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The Netherlands and the role of national parliaments in the EU
*a debate about democracy in the Dutch House of Representatives
from Maastricht to Lisbon*

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Introduction

In December 2007, the Dutch Prime Minister, Jan-Peter Balkenende, returned to the Netherlands triumphant from the final negotiations on the Lisbon Treaty.¹ Less than two years earlier, in a referendum on 1 June 2005, the Dutch had dramatically rejected the draft Constitutional Treaty upon which the later Lisbon Treaty was largely based. At that time, Balkenende's government had interpreted the referendum result to mean that the Dutch people were unsatisfied with the democratic legitimacy of the European Union (EU).² His government had therefore made the increased role of national parliaments a Dutch priority during the Lisbon negotiations.³ On his return, Balkenende presented the addition of an 'orange card' in the Treaty of Lisbon as a great negotiating success for the Netherlands.⁴ His party linked the colour orange to the Dutch national colour and hoped that this would make the general public recognise themselves in Europe.⁵ One of the novelties of 'Lisbon' was the increased role of the national parliaments, meaning that if enough parliaments were dissatisfied with the subsidiarity of a new EU legislative proposal, they could now formally object to it. This 'early warning mechanism' was part of Lisbon's new role for national parliaments.

The Dutch government reasoned that this increased role for national parliaments would help solve the discontent with European democracy that had, in their view, caused the negative referendum outcome.⁶ As State Secretary for Foreign Affairs, Frans Timmermans – who was also involved in the negotiations – told the House of Representatives proudly, the President of the European Council, the President of the European Commission and the President of the European Parliament had all emphasized in their speeches that national parliaments in the EU would gain a new, strengthened role: "You can imagine that this put a smile on my face, because all three presidents were not really in favour of this when we were first committed to it."⁷ With this statement, he demonstrated how ardently the Dutch government had pushed for a larger role for national parliaments in the EU, despite resistance from the heads of the European institutions.

Thus, the prompt for writing this thesis was the negotiating position of the Netherlands during 'Lisbon': the Netherlands had made the strengthening of national parliaments in the EU one of their five 'red lines'.⁸ And yet while Balkenende himself reasoned that Dutch citizens had demonstrated

¹ Pieter de Wilde, 'Why the early warning mechanism does not alleviate the democratic deficit', *OPAL Online Paper*, Vol. 6, no. 12 (2012) p. 3.

² Many scholars dispute this reasoning nowadays. (See e.g.: Aarts and Van der Kolk (2005); De Wilde (2012); Tans, Zoethout and Peters (2007).)

³ Leonard Besselink and Brecht van Mourik, 'The Roles of the National Parliament and the European Parliament in EU Decision-Making: The Approval of the Lisbon Treaty in the Netherlands', *European Public Law*, 2009, Vol.15(3), pp.307-3725.

⁴ 'Oranje kaart' van Nederland blijft kans maken', *NRC Handelsblad* (2008). No author named.

⁵ Han ten Broeke, 'Die Orangen Karte', *Trouw* (2008).

⁶ Kees Aarts and Henk van der Kolk, 'Understanding the Dutch "No": The Euro, the East, and the Elite', *PS: Political Science & Politics*, Vol. 39, no. 2 (2006) pp. 243-246.

⁷ Handelingen II, 2007/08, 31202, nr. 37, p. 2951.

⁸ Besselink and Van Mourik, 'The Roles of the National Parliament and the European Parliament in EU Decision-Making', p.307.

they were dissatisfied with the EU's level of democratic legitimacy in the 2005 referendum, later research has shown that this had in fact not been the main reason for voting 'no'. Contrary to the government's reasoning, academics later stated that there had been a myriad of reasons why the Dutch people had voted against ratifying the Constitutional Treaty and that a common worry about the democratic state of the EU had not been the main one.⁹ Why, then, did the Balkenende administration focus on enhancing the role of national parliaments in the negotiations for the Lisbon Treaty? In so asking, this thesis does not adhere to Balkenende's claim that the concern of the population with European democracy was the motivation for his government's focus on national parliaments. Instead, this thesis argues that there were additional, less visible, institutional reasons for the focus.

As we will see, these institutional reasons were at least twofold. Firstly, the Dutch House of Representatives (HoR) had been publicly debating their role within Europe for a long time; thus the scope of the debate about national parliaments within the EU clearly reached well before the 2005 referendum. Parliaments have been interested in their role within the EU institutional setup since the early 1990s, when they were first recognized as institutional players on the European level.¹⁰ Therefore, to find out why the Balkenende administration thought that enhancing the role of national parliaments would solve the Dutch people's perceived discontent with democracy, this thesis looks beyond the immediate concern of the government of that time to the overarching discussion about the role of national parliaments and the democratic legitimacy of the EU.

The second reason for asking why the Balkenende administration focused on the role of national parliaments, so this thesis will posit, is that the Dutch government had wanted to balance the EU's decision-making process in favour of a more intergovernmental approach. The Dutch stance towards the EU has traditionally been very pragmatic, and has even been seen as changing to a more critical – but not sceptical – stance since the 1990s.¹¹ The Dutch government wanted to balance the supranational tendencies of the European Parliament by focusing on national parliaments. During the Lisbon negotiations, Balkenende and Timmermans championed the expansion of an already existing informal practice that gave national parliaments the chance to object to EU legislative proposals, if they were considered contrary to the principle of subsidiarity.¹² EU member states tried to reform the institutional structure of the EU since Maastricht so that it would better fit the enlargement that was coming up. The Dutch government wanted to enhance the role of national parliaments to increase practical importance of the principle of subsidiarity as a means to balance the EU institutions more to the benefit of member states instead of its supranational institutions.¹³ It would balance the recently

⁹ Sara Binzer Hobolt and Sylvain Brouard, 'Contesting the European Union? Why the Dutch and the French Rejected the European Constitution', *Political Research Quarterly*, Vol. 64, no. 2 (2011) pp. 309–322.

¹⁰ Christopher Lord, *A Different Kind of Democracy? Debates About Democracy and the European Union* (2015), pp. 2-7.

¹¹ Adriaan Schout and Jan Marinus Wiersma, 'For as well as against: the Dutch-EU paradox. From pro-EU towards defending sovereignty?', *Clingendael Institute* (2012) p. 3.

¹² De Wilde, 'Why the early warning mechanism does not alleviate the democratic deficit', p. 3.

¹³ *Ibidem*.

adopted co-decision of the European Parliament, and at the same time still ensure proper democratic representation of the people at EU level. In this thesis, I will argue that this struggle with the EU's institutional structure is an important reason why the Balkenende administration of 2007 decided to focus on enhancing the role of national parliaments in the EU.

To answer the research question, this thesis will trace the debate in the Dutch House of Representatives about the role of national parliaments in the EU, and analyse how this small parliamentary discussion evolved; had consequences for the monitoring of EU legislation within the HoR; and how this debate ultimately influenced government policy. Thus, this thesis will bring to light how and most importantly why national parliaments became a priority for the Balkenende government in the negotiations for a new EU Treaty. Having stated the two main reasons for asking this research question – the first being a justification corresponding with the research method, the second being a theory corresponding with the focus of the research – the main question has two elements that this research will address. The following paragraphs will state the two sub-questions of this thesis.

First, since the debate about the European role for national parliaments had been longstanding: how did the debate about the role of national parliaments in the EU develop in the Dutch House of Representatives? To answer this first sub-question, this thesis looks at how the idea originated that national parliaments could provide more democratic legitimacy in the EU, and how this was first linked to the principle of subsidiarity. Equalling a larger role for national parliaments in the EU directly to more democratic legitimacy is too simply put, so how did this debate develop? Since subsidiarity was first officially enshrined in the Treaty of Maastricht, the search for an answer to this question begins in 1992. Additionally, since the HoR had been interested in EU affairs since before 2005, the yellow and orange card system was not the parliament's first experience with EU affairs. The parliament had developed informal practices to gain more oversight and control on EU governance; the yellow and orange card system was in that sense a formalisation of an already existing practice. Thus, with this sub-question I want to trace how this debate developed in the HoR over time, and how the parliament assessed EU policy and which mechanisms it had to its disposal.

Secondly, since the Balkenende administration struggled with the institutional set up of the EU, prior to Lisbon: what exactly did both parliament and government wish to solve by strengthening the role of national parliaments? In order to understand why the Dutch pushed for an increased role for national parliaments in the Lisbon negotiations, it is important to know the reasons for wanting to increase parliamentary oversight in general. Accepting the premise that the European democratic deficit was not the common worry of the Dutch people, and thus not the sole reason for the Balkenende-administration to focus on the role of national parliaments, eventually the question arises what parliamentarians and government hoped to achieve by a larger role for national parliaments.

This thesis will answer these sub-questions by looking at the argumentation of MPs and singling out the institutional changes to both the HoR and the negotiating position of the Dutch government that were made because of these parliamentary debates. Combined, this will outline why

the Balkenende-government directed their energy towards the role of national parliaments in the Lisbon negotiations, by illuminating what parliament perceived to be wrong with their control over EU decision-making, and how, eventually, both parliament and government came to the conclusion that an enhanced role for national parliaments was the answer.

To conclude the introduction, I will lay out how the thesis is structured. Chapter 1 will give academic context to the questions asked by means of a literature review. Chapter 2 will provide the research design and methodology. Chapters 3 to 7 are focused on the primary material, mostly minutes from parliamentary debates from 1992-2007, but information is also gathered from parliamentary briefs, policy documents and newspaper articles. The thesis is chronologically structured; Chapter 3 starts in 1992, in the Dutch House of Representatives' debate about the Maastricht Treaty, Chapter 4 deals with the ratification debate of the Amsterdam Treaty, Chapter 5 with the debate surrounding the Treaty of Nice, Chapter 6 analyses the Convention on the Future of Europe and the resulting Constitutional Treaty and Chapter 7 finally deals with the aftermath of the 2005 referendum in the lead-up to the Lisbon Treaty. All parliamentary debates about Treaty revisions are analysed with a focus on the role of national parliaments in the EU. Every chapter will first sketch the state of affairs, and then answer the first sub-question in the first paragraph and the second in the second paragraph. The chapters will elaborate on relevant parliamentary debates, which are subsequently summarised and analysed. In the next and first chapter, however, the research question and sub-questions are first embedded in the broader secondary literature, and provided with academic context.

