who could be persuaded to advance these positions under pressure from their own regions.

Eventually, four pan-European regional demands were agreed. These received the blessing of several pan-European organisations, including the Association of European Regions. These were portrayed as the minimum price for regional support for any Treaty. Key amongst them was the establishment of a European Union institution that would represent regional interests. This, in the eyes of the *Länder*, would be the embryonic beginnings of a European senate to represent the 'third level' of European government beneath that of the Union/Community and the Member States. Others may have been less ambitious, but the overall aim remained the same: the creation of a regional voice at the European table.

Europe's regions also raised the issue of subsidiarity and demanded that the new Treaties recognise the principle that powers should only be exercised by the European Union (and indeed Member States), when smaller units of government (such as the regions) were unable to deliver the desired policy outcomes. In relation to this, they wished to see subsidiarity being policed by the European Court of Justice (ECJ), with either regions themselves, or failing that, a European regional institution having direct access to the Court to ensure the principle was upheld. A final demand was that the Council of Ministers allow regional ministers (from legislatively powerful regions) to sit as the national delegate when Member State government or domestic constitutional arrangements deemed this appropriate.

The negotiations that surrounded the TEU saw three of these demands being met with only direct access to the ECJ being rejected outright by the Member States. One should not get over excited about the practical impact of the regions at this point, as events both during and after the ratification of the Treaty made it abundantly clear that these

regional successes were partial only. In particular, the “subsidiarity” clause proposed by the Belgian government (at the behest of their regions) soon morphed into a principle to defend Member States' interests, particularly in the eyes of unitary states such as the UK. The regions may have some power during the negotiation and ratification phases of the Treaty, but in the practical implementation of such Treaty amendments, the pan-European regional front had little bite. Instead, regions had to operate within their own domestic circumstances, leaving some at a distinct disadvantage. The clearest example of this being the appointment of representatives to the new regional institution, the Committee of the Regions (and local authorities). This remained in the hands of the Member States and only when the regional (or local tiers) had sufficient political or constitutional power would such national delegations represent their interests.<sup>8</sup>

Nevertheless, despite the limited nature of these successes, that regions had achieved any success at all was noteworthy. The EC (and now the EU) was and is a Member State dominated institution. That a sub-national level of government had been heard on the European stage at all suggested that the regions were an emerging force. To quote Charlie Jeffrey, 1992 had seen the *Länder* and their European regional allies “strike back”.<sup>9</sup> This, allied with the pro-regional tendencies of Commission President Delors (particularly his ultimately unsuccessful attempt to provide regional development funds directly to regional authorities) led many to explore the possibility of a ‘Europe of Regions’ not one of states. Some of the more extreme proponents of the thesis even began to hypothesise that the regions could even replace the Member-States as the sub-European building blocks of the EU.<sup>10</sup> Although such claims were never made by most of the regional governments (and the *Länder* notably shied away from them) there seemed little doubt that, whatever its final shape, a ‘Europe of the Regions’ was at least a very real possibility, if not already a reality.

Within five years, however, these predictions had proved wildly exaggerated. The weakness of the regional alliance had been cruelly exposed and, to quote Jeffrey again, this time the *Länder*, far from striking back, rather weakly, struck out.<sup>11</sup> The dream of a ‘Europe of Regions’ lay ruined on the rocks of Amsterdam and Nice. So what went wrong? Why did the idea of a third level disappear so quickly in the aftermath of Maastricht? Answering these questions requires us to look both at the TEU and its aftermath and the parallel events taking place as the backdrop to the Union’s birth. These events have also, ironically, laid the foundations for a new regional voice, far less idealistic and ‘European’ than its 1992 counterpart.

## From Maastricht to Amsterdam - The Fall of the Third Level

The 1992 negotiations and the approach of the powerful constitutional regions of the EU had been pan-European. Their theoretical basis was ‘Europeanist’ and had been premised on the idea that a general European regional tier was emerging or could be

<sup>8</sup> W. J. Hopkins, *Devolution in Context*, op. cit., pp. 202-207.

<sup>9</sup> C. Jeffrey, op. cit.

<sup>10</sup> K. Ohmae, *The End of the Nation-State: The Rise of Regional Economies*, New York, The Free Press, 1995.