Chapter 1: Literature review

Decision-making in the EU developed rapidly over the past 30 years, and national legislators sometimes seem to be scrambling to keep up. National parliaments have been struggling with their place in the European institutional framework ever since they were formally recognized in the EU institutional set-up. The Balkenende government of 2007 believed, like other member states, that an emphasised role for national parliaments could provide democratic control on European legislation. However, like Schout, Hoevenaars and Wiersma argue, the assumption that a stronger role for national parliaments would automatically provide the EU with more democratic legitimacy is too simplified.¹⁴ For instance, some scholars ardently argue that national parliaments can help communicate to citizens and help bridge the democratic deficit that way,¹⁵ while others see them more as a tool to politicise the EU and thus enlarging democratic impact at home.¹⁶

In the paragraphs below, I will discuss the main academic debates that substantiate this thesis. First, I will discuss what constitutes parliamentary control and how national parliaments in the EU try to achieve it. This embeds the first aspect of the research question, embodied by the first sub-question: ‘How did the debate about the role of national parliaments in the EU develop in the HoR?’ Second, I will discuss the idea of European democratic legitimacy. This corresponds with the second sub-question: ‘What exactly did both the Dutch House of Representatives and the Dutch government wish to solve by strengthening the role of national parliaments?’. This chapter will thus provide academic embedding for the questions of this thesis, and provide context for the following chapters.

1.2 Parliamentary control

With the expansion of the Union, both geographically and in competences, EU decision-making has gained importance in domestic political arenas. It is therefore important for national parliaments to exercise parliamentary control on European matters as much as on domestic matters. Tans, Zoethout and Peters define (political) control as ‘knowing about the object of control and being able to influence the object of control’.¹⁷ Being able to scrutinize EU affairs and policy proposals effectively therefore requires national parliaments to be properly informed and have some measure of influence, either by controlling their government official in the Council, or by gaining an independent role in the EU decision-making process.

¹⁴ Adriaan Schout, Judith Hoevenaars and Jan Marinus Wiersma, ‘Obstacles to a strengthened role for national parliaments in the European Union’, *Clingendael Institute* (2014), p. 1.

¹⁵ Rosamaria Alibrandi, ‘Towards political integration in Europe: the involvement of national parliaments in European Union politics and policy-making’, *Parliaments, Estates & Representation*, Vol. 38, no. 2 (2018) pp. 227–238.

¹⁶ Eric Miklin, ‘EU Politicisation and National Parliaments: Visibility of Choices and Better Aligned Ministers?’, *The Journal of Legislative Studies*, Vol. 20, no. 1 (2014) pp. 78-92.

¹⁷ Olaf Tans, ‘The Dutch Parliament and the EU’ in: Tans, Zoehout and Peters, *National Parliaments and European Democracy*, pp. 166-167.

Naturally, the functioning of a national parliament differs very much per member state due to political culture, historical context and constitutional habits.¹⁸ Raunio and Wiberg write that the different levels of EU scrutiny over the member states' national parliaments can be attributed to the role of parliament in the domestic setting and the way political parties and public opinion view EU issues.¹⁹ The Dutch parliament is an example of this, since the Dutch House of Representatives regulate the control of EU affairs mostly in an informal way.²⁰ With regards to on which level parliaments try to exert influence, Cygan writes that national parliaments such as the United Kingdom and Scandinavian parliaments gave up on trying to influence the policy making process on EU level, and instead focused rather on holding their government representatives in the Council accountable.²¹ The object of control therefore exists in their government officials in these cases, rather than directly in EU legislation.

The Danish parliament is a well-known example of a national parliament with large control over its government executives in EU context. The Danish parliament has to give an explicit mandate to its government official, prior to any Council meeting, for the minister to be able to decide anything. In the early years of the European Union, this worked quite well, because decision-making was based on unanimity. However, since decision-making has changed in the EU, so had the way a national parliament can exert its influence on EU policy. The Danish EU Affairs Committee, which has before been a source of inspiration to other national parliaments that wanted to increase their control on EU legislation, does not seem able to persuade their parliament to adapt to this change in decision-making.²²

After the introduction of the Lisbon Treaty, legislators hoped that parliaments would focus on influencing EU affairs again rather than just their ministers in EU context. The loss of veto power in many policy fields in the Council had prompted this change of direction, and the new role for national parliaments in the Lisbon Treaty strengthened it. In areas where national interests are fundamentally at stake, but that are now decided on a supranational level such as the Common Security and Defense Policy, the added value of national parliaments could be significant.²³ However, scholars agree that the national parliaments' attainments of the Lisbon Treaty have only marginally strengthened the democratic legitimacy of the EU as a whole.²⁴

¹⁸ Tans, Zoehout and Peters, *National Parliaments and European Democracy*, p. 15.

¹⁹ Tapio Raunio, 'The Finnish Eduskunta: Effective Scrutiny, Partisan Consensus' in: Tans, Zoehout and Peters, *National Parliaments and European Democracy*, pp. 32-40.

²⁰ *Ibidem*, p. 14.

²¹ Adam Cygan, 'National parliaments within the EU polity – no longer losers but hardly victorious', *ERA Forum Vol. 12* (2012) p. 518.

²² Maja Møller Sousa, 'Learning in Denmark? The Case of Danish Parliamentary Control over European Union Policy', *Scandinavian Political Studies, Vol. 31, no. 4* (2008) pp. 428 – 429.

²³ Jan Wouters and Kolja Raube, 'Seeking CSDP Accountability Through Interparliamentary Scrutiny', *The International Spectator, Vol. 47, no. 4* (2012) p. 162.

²⁴ Cygan, 'National parliaments within the EU polity (2012) p. 518.

The work of Tans, Zoethout and Peters has gone a long way in charting the many different approaches that member states take to scrutinizing and controlling EU affairs and their government representatives on EU level. They have not traced how the thoughts behind these mechanisms developed and how parliaments debated them, however. In this thesis, I will trace how the debate about national parliaments in the EU developed in the HoR, and explore how a government position is shaped by years of parliamentary debate and influential individuals. To know why a national parliament adapted to EU governance the way that it did, will provide a valuable insight in how parliaments react to institutional developments on EU level and how they can influence decision-making bottom-up.

1.2 Institutional functionality versus democratic legitimacy?

Especially after the French and Dutch referenda on the draft Constitutional Treaty, the scholarly discussion about democracy in the EU reached new heights. For the purpose of this thesis, however, it is not relevant to dive into the academic discussion about the actual existence of a democratic deficit.²⁵ What *is* relevant to this thesis, however, is the premise that a larger role for national parliaments would automatically solve this democratic deficit. This argument returns often in both academic literature and parliamentary reasoning and links to the second sub-question of this thesis – what parliament and government actually wished to solve with a larger role for national parliaments in the EU. However, a larger role of national parliaments and more democratic legitimacy in the EU are not a direct cause and effect. Schout, Hoevenaars and Wiersma stretch this point as well, stating that it would be ‘too simplistic and unsubstantiated’ to assume that a larger role for national parliaments would automatically further the democratic legitimacy of the EU.²⁶ The debate about the EU’s democratic legitimacy is more complicated than this.

Put curtly, the EU’s democratic deficit is the result of the disparity between efficient majority voting in the Council and proper parliamentary oversight. The gradual transition to a qualified majority vote in the Council meant that member states had to forfeit their veto powers on many issues, which – although it made EU decision-making more efficient – created a democratic fallacy in their domestic structure of governance, because it made parliamentary oversight more difficult in national parliaments. Even though it is well-known that actual voting rarely take place in the Council²⁷, abolishing the possibility of a veto made it easier for a government representative to ‘hide’ behind a majority in the Council.

²⁵ For an overview of the academic debate on the EU’s democratic deficit see e.g. Moravcsik (2002); Follesdal and Hix (2006); Moravcsik (2006); Kaina and Karolewski (2007).

²⁶ Adriaan Schout, Judith Hoevenaars and Jan Marinus Wiersma, ‘Obstacles to a strengthened role for national parliaments in the European Union’, *Clingendael Institute* (2014) p.1.

²⁷ Van Keulen, *Going Europe or Going Dutch?* (2006) p. 105.

And, as national parliaments experienced a lack of information, their jobs of scrutinizing their government's position in the Council became even harder. It made national parliaments dependent on their governments for information, which per definition hinders proper parliamentary control. Both the possibility to hide behind other member states due to the loss of veto powers, and the information deficit in national parliaments undermined the possibilities for parliamentary oversight, and thus widened the democratic gap.²⁸ With each step of EU integration, it grew more difficult for national parliaments to question and control their government representatives in the European Council. The Dutch constitutional system is largely based on ministerial responsibility, but the accountability of ministers in the Council was severely diminished because of the loss of veto power.²⁹ As we will see in the following research chapters, the Dutch parliament has fought for more direct access to information about EU legislative proposals in the years 1992-2007.

As a reaction to these democratic deficits, academics have observed two kinds of responses: those that want to strengthen the European Parliament and those that want to reinforce the national parliaments of the EU.³⁰ Like the debate on the nature of the EU, this debate about the role of national parliaments can also be simplified to the federalist approach and the intergovernmental approach. The federalists generally want the European Parliament to be responsible for parliamentary oversight in the EU, and the intergovernmental approach often argues in favour of more power for national parliaments.³¹ The Dutch stance differs often, but can generally be described as pragmatic, Rood and Schouten state.³² In this thesis, this is confirmed as we see a decisive attitude change in the Dutch government from federal to intergovernmental.

When looking at the polls about the referendum in 2005, it strikes that 6 months before the referendum, 73% of the Dutch population had expressed to Eurobarometer that they were in favour of a Constitutional Treaty. However, at the referendum on June 1 2005, 61% voted against.³³ Atican argues that an especially strong campaign against the Constitutional Treaty was the main reason for the unexpected outcome. The 'no' campaign successfully linked topics such as Turkish accession to the EU and the loss of sovereignty over national affairs to the Constitutional Treaty. Democracy also played a big role in the 'no' campaign, with the biggest argument being that there is no European 'demos' and thus no possibility for a real European democracy. However, although this argument played a big role in the campaign, and was subsequently indicated by politicians in their first responses as being one of the main reasons for the 'no' vote, voters themselves did not cite this

²⁸ Cygan, 'National parliaments within the EU polity' (2012) p. 520.

²⁹ Tans, Zoethout and Peters, *National Parliaments and European Democracy*, p. 177.

³⁰ Sverker Gustavsson, 'Preserve or Abolish the Democratic Deficit?' in: Eivind Smith, *National Parliaments as Cornerstones of European Integration* (1996) p. 100-101.

³¹ Tapio Raunio, 'Always One Step Behind? National Legislatures and the European Union', *Government and Opposition*, vol. 34, no. 2 (1999) p. 181/.

³² Rood, J. and Schout, A., *The Netherlands As an EU Member : Awkward or Loyal Partner?* (2013).

³³ Ece Ozlem Atikcan, '*Framing*' the European Union: Explaining the 2005 Constitutional Referenda Results (2010) p. 192.

argument as being particularly important.³⁴ In fact, in a Eurobarometer review only 5% of voters gave the reason ‘the EU is not democratic enough’ as explanation for their vote.³⁵ Hobolt and Brouard confirm this, as concern about democracy in the EU did not emerge in their research as an important factor for voting ‘no’ in the referendum.³⁶ Thus the general opinion of the academic world – after researching the 2005 referendum outcome – is that democratic legitimacy did not play a decisive part in people’s decision to vote against the Constitutional Treaty. However, just after the referendum politicians often cited this reason as having been important.³⁷

This thesis concurs with the general academic opinion, and disputes that the worry for democratic legitimacy was the only reason for the Balkenende administration to adopt this position in the Lisbon negotiations. Nevertheless, since most politicians did reason from that point of view, the second part of this chapter has embedded the second sub-question in the larger debate about democratic legitimacy, and thus showed why it is relevant to revisit the question why the Balkenende administration focused on national parliaments in the Lisbon negotiations. The next chapter will provide the methodology and design for answering this question.