<sup>11</sup> C. Jeffery, ‘Farewell the Third Level? The German Länder in the European Policy Process’, *Regional and Federal Studies*, Vol. 6, No. 2, 1996, pp. 56–75.

developed throughout most if not all Member States. The open flank could thus be solved on the European level by the creation of regional institutions, and on the domestic, by the creation of a regional tier.

Events, as they so often do, proved such ideas to be fanciful. Far from being the beginning of a 'Europe of the Regions', the Treaty on European Union was to prove the high water mark of this particular idea. The fall of the 'Third Level' and the whole 'Europe of the Regions' idea was swift and occurred primarily because those who had championed it soon became disillusioned with the reality of what they had achieved. The catalyst for the demise of the European regional ideal was the failure of the Committee of the Regions (CoR).

The CoR was flawed at birth, partly due to its lack of powers. These were far removed from the European Senate, imagined by the German *Länder*. The fact that the CoR was consultative only and could be ignored by both the Commission and the Council certainly did not help matters. However, future reforms could have remedied this, as had occurred with the European Parliament. Of much more concern was the fact that the Committee was dysfunctional and divided from the start. The reasons for this were to be found in its very membership. Although, during the heady days of the early 1990s, the regions had talked in terms of the CoR as an institution to represent the 'third level', the reality was that far from being a coherent entity the regions of the EU remained (and remain) trapped in their national contexts. The harsh reality was that, despite the encouragement of their more powerful 'legislative' cousins, all regions in the European Union were not equal. The powers and responsibilities of individual regions varied dramatically, and despite their talk of European involvement, the vast majority operated almost exclusively within a national context.

The 'Europe of the Regions' thesis focussed almost exclusively on the more powerful regional governments such as those of Germany, Belgium and Spain and glossed over the rather inconvenient fact that most regions performed a far less important constitutional role. Even when weaker regions were discussed, as in relation to France, they were portrayed in a positive light or as precursor to a more powerful regional tier. The 'Europe of the Regions' view thesis even went as far as ignoring that in several Member States, notably the United Kingdom (prior to 1999) there were no regional governments at all. In glossing over this at the discussions surrounding the role of regions in the future Union, the powerful regions in particular had believed their own publicity. The reality came into sharp focus during the early days of the Committee of the Regions.

The TEU gave no details as to how individual representatives on the Committee were to be appointed, leaving this to Member State discretion. The extent to which the national delegations actually comprised regional or even local representatives was thus in the hands of the national governments. In practice, only those regional governments with sufficient national political or constitutional power were able to ensure their presence on the Committee. In most cases, representatives came from local and regional levels with some purely national appointees. Few represented individual regional governments (as was the case with the German and Belgian regions, for example), with most being

national ‘delegations’ established to ‘represent’ the sub-national interests of a particular Member State.

The result was a Committee which comprised a huge variety of local, regional and national representatives all with very different agendas. Importantly, they did not even agree on what the purpose of the Committee or on their roles within it. Some, particularly local government representatives, perceived the Committee as a technical body, charged with delivering opinions on the practical impacts of delivering proposed European Union policies. They often also regarded themselves as ‘national delegations’ and operated as such in the Committee. In contrast, representatives from the legislative regions in particular regarded the Committee’s purpose as providing policy analysis, often from the viewpoint of *individual* regions (who they represented). This concern with ‘national’ policies, such as the crisis in the Balkans was often ridiculed by those from unitary states, and seen as an example of the CoRs irrelevance, but for legislative regions such discussions could be very relevant. The more powerful, legislative regions undertook such a policy role within their own domestic systems and naturally saw the CoR as an extension of this. It would be these regions that would have to deal with the influx of refugees, for example, and such global issues could have significant resonance for powerful regional governments. They were obviously somewhat less relevant to the local councillor from Ireland or Portugal. It was not that either view was right, merely that each had a fundamentally different view of the purpose of the Committee.<sup>12</sup>