³⁴ Arjen Nijeboer, ‘The Dutch Referendum’, *European Constitutional Law Review*, Vol.1, no. 3 (2005) p. 404.

³⁵ Nijeboer, ‘The Dutch Referendum’ (2005) p. 401.

³⁶ Hobolt and Brouard, ‘Contesting the European Union?’ (2011) pp. 309–322.

³⁷ Nijeboer, ‘The Dutch Referendum’ (2005) p. 404.

Chapter 2: Methodology and research design

This thesis will explain why the Netherlands focused on the role of national parliaments during the Lisbon negotiations, by tracing the Dutch parliamentary debates about the role of national parliaments in the EU. Answering this research question will shed light on the decision-making process in Dutch governance, the inner workings of the Dutch House of Representatives and the interplay between parliament and government in The Netherlands. To answer why the Balkenende administration focused on enhancing the role of national parliaments in the EU in the Lisbon negotiations, I will use systematic process tracing, by means of historical analysis. The position of the Dutch government in the Lisbon negotiations in 2007 is the dependent output variable. The thesis will provide an explanation for this position using primarily minutes and reports from parliamentary ratification debates in the period 1992-2007. Since the Dutch parliament has the power to control and question government officials and positions, these minutes will show the interplay between parliament and government on this topic, and thus how the government position in 2007 was shaped. This thesis uses the Dutch case-study as a standalone case that is relevant for wider research to European parliaments, the role of national parliaments within the EU and the debate about the EU's democratic legitimacy. The next two paragraphs will provide context for the empirical chapters that follow after.

2.1 The Dutch House of Representatives

Since this thesis uses the Dutch House of Representatives as a case study, understanding how this chamber works in the grander scheme of the role of national parliaments in the EU is vital. The HoR has made its EU-related decisions through the use of a permanent EU Affairs committee, which is also the first point of contact for inter-parliamentary cooperation. Next to this, the committee informs and advises the HoR about relevant European developments in other policy fields. The Dutch House of Representatives was a relative latecomer to the practice of monitoring EU affairs, however: its EU affairs committee was only established in 1986.³⁸ This committee is also active in COSAC, the Conference of the European Affairs Committees, an international cooperation platform for national parliaments' EU affairs committees and EU parliament delegations. It meets twice a year to exchange information, ideas and best practices and was first held in 1989.

Despite– or perhaps because of– this, the Dutch House of Representatives was an early adapter to the idea of parliamentary scrutiny of EU legislative proposals on the basis of subsidiarity, and had a protocol in place for the active scrutiny of EU affairs as early as 2006.³⁹ However, its active

³⁸ Van Keulen, *Going Europe or Going Dutch?* (2006) p. 105.

³⁹ Van den Brink, T., 'The Substance of Subsidiarity: The Interpretation and Meaning of the Principle after Lisbon', in: Trybus, M., and Rubini, M., *The Treaty of Lisbon and the Future of European Law and Policy* (2012) p. 2.

approach to this mechanism is in stark contrast with the image that Van Keulen paints on the Dutch parliaments' involvement in EU affairs in general. Officially, a summary of EU legislative proposals is sent to the parliament – the so-called ‘BNC-fiches’⁴⁰ – before any negotiations, and parliament can technically question government officials about them. The fiches are written by an interdepartmental working group, spearheaded by the Ministry of Foreign Affairs and contain brief summaries of legislative proposals, since 2007 they also contain an evaluation of the subsidiarity and proportionality of the proposal. Fiches also contain the preliminary position of the Netherlands on a EU legislative proposal.

In the case of a Justice and Home Affairs Council of Ministers meeting, however, the parliament has explicit mandatory powers to be informed by the minister beforehand. Active use of this power does not occur often, however, in comparison to the Danish case for instance.⁴¹ The reasons for a relatively passive attitude are well-known: lack of knowledge of EU dossiers, pressure of domestic issues, lack of salience of EU matters and the limited timeframe in which these developments usually take place. Active debate is usually limited to a few specialized members of parliament (MPs) and salient topics like Treaty revisions or the Dutch contribution to the EU Multi-annual Financial Framework.⁴²

⁴⁰BNC stands for: ‘Beoordeling Nieuwe Commissievoorstellen’. (English: ‘Evaluation New Committee proposals’.)

⁴¹ Van Keulen, *Going Europe or Going Dutch?* (2006) p. 105.

⁴² *Ibidem*, p. 106.

Chapter 3: The Treaty of Maastricht

This thesis starts its empirical research at the parliamentary debate on the Maastricht Treaty, since the idea of a role for national parliaments in European decision-making was first formally introduced there. The Maastricht Treaty encompassed a ‘Declaration concerning the role of the national parliaments in the European Union’, in which the Member States emphasized their vision of a bigger role for national parliaments. These protocols highlighted the importance of information and best practice exchanges between national parliaments within COSAC, and directly between national parliaments and the European Parliament. This particular protocol also asked of governments to inform their national parliaments on time about upcoming legislative proposals or other important affairs, so MPs could scrutinize EU proposals and their governments. Already, since 1989, the Dutch government had a system in place to inform the HoR and Senate about new Commission proposals through the abovementioned ‘fiches procedure’. However, because of ministerial bureaucracy this procedure was often late and it effectively provided the government with an information-monopoly which put the parliament in a dependent position.⁴³

Additionally, although the principle of subsidiarity was officially enshrined in the EU’s institutional set-up in the Maastricht Treaty, there was not yet any mention of the role of national parliaments in this regard.⁴⁴ Mainly, the debate about the Maastricht Treaty in the HoR was interesting because of two particular aspects of the parliamentary discussion during the ratification period of this treaty: the amount of parliamentary discussion on the treaty, and a renewed attention to the democratic deficit caused by a lack of information about EU affairs in the Dutch parliament.

3.1 The Maastricht negotiations debated

The debate about the Maastricht Treaty in the Dutch House of Representatives is particularly relevant in the light of the development of the debate about the role of national parliaments in the EU in the Dutch HoR, which is the first sub-question of this thesis. The Treaty of Maastricht was not much debated in the Dutch House of Representatives before its signing but started to show interest in their own role in European decision-making from this period onwards. The parliament did not monitor European affairs as intensely during the Maastricht ratification-process yet as they did five years later at the ‘Amsterdam’ negotiations: its permanent EU affairs committee was still ‘young’ – having been established in 1986 – and most parliamentarians were simply not that interested in EU affairs.⁴⁵ They initially saw their role of keeping parliamentary oversight on EU legislation as a temporary one,

⁴³ Besselink and Van Mourik, ‘The Roles of the National Parliament and the European Parliament in EU Decision-Making’, p. 310.

⁴⁴ *Treaty on European Union (Consolidated Version)*, Official Journal of the European Communities C 325/5 (1992).

⁴⁵ Van Keulen, *Going Europe or Going Dutch?* (2006) p. 105.

waiting for the EP to grow its mandate.⁴⁶ That debating and ratifying of the Treaty of Maastricht was not a high priority for the HoR is illustrated by a letter from the state secretary of Foreign Affairs, reprimanding the House for taking too long to schedule the ratification-debate.⁴⁷ The Dutch parliament's own perception of their role slowly shifted only after the failure of the non-paper on a European political union that the Dutch government had proposed during its presidency in 1991, leading up to Maastricht. Both parliament and government realised then that an EU with federal traits – something that the Dutch government of 1991 was in favour of – was not politically feasible in the other member states and did not have the support of the Dutch people.⁴⁸ This incident stimulated a slow increase in parliamentary interest in EU affairs: in 1997, during the debate on the Amsterdam Treaty in the Dutch House of Representatives, Minister of Foreign Affairs Van Mierlo expressed that he thought it to be a victory that the HoR was more inclined to debate the content of the new Treaty than they had been five years before. It meant that European affairs were on their radar, as they had not been during the negotiations for 'Maastricht'.⁴⁹

3.2 The Danish 'no'

The pro-integrationist stance of the Dutch government and parliament in 1992 was tempered by the more moderate reactions to the Treaty in other member states. The Danish 'no' to Maastricht resonated with the Dutch parliament, and most parties in the HoR agreed that the Maastricht Treaty was not the final stage of optimizing the institutional set-up of the EU. MP Van der Linden (CDA) ultimately summarized the result of the Danish referendum in threefold: "Firstly, it has become clear that the European Community should confine itself to what is strictly necessary. [...] Secondly, I believe that the referendum has once again urged politicians to emphasize the need to strengthen democratic control. To which I add: including the role of national parliaments. [...] And thirdly, the gap between politicians and citizens has now been demonstrated."⁵⁰ In this statement, he linked the results of the Danish referendum to the strict division of competences between EU and member states, subsequently to democratic control and the role of national parliaments and finally to the gap between citizens and politicians. This shows the idea behind the reasoning that national parliaments might play a role in solving the democratic deficit, and is the prelude for an answer to the second sub-question of this thesis – what exactly did both government and parliament wish to solve by strengthening the role of national parliaments in the EU? The Dutch government and parliament had misjudged the enthusiasm for a more federal Europe both internationally as well as nationally, and thus concluded that they had lost touch with their citizens. However, the French voted in favour of the Treaty –

⁴⁶ Hilde Reiding and Afke Groen, 'Kaartspel om de macht', *Internationale Spectator*, Vol. 8, no. 69 (2015) p. 2.

⁴⁷ Kamerstukken II, 1991/92, 21952, nr. 38.

⁴⁸ Reiding and Groen, 'Kaartspel om de macht' (2015) p. 3.

⁴⁹ Handelingen II, 1996/97, 24609, nr. 82, p. 5693.

⁵⁰ *Ibidem*, p. 5693.

although barely – with a small majority of 51%. This *petit oui* gave the impression that a ‘permissive consensus’ existed on the path that EU integration was on.⁵¹

The discussion about the democratic deficit in the EU became increasingly relevant in the HoR in 1992 for two reasons. First, the Danish had held a referendum on the ratification of Treaty of Maastricht, and the Danish people had voted ‘no’. Moreover, MP Van Middelkoop (GPV/ChristenUnie) argued that almost 60% of the Dutch people would want a referendum on the treaty as well. He stated that the democratic deficit of the European project has now been revealed and asks the government to comment on the apparent lack of political legitimacy of this treaty.⁵² MP Eisma (D66) affirmed, in reaction to MP Van Middelkoops statements, that the result of the Danish referendum was linked to the democratic issue. “This is not just about the formal democratic deficit in Europe and the limited powers of the European Parliament [...]. We also see a large gap between citizens and national politics.”⁵³ This is the second reason why the parliamentary discussion about the democratic deficit was increasingly relevant. Democratic legitimacy was already a particularly relevant topic in that parliamentary year, because the HoR had recently appointed a committee to research the gap between the political elite and the Dutch people.⁵⁴ The findings of this committee notwithstanding, the fact that it was appointed for this specific question illustrates that democratic was very much part of the *zeitgeist*: the discussion about democratic legitimacy was on the minds of the MPs.