The dysfunctional nature of the CoR had significant consequences for both the Committee itself and the Europe’s regional tier. In the longer term, it would also have repercussions for the Union itself. For the Committee, the results were disastrous. The CoR, as an advisory body, relied exclusively upon the quality of its decisions for its influence. The decision-making institutions of the EU did not even have to respond to the Committee’s decisions. Unsurprisingly, as the result of the factors mentioned above, the opinions of the Committee were often poorly constructed and added little to the decision-making process of the Union. They were thus easily ignored. For the more powerful regions, particularly the German *Länder*, the failure of the Committee was a huge disappointment, leading to their abandonment of the whole ‘third level’ idea. Instead, they retreated into a nationally focussed approach to EU policy. The results of this were not positive for the Union, as potentially powerful supporters of the European project (and the Commission) – as a means of gaining influence against their federal level – now saw the EU in a far more sceptical light. To paraphrase Jeffrey, the pro-European “let us in approach” characterised by the ‘Europe of the Regions’ idea had been replaced by a more sceptical cry of “leave us alone”.<sup>13</sup>

The results of these factors were made clearly visible in 1997 when the next phase of the European Union’s development culminated with the Treaty of Amsterdam. In contrast with the regional influence at Maastricht, Amsterdam was notable only for its absence. Little, if any, regional influence was discernable from the Treaty itself, despite the Committee of the Regions presenting various demands to the Member-States. The

<sup>12</sup> To compound the problem of the local/regional divide, there was a tendency of the Committee to split on geographical grounds between southern and northern representatives.

<sup>13</sup> C. Jeffrey, ‘Regions and the EU: Letting them in and Leaving them Alone’, *Federal Trust Papers*, XX/04, 2004.

reason for this was that the powerful regions (particularly the *Länder*) had largely abandoned the CoR and the idea of a European approach to the regional question.<sup>14</sup> Instead, their focus was on influencing European policies and more often reducing the influence of such policies on the regions through the medium of the national government. Without the backing of the legislative regions, the 'Europe of the Regions' itself was perceived as something of a busted flush. The Committee of the Regions might continue to talk in such terms, but without the strong support of its powerful regional members, it lacked any real leverage over the Member States.

At the end of the 1990s, the future for Europe's regions looked bleak. Their failure to gain access to the EU's decision-making process had left many embittered with the European project turning many towards a defensive, nationally focussed policy. As the events of the next decade were to prove, the EU could do without further enemies. Yet, even as the 'Europe of the Regions' was enjoying its brief moment in the sun in late 1980s, events to the east of EU were sowing the seeds of further regional problems for the Union. Resolving the regional issue was about to get a lot more difficult.

## The End of the Regional Revolution? Regions and Eastern Europe

The collapse of the Soviet Union and its European imperial ambitions, symbolised by the fall of the Berlin Wall in 1989, opened a new chapter in the history of Europe and, by extension, the EU. First in 1990 and then in 2004 and 2007, the Union expanded to the east to bring the former members of COMECON into the fold. In doing so, Europe's centre of gravity shifted eastwards. The final impact of these monumental changes to the European political landscape are yet to be fully played out, but one area in which the impact has been significant, although few have recognised it, was the role of the regional tier within the EU.

The whole question of regional involvement in the European Union has largely been driven by the existence of autonomous 'legislative' regions, many of which have a significant role within their domestic constitutional system. Without these significant players, it is doubtful whether the regional issue would have even been recognised at all, whatever its merits. The political and constitutional power, that some legislative regions enjoy, ensures that their opinions are taken seriously at the European table, at least intermittently. By contrast, regional governments, which lack such power, struggle to exert any meaningful influence at the European level.<sup>15</sup> If they have had any role at all, it has largely been on the coat tails of their more powerful cousins. The CoR too, lacking any leverage of its own, only has constitutional power when it is backed by the legislative regions. Thus, even the European Union's regional voice, although often having the appearance of pan-Europeanism, remains deeply rooted in the powers that some regions exert within their domestic political systems (either *de facto* or *de jure*). For this reason, the expansion of the EU into eastern Europe had profound effects on the influence of the regional tier. The problem for the western regions was that, despite the early belief that regionalism would find fertile soil in the states of the former Communist

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<sup>14</sup> In fact, many senior regional leaders no longer attended.