Therefore, both the general lack of parliamentary debate about the Maastricht Treaty in comparison to later treaties and the increased discussion about the European democratic deficit contributed to the first mention of the role of national parliaments in the EU in 1992. Despite the lack of general debate by the HoR, there had up until now always been a few MPs that did show interest in EU affairs. One amendment to the domestic ratification act especially cleared the way for a bigger parliamentary influence in the EU. The HoR regained some power on their government representatives in the EU, by adopting an amendment from MP Van der Linden (CDA) into the ratification act of the Dutch parliament.⁵⁵ This meant that for government officials to be able to accept binding decisions in the ‘third pillar’, they had to be subjected to parliamentary consent, if co-decision did not apply. Similar amendments in earlier treaties had ensured that parliamentary consent was also necessary for other binding decisions in the fields of justice and home affairs, concerning the free movement of persons and the Schengen Agreement.⁵⁶ Linking back to the first sub-question on the development of

⁵¹ Robert Harmsen and Menno Spiering, *Euroscepticism: Party Politics, National Identity and European Integration* (2004) p. 25.

⁵² Handelingen II, 1991/92, 22647, nr. 87, p. 5382.

⁵³ Handelingen II, 1991/92, 22647, R1437, nr. 87, p. 5382.

⁵⁴ This committee concluded, however, that there was no substantial gap between politics and citizens and that the Dutch democracy was performing well in comparison to other European countries. See: Rapport Commissie-De Koning, 1992/1993, 21427, nr. 37, p. 11.

⁵⁵ Kamerstukken II, 1992/93, 22647 (R1437), nr. 20.

⁵⁶ Besselink and Van Mourik, ‘The Roles of the National Parliament and the European Parliament in EU Decision-Making’, pp. 311-312.

this debate in the HoR, this signalled that – despite the lack of more general interest – some MPs were trying to preserve parliamentary control on decisions that were of importance in the domestic political arena, and trying to balance the lacking co-decision procedure if necessary.

As we have seen in this chapter, the Dutch parliament slowly started to shift their perception of their own role in the EU, as a result of a less pro-integrationist international reception of their non-paper than expected and a meagre reception by the Dutch public. Under this pressure, they started to give more attention to the legitimacy of politics in general. The Maastricht Treaty's institutional reforms, controversies surrounding the EMU and the failed Dutch non-paper revealed a perceived democratic deficit on a European level to the Dutch parliament and so the Dutch House of Representatives urged the Dutch government to consider this debate when negotiating the revisions to the Treaty at the IGC in Amsterdam in 1997. This chapter has shown that the debate about the role of national parliaments in the EU traces back to far before the Dutch 'no' vote in the referendum on the draft Constitutional Treaty and illustrates that the Dutch House of Representatives started to show interest in their own role from the early 1990s onwards. In the next chapter, concerning the parliamentary debates about the Amsterdam Treaty, we will see the concept of subsidiarity being linked to national parliaments for the first time.

Chapter 4: The Treaty of Amsterdam

During the parliamentary year of 1996-1997, the negotiations for the Amsterdam Treaty were in full development. The HoR engaged with the Dutch government in multiple plenary debates, to query the government on the Dutch official position during these negotiations, as they had stipulated in the Van der Linden-amendment during the ratification of ‘Maastricht’. The member states had negotiated for almost two years, and an ‘outline for a draft treaty revision’ was on the table.⁵⁷ The Netherlands had a difficult double-role to play as both negotiator and chair during the IGC in Amsterdam. Large agenda items were the EMU and the foreign policy of the EU, naturally, but the biggest challenge for the functioning of the EU’s institutions was the necessary change in decision-making. A different weighing of votes in the Council was needed, and the European Parliament was to gain co-decision in multiple policy areas. However, these issues were not decided in the Treaty of Amsterdam, but largely postponed to the Treaty of Nice. But this democratic dilemma spurred a debate in the Dutch House of Representatives during the negotiations in Amsterdam. The risk existed that a form of majority voting was to be introduced in the Council, in policy areas where co-decision was not extended to the Parliament, thus creating a lack of democratic legitimacy. Dutch political parties were divided on the issue: D66, as a more federally oriented party was prone to favour an extension of the co-decision to the European Parliament, whereas the more intergovernmental oriented political parties, e.g. GPV/ChristenUnie and VVD, were arguing for an emphasised role for national parliaments. Simplified, this divide came down to the federalist/intergovernmentalist discussion as introduced in the literature review section of this thesis.

4.1 Intergovernmental versus federal approach

When looking at the first sub-question about the development of the debate in the HoR about the role of national parliaments in the EU, the federalist/intergovernmentalist debate is highly relevant. In the plenary debate of 21 May 1997, the HoR reacted to a letter sent by the Dutch Minister of Foreign Affairs Van Mierlo in March that year. In this letter, Van Mierlo briefed the HoR on the upcoming Intergovernmental Conference (IGC) in Amsterdam and where the negotiations stood at that moment. He described widespread support amongst member states to enclose a ‘subsidiarity-protocol’, one of the Dutch priorities, that would define the principle of subsidiarity for the first time.⁵⁸ However, member states had not yet been able to agree on its content regarding a subsidiarity-test. Some member states wanted a role for the Committee of the Regions, COSAC, or the European Parliament

⁵⁷ Handelingen II, 1996/97, 24609, nr. 82, p. 5667.

⁵⁸ Ton van den Brink, ‘The Substance of Subsidiarity: The Interpretation and Meaning of the Principle after Lisbon’, in: Trybus, M., and Rubini, L., *The Treaty of Lisbon and the Future of European Law and Policy* (2012) p. 2.

and others (i.a. The Netherlands) wanted a larger role for national parliaments.⁵⁹ The inclusion of this last option illustrates that the discussion about the role of national parliaments was now not only firmly established in the debate about democracy in the EU, it was also for the first time linked to subsidiarity. In his letter to the House, the minister clearly stated that the Netherlands was amongst those member states that were in favour of an extended role for national parliaments, where co-decision was not applied. This shows the inclination of the Dutch government towards an intergovernmental solution, the fact that the government was headed by a coalition where two of the three parties, D66 and PvdA, were prone to federal solutions. The voice of intergovernmentalist state secretary for European Affairs Patijn (VVD) was a big influence here and shifted the policy away from the federal approach of 1991/92, towards a more intergovernmental stance.

4.2 Information for the House

Regarding the second sub-question of this thesis, about what both government and parliament wished to solve by strengthening the role of national parliaments; during the debates about ‘Amsterdam’ the HoR focused on its own information position for the first time. ‘Maastricht’ had made the parliament more aware of their own role in Europe, and during these debates about ‘Amsterdam’, the HoR started to look at what they needed from the EU for a better grasp on its legislative proposals, instead of focusing on how to control their own government officials. This was concretised in a motion about the information position of national parliaments by MP Van Middelkoop (GPV/ChristenUnie), in which he argued in favour of an enhanced role for national parliaments. He pointed out that the government had promised in Van Mierlo’s letter and in earlier statements to the House that national parliaments would gain a more prominent role in the Dutch negotiating position, but that this was missing from the official communications so far. He worried that the democratic deficit would grow when voting ratios in the Council were adapted and parliamentary control was not guaranteed. Several other parties, i.e. coalition party VVD, but also the CDA and SGP, supported this assertion. He therefore submitted a motion to parliament where he urged the Dutch government to consider proper information provisions for national parliaments, and to ensure a period of at least four weeks to scrutinise all EU proposals that could be relevant to the legislative process.⁶⁰ The fact that this motion was accepted with unanimous support from all parliamentary groups signalled that it was not a party political issue: everyone agreed that the EU needed to improve its parliamentary oversight.⁶¹ The Dutch government adopted this idea in their official communications to the HoR, and promised to negotiate in favour of the proposal. The idea for the proposal was first formulated in the COSAC-conclusions of the October 1996 conference. Even though parliaments did not have an official role in the Amsterdam

⁵⁹ Kamerstuk II, 1996/97, 24609, nr. 16.

⁶⁰ Kamerstukken II, 1996/97, 24309, nr. 22.

⁶¹ Stemmingen II, 1996/97, 24609, nr. 83, p. 5740-5742.

negotiations, they were actively trying to put the issue on the agenda through international cooperation.⁶²

The Amsterdam Treaty thus carried a ‘protocol on the role of national parliaments in the European Union’, which stressed that national parliaments should be properly informed by their governments in order to ensure parliamentary oversight on government officials, as well as on EU legislative proposals. A new feature was the period of six weeks before an EU legislative proposal was discussed in the Council, in which all documents had to be provided to the respective parliaments. The six week period indicated that COSAC cooperation had been successful: national parliaments even gained two weeks extra time on the motion that Van Middelkoop had issued. These points were added to the Amsterdam Treaty in a protocol rather than a recommendation, that had been the case in the Maastricht Treaty. Since protocols are legally binding and recommendations are not, this was a definite improvement.⁶³ However, both measures – more information provisions and the six-week period – were aimed at strengthening the parliaments in parliamentary oversight of their *own* government officials at EU level. Although this was an important part of the debate on the EU’s democratic deficit as well, it did not allow national parliaments direct influence on EU decision-making. Thus, while the protocol did address the worry on which the COSAC/Van Middelkoop motion was based, it did not intrinsically enhance democratic legitimacy of the EU legislative process or improve oversight on EU institutions. Neither did the provision work flawlessly; national parliaments were in practice still mostly dependent on their government officials for the right information nor were communications from the Commission about upcoming legislative proposals consistent.⁶⁴

Additionally, in the second part of the protocol – which deals with the role of COSAC – the text suggests that COSAC might scrutinise EU legislative proposals. According to the protocol, COSAC may address comments on legislative proposals to any EU institution, ‘especially concerning the principle of subsidiarity’.⁶⁵ In the first place, this gives the cooperation of national parliaments in the EU the legal right to have an opinion on EU legislation, which was a big step towards a defined role for national parliaments. Secondly, by mentioning the principle of subsidiarity explicitly in relation to COSAC, the Amsterdam protocol paved the way for the inclusion of subsidiarity in the role of national parliaments. This proved to be a stepping-stone for the HoR in the debates surrounding the much-needed treaty revisions during the IGC in Nice in 2002.

As we have seen in this chapter, the call for a larger role for national parliaments in the EU was supported by intergovernmentalist parties as well as the government in 1997, despite the fact that the

⁶² Raunio, ‘Always One Step Behind?’, p. 196.

⁶³ Raunio, ‘Always One Step Behind?’, p. 197.

⁶⁴ Cygan, ‘National parliaments within the EU polity’ (2012) p. 520.

⁶⁵ *Treaty of Amsterdam Amending the Treaty on European Union, The Treaties Establishing the European Communities and Related Acts*, ‘Protocol on the Role of National Parliaments in the European Union’ Official Journal of the European Communities C 340/01, (1997).

government's coalition parties were traditionally more federal oriented. This is a change from the approach we saw during the 'Maastricht' negotiations from both the government and the HoR. After the failure of the Dutch non-paper in 1991 and the bad reception, both internationally and by the Dutch public, the government switched to a more intergovernmental stance.⁶⁶ The HoR became increasingly more aware of their role in the scrutiny of EU legislation, and gained important tools to potentially increase their parliamentary oversight on EU legislation with the new information provisions and the 6 weeks period to respond to EU legislative proposals the parliament. In the next chapter, we will see an increase in this newfound awareness of the role of national parliaments in the EU and an even more active call for the operationalisation of the subsidiarity principle.

⁶⁶ Daniel Wincott, 'Federalism and the European Union: The Scope and Limits of the Treaty of Maastricht', *International Political Science Review*, Vol. 17, no. 4. (1996) p. 403.

Chapter 5: The Treaty of Nice

The Nice IGC of 2001 needed to solve many institutional difficulties that the member states had not been able to solve during prior negotiations. An adjustment to the voting ratios in the Council was necessary because of the upcoming growth of the EU, for instance. During the negotiations leading up to the IGC in Nice in December 2000, the government kept the HoR duly informed. Notable in the updates from minister of Foreign Affairs Van Aartsen, however, is that the updates rarely mention the democratic legitimacy of the EU, while that issue was still high on the agenda of parliament. The member states' biggest concern during 'Nice' was the institutional set up of the EU; more specifically voting ratios and qualified majority voting in the Council, which had to be prepared for the upcoming enlargements.⁶⁷ A 'post-Nice agenda' was composed, which put 'a more precise divide of the competencies between the Union and the Member States and the role of national parliaments' on the agenda for the next IGC in 2004.⁶⁸ The accords of the Nice summit were direly needed for the institutional set up of a growing Union, and put the more ideological question of democratic legitimacy on the long-term agenda: efficient functioning was at the moment more important than the question of legitimacy.

5.1 "Trust is good, control is better"

With regards to the development of the debate about the role of national parliaments in EU decision-making – the first sub-question – it can be argued that the Nice IGC was a step back. In December 2000, the Dutch House of Representatives debated the draft treaty. MPs Timmermans (PvdA – later state secretary for European Affairs and minister of Foreign Affairs) and Scheltema-De Nie (D66), both from very pro-European parties and governing parties, were urging Prime Minister Kok (PvdA) to take action on the role of national parliaments in the European institutional architecture. Kok was forced to admit that the Dutch position on this subject was not entirely clear yet, and that it would be a conjoint process with the House to formulate their position on this subject.⁶⁹ This statement shows that the role of national parliaments was not on the radar of the government at the time of the 'Nice' negotiations, even if it was on the agenda of the HoR. The parliament took matters into their own hands: in June 2001, before the parliamentary ratification of the Nice Treaty, multiple MPs spoke out on increasing domestic control on European affairs. Up until then, in case of EU legislative proposals, government informed the parliament's permanent committee on European Affairs. In turn, they would provide other committees with the necessary information. As domestic issues were increasingly influenced by a European dimension, however, the HoR wanted to get a firmer grip on the European

⁶⁷ Kamerstukken II, 2000/01, 21501-20, nr. 145.

⁶⁸ Kamerstukken II, 2000/01, 21501-20, nr. 146.

⁶⁹ Handelingen II, 2000/01, 21501-20, nr. 35, p. 2918.

dimension of domestic policy issues.⁷⁰ The chair of the HoR set out an inquiry at the permanent committee on European Affairs, which appointed MP Van Baalen (VVD) to research the possibilities of strengthening democratic control and influence of the Dutch parliaments on European decision-making.⁷¹

Van Baalen submitted his report – ‘*On time is too late*’ – to the HoR in 2002.⁷² In this report, he signalled two developments in European decision-making. Firstly, he stated that national parliaments were supposed to hold their governments accountable, when the heads of state or ministers negotiate on the European level. However, he argued that this is where the democratic deficit lies, since it is difficult for national parliaments to exercise effective control on their government officials when they go to Brussels, due to a lack of information and a shift to qualified majority voting in the Council. The Council meetings are not transparent, and both before and after such meetings parliamentary control is almost a formality. He wrote: “[...] the House must for a large part rely on its trust in the government. Trust is good, however, control is better.”⁷³ This clearly reflected the sentiment that was growing in the HoR: the Dutch parliament should know what developments are going on in Brussels, since such developments potentially have a large impact on Dutch domestic policy. This is a change in how the HoR saw their own role: in 1992 they still saw themselves as temporarily involved in EU affairs while waiting on a stronger European Parliament, but now the parliament started to realise that they needed more information on EU affairs in order to maintain parliamentary oversight on domestic affairs.

Van Baalen ultimately concluded that national parliaments in general should be more active in their European network and especially within their formal mandates on intergovernmental issues, to diminish the democratic deficit.⁷⁴ After the Van Baalen report, the Dutch parliaments installed a Permanent Representative in Brussels – despite qualms about high costs – to ensure their independent information position. It is clear here, that the HoR took on a more active stance on the position of national parliaments in the EU than the Dutch government.

5.2 Efficiency versus democracy

During the evaluation of the Nice Treaty in parliament, just after the negotiations concluded and before its ratification, the sentiment amongst the MPs was that ‘Nice’ did not provide a consistent solution to the democratic legitimacy question. Again, and this time more pronounced than in 1997, the MPs felt that democratic gaps fell where qualified majority voting was introduced. National parliaments were not even on the agenda in Nice, although Dutch MPs had already in 1997 suggested

⁷⁰ Handelingen II, 2000/01, 27677, nr. 92, p. 5752-5764.

⁷¹ Handelingen II, 2000/01, 27677, nr. 92, p. 5768.

⁷² Johannes Cornelis van Baalen, ‘Op tijd is te laat’, *Report for the Dutch House of Representatives* (2002).

⁷³ Van Baalen, ‘Op tijd is te laat’ (2002) p. 5.

⁷⁴ Van Baalen, ‘Op tijd is te laat’ (2002) p. 10.

that they might provide a democratic safety net for the European institutions. The more ‘federalist’ oriented parties, like D66, stuck to the idea of co-decision for the EP with every instance of qualified majority voting, whilst the traditionally intergovernmental oriented parties (e.g. CDA, VVD and GPV/ChristenUnie) argued for a role for national parliaments.⁷⁵ In a report drafted by the permanent committee on European Affairs, submitted to the HoR before ratification in September 2001, members of D66 were said to be ‘regretting the fact that the democratic deficit, which fell after the Treaty of Amsterdam, was not fixed.’⁷⁶ In some cases, the European Parliament’s right to consent with legislation even disappeared in this Treaty, while the decision-making of a policy area *was* changed to qualified majority in the Council. According to academics, this is where the discussion about the EU’s democratic deficit originates: a Union with increasingly federal characteristics, but without any of the usual safeguards of a federal state.⁷⁷ Theoretically, this only worsened the democratic state of the EU. MPs wondered ‘if they should deduce from this, that the government also considers the right of consent from its own parliaments to be without value’.⁷⁸ The implied insult of this GroenLinks MP to the government – that the government disrespected the democratic control that a parliament could provide – illustrated the worry and anger of some parliamentarians about the lack of democratic control on EU decisions. It showed that parliament felt that they lost control over the decision-making process, and could not guarantee proper parliamentary oversight on the European level. This illustrates clearly what this thesis has argued in previous chapters: up until ‘Amsterdam’, the parliament was mostly occupied with the question of how to best control their own government officials in the EU. Now, however, it started to look beyond that, and to focus more on the democratic legitimacy of the EU, linking back to the second sub-question about what exactly government and parliament wanted to solve by enhancing the role of national parliaments in the EU. Some parties, e.g. GPV/ChristenUnie even went so far as to plead for a subsidiarity test for national parliaments with testable criteria for the Court of Justice.

Due to the enlargement looming over the Nice IGC, ‘efficiency’ had got the upper hand on ‘democracy’. Since the IGC in Nice had also not been able to set the rule that majority voting in the Council would always be accompanied by co-decision from the European Parliament, it was clear that the subject of democratic legitimacy through parliamentary oversight was postponed until the next IGC in 2004. MPs spoke of a ‘hostile atmosphere’ between the large and the smaller member states during the Nice negotiations, and of a failing of the Community method of decision-making through IGC’s. Domestic and international press featured stories of a ‘mess in Nice’, and MP Karimi (GroenLinks) spoke about the ‘monstrosity of Nice’.⁷⁹ In the end, however, the Dutch House of

⁷⁵ Kamerstukken II, 2000/01, 27818 (R 1692), nr. 4.

⁷⁶ *Ibidem*, p. 11.

⁷⁷ Andreas Føllesdal, ‘Survey Article: Subsidiarity’, *The Journal of Political Philosophy*, vol. 6, no. 2 (1998) p. 192.

⁷⁸ Kamerstukken II, 2000/01, 27818 (R 1692), nr. 4, p. 18.

⁷⁹ Handelingen II, 2000/01, 21501-20, nr. 35, p. 2904.

Representatives ratified the Treaty because they argued that the proposed institutional reforms were necessary for the sake of the upcoming enlargement, but they were not fully satisfied with the outcome. Despite MPs Timmermans (PvdA) and Scheltema-De Nie (D66) specifically urging the Minister to take action on the role of national parliaments, the subject was clearly not on the agenda of the government during ‘Nice’. The European Council established the European Convention on the Future of Europe in December 2001, by means of the Laeken Declaration. This declaration named the role of national parliaments as one of the most important issues to be considered for future treaty reforms, because of its potential to bridge the democratic gap between EU institutions and its citizens.⁸⁰

With regards to the first sub-question on the development of the debate on national parliaments during ‘Nice’, we have seen in this chapter that the Dutch House of Representatives stressed the importance of national parliamentary oversight, urging the government to take the role of national parliaments into account as a possible solution to the democratic legitimacy problem of the EU. Additionally, the Van Baalen report showed that the impact of European legislation on domestic policy meant that the HoR had to become more actively involved by actively pursuing their own sources of information and international cooperation. National parliaments simply had no other option if they wanted to stay ahead of European developments. Furthermore, regarding the second sub-question, the House clearly wanted to see an operationalisation of the subsidiarity-principle – that was introduced as a basis for the COSAC competence of commenting on legislative proposals from the Commission in the protocol on the role of national parliaments attached to the Amsterdam Treaty. Additionally, this chapter illustrated the increased focus on the democratic legitimacy that MPs believed a larger role for national parliaments in the EU could bring. The next chapter will discuss the debates about the Convention on the Future of Europe – following the Laeken Declaration – and the resulting draft Constitutional Treaty.

⁸⁰ Cygan, ‘National parliaments within the EU polity’ (2012) pp. 517-533.