<sup>15</sup> For a discussion of local government regions see, W. John Hopkins, *Devolution in Context*, op. cit., pp. 137-164.

bloc, the reality has proved very different. The regional revolution, which was already reaching its limits in western Europe appears to have been abruptly halted at the river Oder.<sup>16</sup>

With the exception of the former GDR, strong regional autonomy has not been a feature of post-communist constitutions. In fact, the extensions to the east in 2004 and 2007 brought no new legislative regional governments into the European Union. The reasons for this are yet to be fully understood and are beyond the scope of this article.<sup>17</sup> However, the limited research into East European regionalism identifies some general arguments as to why this occurred.<sup>18</sup> The three explanatory approaches recognised have been categorised as transformative; EU conditionality and, more recently, a focus on sub-national governance.

Early discussion of regions in the post-Communist era saw it as part of the democratic process. This transformative school saw regionalism as a European democratic right of passage for the previously Communist states. In the long term, this approach was characterised by a clear differentiation between the early expectations for regionalism in eastern Europe (particularly for micro-nationalities and ethnic minorities) and the actual outcomes. Authors have explained the failure of the transformative regional drivers in terms of the fear that such democratic reforms would weaken the existing nation-state. These fears were supported by historical memories of micro-national regions as threats to the stability of the state in the inter-war (1918-1939) and post-war (1945) periods, as well as the more recent examples of Czechoslovakia and Yugoslavia. To this might be added that western observed phenomenon that national politicians tend to support regionalism when in opposition, but not when they achieve power.<sup>19</sup> Whatever the exact drivers, the imperative of securing the borders of the existing nation-state trumped the argument for democratic regionalisation in the formative years of the post-communist states.

These arguments had links with the so-called EU conditionality explanatory theory. This viewed regionalism in the EU-10 through the lens of the EU accession process. This view began by seeing EU membership as a positive influence, driving the development of regional government, and thus countering the centralist tendencies mentioned above. As the accession process gathered pace, this EU driven regionalisation did not occur and, where regions were created at all, they were weak and avoided historical or geographic realities. In fact, some authors began to turn the argument on its head. Far from seeing the EU as driving the creation of a regional tier, the realities of the EU accession process and its harsh requirements for acceptance of the *acquis communautaire* left little room for regional diversity.<sup>20</sup> The priority for EU-10 was achieving the

<sup>16</sup> Failed regional autonomy referendums in Portugal, Corsica and the North East of England marked the end of the regional movement in the west.

<sup>17</sup> For a discussion of the rise of western regionalism see, M. Keating, *The New Regionalism in Western Europe: Territorial Restructuring and Political Change*, London, Edward Elgar, 2000.

<sup>18</sup> D. Pitschel and M.W. Bauer, 'Subnational Governance Approaches on the Rise – Reviewing a Decade of Eastern European Regionalization Research', *Regional and Federal Studies*, Vol. 19, No. 3, July 2009, pp. 327-347.

<sup>19</sup> The Italian post-war experience is the clearest example of this. Although the regions were created as part of the constitution, the incoming Centre Right government reversed their support for them on election and they were not established for thirty years.

<sup>20</sup> In Romania, Transylvania has been divided into several administrative areas, with little historic basis.

requirements of EU membership. This was most easily achieved through central legislative diktat. Regional autonomy risked getting it the way.<sup>21</sup> As the EU-10 joined the EU these imperatives have receded. In the light of a less frenetic political environment, regionalism is again being discussed, although now from a more indigenous perspective.<sup>22</sup> This has led academics to abandon the top-down approach and turn to the possibilities of domestic regional drivers. This academic shift may mirror a change in fortunes for the regional tier in east Europe. For now, the eastern states of the European Union, while not exactly region free, are certainly region light.

Whatever the future holds for eastern regions, the different regional experiences of east and west Europe have had a significant impact on the extent of regional influence on the EU. This has rendered legislative regions with significant autonomy a largely western phenomenon, and created an increasing sense of asymmetry within the Union. It has also put a final nail in the coffin of the 'Europe of Regions' idea.