Chapter 6: The Convention and the Constitution

The Convention on the Future of Europe started crafting the draft Constitutional Treaty in the beginning of 2002. Between 2002 and July 2003, multiple drafts were created and thousands of amendments were submitted to the negotiations. The European Convention was a think-tank, comprised of representatives from the governments and parliaments of all EU Member States, as well as representatives from the European Commission and the European Parliament. The Convention was without precedent, and as such piqued the attention from both the Dutch House of Representatives as well as the Senate. Already at the ratification debate of the Nice Treaty, it had been clear that the member states' work on reforming the EU was not done yet. The most urgent changes had been facilitated, but many of the planned institutional reforms had been postponed. The purpose of the Convention was to create a draft European Constitution, which it did in July 2003.⁸¹

6.1 Usual suspects and joint debates

It was the first time that representatives of national parliaments were invited to help revise a treaty. It was in fact the first time that parliaments officially had any influence on EU decision-making at all.⁸² Two representatives from the Dutch parliaments MP Timmermans (PvdA), from the HoR, and MP Van der Linden (CDA), this time representing the Senate, attended the Convention. These names have appeared in this thesis before, since MP Timmermans had urged the government in 2001 to negotiate in favour of stronger national parliaments in the negotiations of the Nice Treaty, and would later become state secretary for European Affairs during the negotiations for the Lisbon Treaty. MP Van der Linden had submitted the amendment with which the HoR gained the power to better control the positions of their government officials in the Council after 'Maastricht'. These were both MP's that had focused on this debate since the beginning of their time as parliamentarians. With regards to the first sub-question – how did the debate about the role of national parliaments develop in the HoR – we see that it is again the 'usual suspects' driving the debate forward.

Another novelty in the development of the debate on the role of national parliaments in the EU were the joint debates. Since both Dutch parliamentary chambers were represented in the Convention, they organised joint parliamentary meetings in June 2003, to debate the Convention and to query the government on its views. These debates were a novelty, because joint parliamentary meetings were usually only held in case of the Netherlands declaring war, or approval of a royal marriage.⁸³ During these debates, MPs were focused on two main topics. MP Van der Laan (D66) summarised that the key questions were whether 'this constitution would make Europe more democratic and decisive'.⁸⁴ In

⁸¹ Kamerstukken II, 2005/06, 30389, nr.1, p. 12.

⁸² Rood and Schout, *The Netherlands As an EU Member*, p. 285.

⁸³ Kamerstukken I/II, 2002/03, 28473, nrs. 158e en 33, p. 4.

⁸⁴ *Ibidem*, p. 22. My translation.

these meetings, Dutch politicians from both chambers made one point very clear across party lines: they all wished for proper democratic representation.⁸⁵ Even MP Van Bommel (SP), although his party was highly sceptical about the draft Treaty, conceded: “On the one hand, we are in favour of a moratorium on the transfer of new policy powers from The Hague to Brussels; on the other hand we support proposals that will lead to a democratisation of decision making within the EU.”⁸⁶

6.2 Subsidiarity testing as a competence for parliaments?

Answering the second sub-question, on what government and parliament wished to solve by enhancing the role of national parliaments, MP Timmermans reported to the Dutch House of Representatives in September 2002 that the issue of subsidiarity was cited multiple times during the Convention. Academic literature suggests that the salience of the principle of subsidiarity usually increases during periods of institutional reform.⁸⁷ This is confirmed by the distinct presence the concept warranted in these parliamentary discussions leading up to the draft Constitutional Treaty. It is no wonder that in the midst of institutional discussions, and the debate on the role of national parliaments in the EU, the principle of subsidiarity was a touchstone for designing new ways to add legitimacy to EU decision-making. Although both the role of national parliaments and of subsidiarity had been on the EU’s agenda for at least a decade, this was the first time that they were decisively linked to each other.⁸⁸ Already during ‘Nice’, the HoR had already asked for an operationalisation of the principle, to expand the competence of the COSAC to comment on EU legislative proposals. MP Timmermans reported that the Convention was trying to make agreements on how to employ the principle of subsidiarity in a more practical manner, thus obligating EU institutions to take the possibility of a subsidiarity test more seriously. Timmermans said: “If national parliaments feel that certain issues do not fall within the competence of the European institutions, they must be able to report this, after which the Commission is obliged to argue why it has a different opinion.”⁸⁹ Under influence of the Convention, Timmermans was arguing for a role for national parliaments to scrutinise subsidiarity more closely than they were doing, in order to give an operational interpretation of the principle.

Additionally, MP Van de Beeten (CDA, Senate) proudly asserted that national parliaments would not be written into the treaty in a protocol, as had previously been the case, but that they would gain ‘a very independent position in which they are deemed and called upon to participate in European integration and European legislation’.⁹⁰ Many factions, like CDA, VVD, SP and D66, were in favour

⁸⁵ Ibidem, pp. 1 – 68.

⁸⁶ Ibidem, p. 19. My translation.

⁸⁷ Føllesdal, ‘Survey Article: Subsidiarity’ (1998) p. 191.

⁸⁸ Tapio Raunio, The Gatekeepers of European Integration? The Functions of National Parliaments in the EU Political System, *Journal of European Integration*, Vol. 33, no. 3 (2011) pp. 303 – 321.

⁸⁹ Kamerstukken II, 2002/03, 28600-V, nr. 3. My translation.

⁹⁰ Kamerstukken I/II, 2002/03, 28473, nrs. 158e en 33, p. 5. My translation.

of even giving national parliaments the right to go to the European Court of Justice, if they felt that the principle of subsidiarity was not respected. This would effectively provide national parliaments with the option to give the Commission a ‘red card’. Ultimately, the government – in the person of state secretary for European Affairs Nicolai (VVD) – pleaded that a ‘yellow card’ would be enough. He reasoned that the Commission would not dare resubmit a proposal that one-third of the national parliaments had already formed a coalition against. MP Timmermans (PvdA) agreed wholeheartedly with him, and added a red card would inevitably lead to a total paralysis of the decision-making procedure in the EU.⁹¹

The bottom-line of this debate was that even though the precise content of the mechanism was still under debate, both chambers were enthusiastic about the new role of national parliaments as proposed by the Convention. Moreover, even though the IGC was still to begin, a group of MPs from both chambers submitted a motion in which the chairs of the House and Senate were called upon to establish a Joint Temporary Committee Subsidiarity to make suggestions about the desired adjustments to the working of Dutch parliament, which was accepted.⁹² The Dutch House of Representatives and the Senate therefore established a Joint Temporary Committee Subsidiarity, to research what the role of national parliaments could be under the new treaty. The parliaments showed great willingness to change the normal procedures, as illustrated by breaking the precedent about joint-parliamentary meetings in order to discuss the Convention’s draft treaty. Their willingness to innovate was also illustrated by the establishment of this joint committee, which was to design the way in which parliamentary scrutiny of proposed EU legislation would be undertaken by the Dutch parliamentary chambers, even before this competence was formally accepted into the draft Constitutional Treaty.

The atmosphere in the Dutch House of Representatives was almost festive after the presentation of the draft Constitutional Treaty. Most MPs felt that all democratic processes were duly observed thanks to the success of the Convention. MP Van Dijk (CDA) stated that ‘under the treaties of Maastricht, Amsterdam and Nice there were always ‘leftovers’ [...]. That is definitely not the case now.’⁹³ In his eyes, all institutional issues that had been postponed in the Treaties of Amsterdam and Nice had now been adequately resolved. Additionally, MP Van Baalen (VVD) stated that the VVD was not altogether content, but that it was also not planning to vote against the draft Constitutional Treaty. He reasoned, reflecting the feeling of multiple other parties, that if they had accepted the Nice Treaty, they could accept this treaty. This one was better, so why vote against it?⁹⁴ MP Timmermans (PvdA) even complimented the government on the draft Constitutional Treaty. “The rights of the European citizen vis-à-vis the European government are firmly anchored and democracy is increasing, both through increasing the role of the European Parliament and, in particular, through increasing the

⁹¹ Kamerstukken I/II, 2002/03, 28473, nrs. 158e en 33, p. 42.

⁹² Kamerstukken I, 2002/03, 28473, nr 158g. & Handelingen I, 2002/03, 28473, nr. 29, p. 881-901.

⁹³ Handelingen II, 2003/04, nr. 87, p. 5557. My translation.

⁹⁴ Handelingen II, 2003/04, nr. 87, p. 5557.

role of national parliaments.’⁹⁵ The feeling in this debate was definitely more positive than in debates about the treaties in the years prior. All that was left now, they felt, was to engage the Dutch public by means of a referendum.⁹⁶

In this chapter, the debate about the position of national parliaments in the EU developed mostly because of ‘usual suspects’ that were active as representatives of both chambers to the Convention. As stated above, the parliaments were concerned with establishing proper democratic representation. For the first time, parliamentarians were at the table in Brussels. As we saw above, the Dutch House of Representatives and the Senate took this opportunity very seriously, by organising these joint parliamentary meetings. The second sub-question of this thesis asks: what did government and parliament wish to solve by focusing on enhancing the role of national parliaments in the EU? We saw in previous chapters that this had shifted from a parliament demanding more control on their own government officials to wanting direct influence on EU legislation. The Convention was the summit of this last wish. The focus from both government and parliamentary representatives at the Convention on subsidiarity testing as a potential competence for national parliaments illustrates the intergovernmental position that the Dutch government and parliaments had gradually switched to. In the next chapter, the lead up to the Lisbon Treaty will be discussed, taking in account the aftermath of the rejection of the draft Constitutional Treaty by the Dutch people in the 2005 referendum.

⁹⁵ Handelingen II, 2003/04, nr. 87, p. 5563. My translation.

⁹⁶ Wolf J. Schünemann, ‘Almost the same stories: narrative patterns in EU treaty referendums’, *National Identities*, Vol. 19, no. 2 (2017) p. 210.