## A Regional Renaissance?

The disappointment of many regions with the Maastricht reforms and the subsequent realisation that the 'Europe of Regions', was little more than a pithy slogan led many to assume that the regional 'question' in Europe, was merely a footnote to the EU's development. This view was strengthened by the lack of regional allies in the new Member States. The regional renaissance of the 1990s that had underpinned the 'Europe of the Regions' concept appeared to have reached its geographical limits. As a result of this, strong regional governments had gone from being the 'norm' in European Union Member States to a minority constitutional fringe. This feeling of isolation may have enhanced the post-Maastricht tendency of the legislative regions to favour defensive measures aimed at protecting their autonomy rather than a positive involvement in the European policy process.<sup>23</sup>

This shift in emphasis saw several regions retreat back to their national roots and in some cases began to adopt a more critical stance towards the European project as a whole. The continuing concern of the German *Länder* that the EU offered an open flank to their domestic constitutional protections began to be shared by other regions and, far from being an ally against the central state, the EU began increasingly to be viewed as an 'enemy' itself. The strong regions thus not only abandoned the "Europe of Regions as symbolised by the CoR, but also focussed their energies less on getting into the EU's decision process and more on excluding the EU altogether. This led to a more parochial approach by many regions, who increasingly focussed on lobbying the national level to defend their patch, rather than concerning themselves with creation of a pan-European regional lobby. Ironically, this would bring about a partial regional renaissance.

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<sup>21</sup> M. Keating, 'Regionalization in Central and Eastern Europe: The Diffusion of a Western Model?', in M. Keating and J. Hughes (eds.) *The Regional Challenge in Central and Eastern Europe: Territorial Restructuring and European Integration*, Brussels, Peter Lang, 2003.

<sup>22</sup> D. Pitschel and M.W. Bauer, op. cit. 24, p. 337.

<sup>23</sup> C. Jeffery, *Farewell the Third Level*, op. cit.

## Asymmetrical Regionalism: Lisbon and the Regions

The end of the 'Europe of the Regions' concept was not to be the end of the regional story, and reports of the death of Europe's regional tier were to prove greatly exaggerated. In fact, the regional level has proved far more resilient than might have been believed and those who imagined that it was no longer a feature of the EU have been proved as equally incorrect as those who proclaimed its impending dominance in the first place. The European Convention and the subsequent Lisbon Treaty have shown that the regional level is far from irrelevant to the future of the EU, but its place in the European constitutional and political structure is very different from that which was predicted in 1992.

The failure of regional governments to have any significant impact at Amsterdam and subsequent Treaty reforms was due largely to a failure of the strong regions to back the demands of the wider regional tier. The CoR is a very weak player in the EU game, particularly on constitutional issues. These will be decided on the basis of negotiations between Member States, focussed on achieving the best deal for their constituencies. It is only when the CoR (and the wider regional tier) can co-opt a powerful ally or two that its views will become relevant. In reality, the CoR depends upon the commitment of the stronger constitutional regions for its leverage. In the case of Germany and Belgium, the ability of the regional tier to veto any European Treaty means that their views cannot be ignored. In other countries, such as the UK and Spain, the power of the regional tier in European matters, although not constitutionally entrenched, can still be politically significant. In particular, the existence of regionalist/micro-nationalist parties (sometimes even in national or regional government) can have significant influence. In all cases, the regional levers are applied through the Member State and it is only when this eventuates that the Committee's views have any real weight. In 1999 this did not occur.

It was a different matter in 2002, as by then the regional tier had been realigned. The legislative regions had abandoned any idealistic notion of pan-Europeanism and instead now saw themselves as a distinct group which deserved a greater role in European affairs. This would only be achieved if they worked collectively on constitutional matters. It was with this realist aim in mind that the Conference of European Regions with Legislative Power (RegLeg) was established in 2001. The establishment of this political network of western European regions (which had its roots in the Flanders declaration of 2000) marked a recognition that the more powerful regions needed to go it alone in establishing greater influence in the EU. It also explicitly recognises that the regional question is a western European phenomenon at least for now. The regional tier has been further boosted by the establishment of strong devolved governments in the United Kingdom. Wales and Scotland, as micro-nationalist regions, were both interested in developing a European role and have been leading figures in the development of the RegLeg group. Ironically, it has been the legislative regions' decision to act alone that has led to the general renaissance of regions in the EU.