Chapter 7: Leading up to Lisbon

On 29 May and 1 June 2005, the French and Dutch peoples voted against the adoption of the draft Constitutional Treaty. To the generally pro-European political elite in the Netherlands, the outcome of the referendum was shocking.⁹⁷ Before the referendum, most Dutch MPs had not even contemplated that the draft Constitutional Treaty might not be ratified. Nevertheless, the political parties opposed to the draft Constitutional Treaty, spearheaded by the SP, had campaigned very successfully. The amount of money paid annually to EU was a big concern, and the fear of losing ‘Dutch values’ was another.⁹⁸ Even Turkish accession to the EU was used as an argument against ratifying the draft Constitutional Treaty.⁹⁹ However, as mentioned in the literature review, despite the emphasis of the ‘no’ campaign on a lack of ‘demos’ and thus of the possibility of a real democracy, voters did not cite this as the reason for voting against the Constitutional Treaty.¹⁰⁰ After the French and Dutch rejections of the draft Constitutional Treaty, the EU seemed to be in deep crisis.¹⁰¹ Dutch Prime Minister Jan-Peter Balkenende stressed that a period of contemplation was needed, and that EU integration had been ‘too much, too fast and too expensive’.¹⁰²

7.1 Aftermath of the referendum

As mentioned in the beginning of this thesis, the Dutch government led by Jan-Peter Balkenende reasoned that citizens felt they had no influence on the pace or shape of EU integration. According to Balkenende, the people had tried to convey three messages to the government: “The fear of a loss of sovereignty, the fact that the pace of change was too high and that the Netherlands is paying too much to the EU.”¹⁰³ The government took this signal to mean that they needed to have more visible influence in Brussels, preferably earlier in the decision-making process. Confirming this line of thought, Dutch secretary for European Affairs Nicolai wrote to the Dutch House of Representatives in 2006: “The referendum has demonstrated the importance of making the European decision-making process and the national role in this more transparent for citizens.”¹⁰⁴ As we know from the earlier chapters of this thesis, this was not a new conclusion: already in the report by MP Van Baalen in 2002,

⁹⁷ Mendeltje van Keulen, ‘Getting a grip on Europe: national parliamentary scrutiny of European policy’, in: Schout and Rood, *The Netherlands as an EU Member*, p. 285.

⁹⁸ Kees Aarts and Henk van der Kolk, ‘Understanding the Dutch “No”: The Euro, the East, and the Elite’, *PS: Political Science & Politics*, Vol. 39, no. 2 (2006) pp. 243-246.

⁹⁹ Ece Özlem Atikcan, ‘Diffusion in Referendum Campaigns: The Case of EU Constitutional Referendums’, *Journal of European Integration*, Vol. 37, no. 4 (2015) 453.

¹⁰⁰ Nijeboer, ‘The Dutch Referendum’, *European Constitutional Law Review*, Vol.1, no. 3 (2005) p. 404.

¹⁰¹ John Sap, ‘The EU constitution is dead, long live the reform treaty: No early funeral for the institutional innovations in the Constitutional Treaty after being rejected in France and the Netherlands’, *Philosophia Reformata*, Vol. 72 (2007) p. 153.

¹⁰² Sap, ‘The EU constitution is dead, long live the reform treaty’, p. 153.

¹⁰³ ‘Kabinet neemt nee tegen Grondwet over’, *NRC Handelsblad*. (No author is named.) Accessed online on 11-07-2019: <https://www.nrc.nl/nieuws/2005/06/02/kabinet-neemt-nee-tegen-grondwet-over-10525540-a1025346>

¹⁰⁴ Kamerstukken II, 2005/06, 22112, nr. 433, p. 2.

the Dutch House of Representatives was advised to aim for more pro-active parliamentary control.¹⁰⁵ Additionally, the Joint Committee Subsidiarity – mentioned in the previous chapter as established by the Dutch parliaments after the Convention’s success – had already advised the HoR twice about strengthening its role in the EU decision-making process. Many reports from many different advisory bodies had concluded, like the Van Baalen report and the Joint Committee, that the Dutch House of Representatives was doing ‘too little, too late’ about parliamentary control of EU affairs.¹⁰⁶ Less than a year after the referendum, state secretary for European Affairs Nicolaï (VVD) stated: “The increased interest for the application of the principle of subsidiarity is largely the result of the referendum on the draft Constitutional Treaty.”¹⁰⁷ The Dutch government clearly saw the solution in the role of national parliaments in scrutinizing proposed EU legislation for accordance with subsidiarity. Therefore, the Netherlands ultimately urged for more democratic control and visible debate. The Barroso Commission also adopted these priorities as part of ‘Plan D’, for more democracy, dialogue and debate.¹⁰⁸ These were pillars for the following period of negotiating the new treaty, in order to make the public feel more included in EU affairs and decision-making.

As argued in the literature review, it is clear that the solution that the Balkenende administration put to the problem of the rejected Constitutional Treaty does not fit, and that there must be other explanations for why the Dutch government focused on the role of national parliaments in the EU during the negotiations for ‘Lisbon’. One of the explanations that this thesis proposes will be put forth in the next paragraph: the simple fact that of the HoR already had all the institutional framework in place to make subsidiarity testing feasible, because the parliaments had been focused on this issue ever since they began to see their own role in a different light. The second explanation for the focus on national parliaments during the Lisbon negotiations is that the state secretary for Foreign Affairs of that time was former MP Frans Timmermans. Already during his time in the HoR, he was very vocal about the role of national parliaments. Additionally, he represented the parliament in the Convention, drafting the Constitutional Treaty. While the development of an idea is of course never a linear process, I would argue that the fact that Frans Timmermans was state secretary during the Lisbon negotiations has lifted this debate from the HoR to the governmental level.

7.2 Dutch parliaments as trailblazers in subsidiarity

Following the suggestions of its MPs in the joint debate on the Convention in 2003, the Dutch House of Representatives and Senate had installed a temporary Joint Committee Subsidiarity. This committee

¹⁰⁵ Van Keulen, ‘Getting a grip on Europe’, p. 289.

¹⁰⁶ Marisa Gerards, *Parlement aan zet. Voorstellen ter versterking van de parlementaire betrokkenheid bij Europa* (2006) p. 6.

¹⁰⁷ Kamerstukken II, 2005/06, 22112, nr. 433, p. 2. Quote translated from Dutch: “*De toegenomen belangstelling voor de toepassing van subsidiariteit vloeit in belangrijke mate voort uit het referendum over het ontwerp Grondwettelijk Verdrag.*”

¹⁰⁸ Adam Cygan, ‘National parliaments as guardians of the principle of subsidiarity’ in: Adam Lazowski, *Research Handbook on EU Institutional Law* (2016) p. 120.

had already in 2003 begun to research the possibility of a structured subsidiarity test and the best way to implement such a test, because the conclusions of the Convention and the negotiations of the draft Constitutional Treaty both pointed to the fact that national parliaments would gain the powers to perform a subsidiarity check. After the referendum and the failure of the draft Constitutional Treaty, however, this temporary Joint Committee did not stop its work. Both Dutch parliamentary chambers assumed that strengthening the role of national parliaments would also be a part of the next step in EU integration. This was assumed largely because the government stressed the importance of increasing visibility of decision-making to Dutch citizens, and national parliaments were simply more salient to Dutch voters than the European Parliament. Confirming this, State secretary Nicolai wrote in a letter to the HoR that the government wished to ‘promote careful assessment of subsidiarity and proportionality of proposed EU legislation’, in the form of a subsidiarity check performed by national parliaments.¹⁰⁹

Following the advice of the temporary Joint Committee, parliament created an subsequent permanent Joint Committee Subsidiarity in April 2007.¹¹⁰ This committee designed a subsidiarity test for the Dutch parliamentary chambers, which entailed a detailed advice to the HoR and Senate about the precise specification of such a test and the results of a questionnaire that had been sent to the other EU national parliaments. The House also obligated the Dutch government to send explanatory notes on important dossiers earlier and initiated structural cooperation with other European parliaments.¹¹¹ This new ‘Europe method’ additionally included designating administrative support especially to subsidiarity testing.¹¹²

As we know from the introduction of this thesis, the Dutch government heavily prioritized the role of national parliaments as ‘subsidiarity checkers’ in the negotiations of this treaty. In the Dutch House of Representatives, however, the debate surrounding the ratification of the Lisbon Treaty was dominated by the question which role the Dutch parliaments themselves should play in the EU, after approval of the new treaty.¹¹³ During the debate on the approval of the Lisbon Treaty in the Dutch House of Representatives in June 2008, two amendments were introduced that were vital in the discussion about the democratic deficit and the role of national parliaments.

The first was almost a culmination of all preparatory work and advices on democracy that the Dutch House of Representatives had gathered in the previous years. In the amendment submitted by five MPs from the opposition¹¹⁴, a scrutiny reserve for Dutch officials in the Council was proposed. This scrutiny reserve meant that the government representative could not act or make a decision in the

¹⁰⁹ Kamerstukken II, 2005/06, 22112, nr. 433, p. 2.

¹¹⁰ Kamerstukken I/II, 2006/07, 30953, nr. 3.

¹¹¹ Miklin, ‘Beyond subsidiarity’, p. 377.

¹¹² Van Keulen, ‘Getting a grip on Europe’, p. 288.

¹¹³ Besselink and Van Mourik, ‘The Roles of the National Parliament and the European Parliament in EU Decision-Making’, p. 307.

¹¹⁴ MPs Ten Broeke (VVD), Van der Staaij (SGP), Van Bommel (SP), Peters (GroenLinks), Ouweland (PvdD), Verdonk (independent MP, former VVD). Kamerstukken II, 2007/08, 31384 (R1850), nr 14.

Council, until both chambers finished scrutinizing the proposals. It would effectively make the Dutch House of Representatives as powerful over their government officials as the Danish parliament is over theirs. Eventually, after much debate, a compromise was reached on this amendment between the opposition in the House and State secretary Timmermans. Ultimately, the compromise meant that only proposals with ‘special political significance’ in parliament were subjected to a parliamentary scrutiny reserve in Brussels. The Dutch government would keep parliament duly up to date on these kinds of politically sensitive proposals, and after four weeks of scrutiny reservation, parliament and government would consult again.¹¹⁵

Additionally, the Dutch government asked the HoR to vote for an adjustment: the consent requirement, installed after the Maastricht Treaty to help fill the democratic gap where co-decision was lacking, would be abolished. The reasoning behind this was that since the Lisbon Treaty granted almost full co-decision to the European Parliament, it would be overdoing it to also ask the national parliament to consent.¹¹⁶ Although not all MPs readily agreed to this, because it would still mean the loss of a tool for parliamentary control for the HoR, eventually the coalition parties sided with the government and the consent requirement was abolished in all cases where the European Parliament had co-decision powers.¹¹⁷

Eventually the Lisbon Treaty was negotiated and ratified in 2007, and caused a significant increase in the powers of national parliaments.¹¹⁸ It has often been called ‘the Treaty of the Parliaments’, because the European Parliament gained influence, and the national parliaments were designated a more important role with the so-called ‘yellow card system’ – a procedure which had already been included in the draft Constitutional Treaty, and allowed national parliaments to force a review of draft EU legislation on the basis of the principle of subsidiarity. It would also expand this oversight role by means of a stronger ‘orange card’ procedure, which in specific circumstances offered the chance to reject legislative proposals in their entirety. This procedure for the Dutch parliaments was in fact an institutionalisation of the already developed practice of subsidiarity testing by the HoR, and was thus relatively easy for the parliaments to transpose into practice. Although the Dutch House of Representatives lost a large portion of its consent powers for binding decisions in the Council, it gained a scrutiny reserve on issues of ‘particular political interest’ to parties.

Conclusions

¹¹⁵ Besselink and Van Mourik, ‘The Roles of the National Parliament and the European Parliament in EU Decision-Making’, p. 313.

¹¹⁶ Besselink and Van Mourik, ‘The Roles of the National Parliament and the European Parliament in EU Decision-Making’, p. 314. & Handelingen II, 2007/08, 31384, nr. 92, pp. 6563.