The fruits of this new co-operation were realised in the Constitutional Treaty and all have been carried forward to the Treaty of Lisbon. Both of these documents delivered a

number of 'wins' for the regional tier, which can largely be attributed to the RegLeg group's formal and informal activities. The connection between the Lisbon Treaty and the regional advances of the 1990s, is also noticeable, with many significant regional demands related to (and building upon) those achieved at Maastricht. Perhaps, the most obvious example of this has been the granting of access to the European Court of Justice to the Committee of the Regions for actions alleging a breach of subsidiarity. For the regions, this marks the completion of unfinished business at Maastricht and clearly links the current regional demands back to those of 1992.

This CoR power has been coupled with an explicit recognition that the principle of subsidiarity which now includes the regional levels in a revised version of Article 5(3):

Under the principle of subsidiarity, in areas which do not fall within its exclusive competence, the Union shall act only if and in so far as the objectives of the proposed action cannot be sufficiently achieved by the Member States, either at central level *or at regional and local level*, but can rather, by reason of the scale or effects of the proposed action, be better achieved at Union level.<sup>24</sup>

This clarification of the subsidiarity principle within the EU legislative process is another significant success for the regions and again can be linked back to the 1992 negotiations. The new form is far more in line with that originally envisaged by the regional tier when it was introduced by Belgium, during the Maastricht negotiations. Protocol 2 on the Application of the Principles of Subsidiarity and Proportionality takes the regional dimension further and expands upon the impact of subsidiarity, this time by ensuring regional consultation in the developed of EU legislation. For the first time, such consultation specifically makes reference to the regional (and local) tiers:

Before proposing legislative acts, the Commission shall consult widely. Such consultations shall, where appropriate, take into account the *regional and local* dimension of the action envisaged. In cases of exceptional urgency, the Commission shall not conduct such consultations. It shall give reasons for its decision in its proposal.<sup>25</sup>

This protocol also outlines the early warning system, which, although of questionable effectiveness, has the potential to give regions the opportunity for involvement through those states where the second chamber is regional in its nature.<sup>26</sup>

Other achievements pushed for by the RegLeg group (and, incidentally, the CoR and the Association of European Regions) are more positive and include recognition of cultural and linguistic diversity of the EU as a core value, recognition of the principle of territorial cohesion across EU policies and a recognition that regional and local governments are 'fundamental structures', which the Union must respect. Perhaps surprisingly, small additional regional gains were achieved in the Lisbon Treaty, such as the inclusion of regional and local level references in the new Services of General Interest Protocol, as well as an extension of the Committee of the Regions' mandate from four to five years, thus bringing it into line with the EU Parliament.

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<sup>24</sup> The Treaty on European Union, Article 5(3).

<sup>25</sup> Protocol no. 2. Articles 5 and 6 of the Protocol make specific reference to legislative regions.

<sup>26</sup> In practice, this primarily applies only to Belgium, Austria and Germany.

These reforms remain limited, but the fact that some regional demands (often in tandem with Member States ones) were incorporated within the final Lisbon Treaty at all is clearly an advance for the regions when compared with the failures of Amsterdam and Nice. The use of Member State leverage to achieve advances at the European level was the hallmark of the regional approach to the Convention (and later Lisbon) as it had been at Maastricht. However, these were achieved by a much smaller group of regions in 2000 than in 1992. The nature of the regional ‘successes’ is also worthy of note as many continue to be at least partially defensive in nature, reflecting the legislative regions’ continued mild-scepticism towards the European project.