¹¹⁷ It would only be preserved in the area of Title V of the consolidated version of the new Treaty on the functioning of the EU, since the European Parliament has no co-decision powers in this area.

¹¹⁸ Jean-Claude Piris, *The Lisbon Treaty: A Legal and Political Analysis*, (2010) p. 125.

The conclusions to this thesis aim to explain why the Balkenende administration put their efforts into enhancing the role of national parliaments in the EU during the Lisbon negotiations, by illustrating how the debate about national parliaments in the EU developed in the Dutch House of Representatives and what the Dutch government and parliaments wished to solve exactly with their focus on national parliaments. The conclusions will first discuss chronologically how the debate in the HoR developed, as the first sub-question of this thesis, tracing back the engagement of the HoR with the role of national parliaments and subsidiarity from Maastricht to Lisbon. During the analysis of these developments, the first part of why Dutch government became focused on the role of national parliaments during the Lisbon negotiations will become clear. In the second part, the conclusions will present the main debate in the Dutch House of Representatives about the democratic deficit relating to national parliaments: what exactly had both government and parliament envisioned to solve? Lastly, the conclusions will discuss the implications of this thesis and recommendations for future research.

Concerning the Dutch position on the role of national parliaments

To build an explanation for the negotiating position of the Dutch parliament during ‘Lisbon’, this thesis traced the development of the debate about the role of national parliaments in the HoR from Maastricht to Lisbon, as the first sub-question. In this paragraph follows a short summary of the most influential changes in this debate.

During the Maastricht debates in the HoR, we saw that the parliament slowly started to shift from a very pro-integrationist to more intergovernmental position, because of a meagre reception of their quite federally oriented non-paper in 1991. This caused the parliament to be critical about their own role for the first time in the lead-up to the Amsterdam Treaty. The HoR had a relatively young EU affairs committee and had until then mostly been waiting for the European Parliament to gain momentum. We also saw that the government encouraged the parliament to debate the ratification of the Treaty more active, something that – the government was happy to see – the parliament indeed did for the Amsterdam Treaty. By amending the ratifying act of the Treaty of Maastricht to ensure that the government needed parliamentary consent for binding decision in the policy area of justice and home affairs, the HoR tried to balance the missing co-decision powers of the European Parliament. However, in practice this has largely resulted in the government more actively informing the HoR about negotiations in these areas. In itself, this was a positive development, but the parliament could have gained more from this mechanism.

During the Amsterdam negotiations, Van Mierlo’s letter declared that several member states were pressing for an enhanced role of national parliaments in applying the principle of subsidiarity. The Dutch government, however, did not prioritise the role of national parliaments during the Amsterdam negotiations. On the one hand, because the Netherlands was chairing as well as negotiating, they were preserving a precarious balance between shrewd negotiator and the image of

honest presidency. On the other hand, there were simply more pressing matters on the table at the time and the Dutch government had set other priorities. Already after the Treaty of Amsterdam, national parliaments were supposed to receive information on new Commission proposals within six weeks, but in reality the information flow was still inconsistent and lacking. Additionally, the information still came only from the government, thus preserving the government's information monopoly. The information flow seemed solved on paper, but it was in practice not yet sufficient to eliminate the imbalance.

During the Nice negotiations in the years 2000-2001, it became apparent that the priority of the Dutch government was the functionality and efficiency of the EU, because of the pending enlargement, but not the role of national parliaments or increasing democracy. The HoR, by voice of the more federalist parties PvdA and D66, reminded the government multiple times that the democratic condition of the EU left something to be desired. Especially MPs Timmermans (PvdA) and Scheltema-De Nie (D66) were actively reminding the government of the potential role that national parliaments could play in solving the democratic deficit. Since Timmermans went on to become the responsible state secretary for European Affairs in the 'Lisbon' negotiations, there is a clear connection between his interest in the topic as a MP and as a state secretary and negotiator. After the Van Baalen report, the Permanent Representative of the Dutch parliament in Brussels was established to gain independence from government information. Additionally, the HoR became more aware of the impact of European legislation on domestic policy-making and legislation and wanted to increase its clout in decision-making on the European level, rather than focusing solely on the domestic level.

During the Convention, the idea of national parliaments as the 'guardians of subsidiarity'¹¹⁹ really developed. In the international environment of the preparatory Convention meetings, and the subsequent COSAC discussions, the role of national parliaments was much discussed, and was eventually considered to be vital in solving the democratic legitimacy problem of the EU. The Dutch MPs adopted this idea, giving voice and body to their own debates about the issue. After the devastating 'no' vote of the 2005 referendum, however, optimism gave way to caution in the public debate, even though the permanent Joint Committee Subsidiarity was silently replaced the temporary Joint Committee Subsidiarity. The Dutch House of Representatives clearly believed that their efforts to create a subsidiarity check for national parliaments would not be in vain but that this Early Warning Mechanism would definitely be adopted into the next treaty. This efforts resulted in an extensive administrative preparation of subsidiarity scrutiny by 2006, which paved the way for the formal introduction of the mechanism in the Lisbon Treaty.

¹¹⁹ Phrase coined by Adam Cygan, 'National parliaments as guardians of the principle of subsidiarity' (2016).

Concerning the dimensions of the democratic deficit

MPs in the Dutch House of Representatives clearly felt that the democratic deficit was the result of the disparity between efficient majority voting in the Council and proper parliamentary oversight. Most Dutch MPs felt that decision-making in the Council should always be paired with parliamentary oversight, either by the European Parliament or by national parliaments. The discussion about democracy in the EU in the HoR was therefore essentially about the introduction of qualified majority voting in the Council, without proper parliamentary control from a corresponding parliamentary body: the European Parliament was not granted co-decision in each policy area where the Council was voting with a qualified majority. This created a democratic gap, wherein EU legislation was not formally supported by democratic representation. This is the ‘European dimension’ of the debate about democracy in the EU.

Additionally, the transition to qualified majority voting in the Council meant that member states had to forfeit their veto powers on many issues, which – although making EU decision-making more efficient – created a democratic fallacy in their domestic structures of governance, because it made parliamentary oversight more difficult in national parliaments. The Dutch constitutional system is largely based on ministerial responsibility. However, the accountability of ministers in the Council was severely diminished because of the loss of veto powers in the Council.¹²⁰ Government officials were harder to scrutinize, because of growing majority voting in the Council. It became easier for a government representative to ‘hide’ behind a majority: they could argue that they had nothing to do with a certain decision, because they had no veto power. Additionally, national parliaments were experiencing a lack of information, which made their job of scrutinizing their government’s position in the Council even harder. It made national parliaments dependent on their governments for information, which per definition hinders proper parliamentary control. Both the possibility to hide behind other member states due to the loss of veto powers, and the information deficit in national parliaments undermined the possibilities for parliamentary oversight, and thus widened the democratic gap. With each step of EU integration, it grew more difficult for national parliaments to question and control their government representatives in the European Council. This represents the ‘domestic dimension’ of the democracy debate.

Above, I have identified two dimensions that characterize the debate in the Dutch House of Representatives about the EU’s democratic deficit after the Maastricht Treaty. On the EU level, the imbalance between majority decision-making in the Council and proper parliamentary oversight by means of co-decision in the European Parliament constitutes the European dimension of the democratic deficit. On the domestic level, a loss of veto power and a lack of information made it more difficult for the HoR to scrutinize the government’s position in the Council. Thus, there is a ‘European dimension’, in which MPs wished to adjust decision-making to restore the right balance of powers so

¹²⁰ Tans, Zoethout and Peters, *National Parliaments and European Democracy*, p. 177.

that citizens would be more directly represented in EU decision-making. Secondly, there was a ‘domestic dimension’, in which the HoR wished for sufficient information and a different position in the EU legislative process to ensure that they can hold their governments accountable. These two dimensions, the ‘European dimension’ and the ‘domestic dimension’ constitute the democratic deficit in the eyes of the Dutch House of Representatives. Thus it answers the second sub-question of the thesis, by clarifying that the Dutch House of Representatives and the Dutch government shifted their aim from wanting to resolve the ‘domestic dimension’, to a larger focus on the ‘European dimension’ of the democratic deficit. They tried to do so by balancing the European Parliament’s democratic mandate by creating a similar mandate for national parliaments on the EU level, through subsidiarity scrutiny. Whether this was successful is for future research to establish.

Implications and recommendations

This thesis contributed to the academic debate about the democratic deficit, by discerning the two dimensions of the democratic deficit that the Dutch government and parliament wished to solve. When taking these two different dimensions into account when explaining the position of the Balkenende administration during the Lisbon negotiations, the intergovernmental position of the Dutch government is clear. Two underlying reasons for this negotiating position are the presence of the right institutional structure in the HoR to focus on subsidiarity testing for national parliaments, and the strong voice of one of the earliest defenders of national parliaments in the Dutch parliament, Frans Timmermans. The position was thus partly deviated from a changing perspective on European integration. A parallel can be drawn between the quick change from a federalist to an intergovernmental stance in 1992, because of the shock of the bad reception of the Dutch non-paper in 1991, and the switch the Dutch parliament and government made in their view on the Constitutional Treaty after the negative referendum result in 2005.

It can be argued that more direct influence on EU legislative processes is the way forward, in an ever-closer Union. As mentioned in the literature review, there is a growing group among academics that hold the view that the Danish system – once a beacon of parliamentary control over their government officials – is not as effective as it used to be, because of the way EU decision-making has changed. In that case, the Dutch parliament – as early adapters of this idea – might provide an example for national parliaments across the EU, especially to the Scandinavian parliaments. Since they, as mentioned in the literature review of this thesis, have been most focused on controlling government officials, having ‘given up’ on direct influence in the EU.

Ultimately, with regards to the question *why* the Dutch government bet on subsidiarity scrutiny in the Lisbon negotiations, following the conclusions above the reasons for this are twofold. In the first place, the administrative set-up was already in place thanks to the proactive attitude of the HoR and Senate. The organization of a joint parliamentary meeting about the negotiations in the

Convention, and the subsequent establishment of the Joint Committees Subsidiarity, gave way to a concerted effort to create a functional subsidiarity check. Secondly, one of the main champions of the subsidiarity test and of a larger role for national parliaments in the HoR was Frans Timmermans, then Member of Parliament for the PvdA – later State secretary of Foreign Affairs under the first Balkenende cabinet. He was the representative MP to the Convention in 2002-2003, and he was very active in the parliamentary debates on the topic in the following years. He was also in favour of a referendum on the draft Constitutional Treaty, because he felt it was important to keep citizens on board and represent their wishes in the new European treaty. It makes sense, then, that he maintained these views when he took office as State Secretary of Foreign Affairs in 2007. His portfolio included the negotiations on the Treaty of Lisbon and therefore he was prominent in these negotiations.

Further research could be executed about how this same debate developed in other national parliaments in the EU, to put the findings of this research in an international perspective, allowing more insight in the development and agency of the role of national parliaments in the EU.

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