## Conclusion: The Future of Europe's Regions in the post-Lisbon EU

The future for Europe’s regional tier in the post-Lisbon era remains unclear. The ability of RegLeg to co-operate and achieve some of their goals during the recent reform processes highlights their ability to co-operate effectively. The links back to the regional strategy at Maastricht are also hard to ignore. Whether this co-operation will extend beyond the Lisbon process remains to be seen, but the signs are that the RegLeg group will continue to operate to defend their interests. The key point here is ‘defend’, and the tone of the network’s comments remains focussed on this approach. They are well aware that the subsidiarity gains of the Lisbon/Convention process are only potential gains and everything will depend upon how they are applied in practice. The new recognition of the regional aspects of subsidiarity in particular comes with a number of uncertainties. The fact that the principle is now justifiable does not, in itself, mean that it will be a particularly effective concept. The ECJ has been reticent to engage with subsidiarity in the past and it is far from certain that the ECJ will warm to its new role as guardian of the principle. Although, it is clearly intended that the ECJ should apply the principle, whether it does so effectively will remain in the hands of the judges. One element in favour of such an effective judicial use of the term can be found in Germany where, despite scepticism, the Federal Constitutional Court became a somewhat enthusiastic user of the principle in rolling back the power of the *Bund*. In fact, its defence of federalism under the enhanced subsidiarity clause of the Basic Law proved too successful, with the grand coalition introducing a subsequent amendment to reduce its effectiveness.<sup>27</sup>

Despite this inherent defensiveness of the legislative regions, there are hints that a re-engagement with the European process is underway. To this end, ensuring that they are properly involved in European Union policy development, as envisaged by Protocol 2, is crucial. It is only through such an active engagement with the significant players in the regional tier that they can win back their current quasi-critical position towards the European project.

The wider problem that the EU faces is how to incorporate the asymmetrical regional tier into the new constitutional structures. The third level is now divided not only by

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<sup>27</sup> G. Taylor, ‘Germany: A slow death for subsidiarity?’, *International Journal of Constitutional Law*, Vol. 7, No. 1, 2009, pp. 139–154.

their domestic constitutional roles but by geography. Regions are largely a western phenomenon and legislative regions are exclusively so (if we put Finland in the “western” camp for these purposes). The asymmetrical nature of Europe’s regional tier makes dealing with this a significant challenge and resolving it will be a major challenge for post-Lisbon Europe. To this end, the signs of a convergence of approach between east and west towards the regional issue may make life significantly easier for the EU. The common factor is the emerging principle of Multi-Level Governance as a defining element of governance across the Union.

The tendency of the European Union has always been to operate on a one-size-fits-all approach with asymmetry being seen as a danger to the European project or a weakness. Given that such asymmetrical structures are the norm for federal systems today, it seems strange that the European Union, that most unique of federal entities, shies away from them. Within the EU, Finland, Spain, Belgium, France, the UK, Italy and Portugal all operate asymmetrical federal or regional arrangements.<sup>28</sup> This has not caused the collapse of these states although it can make things politically and constitutionally messy. In dealing with the regional imbalance in the EU’s Member States (and perhaps in other matters), this asymmetrical approach also needs to be embraced. The EU needs to accept that the tempting symmetry of the Europe of the Regions idea was never going to be a reality and pan-European institutions such as the CoR, although good in theory, are always going to suffer from the reality of regional asymmetry.

Instead, the EU must embrace the fact that it is a Europe with Regions and develop regional institutions and mechanisms that are not pan-European in nature, but instead reflect the unbalanced reality of European regional governance. This will not be easy given the east-west divide that currently exists.

Although the various problems that have beset the European project in recent years may make it tempting to ignore the EU’s regional question, the political nature of European constitutionalism means that this particular European fault line cannot be ignored. In what is likely to be a difficult period for the European Union, the consequences of failing to resolve the regional issue are serious. Such a failure risks creating a disgruntled group of potentially powerful governments, where the European project should naturally find allies. Given the European Union’s experience of the past decade, this author would suggest that in the next few years, the European Union needs all the friends it can get.

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<sup>28</sup> The Spanish system is entirely asymmetrical with regions having an individual relationship with the state through their regional statute. Many regions such as Euskadi, Catalonia and Andalusia have higher autonomy than other regions. Belgium also operates an entirely asymmetrical system with over-lapping Regions and Communities particularly in regards to Brussels and the German Community. In other cases a variety of “special” autonomy applies to a number of so called peripheral regions, although this can be misleading. These regions account for over 15% of the populations of both the UK and Italy. For a general (if slightly dated) overview see D. J. Elazar (ed.), *Federal Systems of the World: A Handbook of Federal, Confederal and Autonomy Arrangements*, London, Longman, 1994. For a specifically European study see W. J. Hopkins, *Devolution in Context*, op. cit.