

# Parliamentary scrutiny

Its shortcomings as illustrated by the Dutch example

Montesquieu Instituut

Masterclass 'Behind the Scenes of the EU'

Date: 9 June 2008

## TABLE OF CONTENTS

I.	Introduction . . . . .	3
II.	Parliamentary scrutiny defined . . . . .	4
III.	The current workings of Parliamentary scrutiny . . . . .	6
IV.	The Lisbon Treaty to the rescue? . . . . .	12
V.	Conclusion . . . . .	15
	References . . . . .	17

## Chapter I

# Introduction

The national parliaments of the member states of the European Union have been losing power ever since the Treaty of Rome initiated the process of European integration in 1957 (Holzhacker, 2002). This eroding of power can be ascribed to three developments.

First, through the subsequent European treaties, a widening of the area covered by legislative action from the European Union took place. Originally, the European Economic Community's (EEC) responsibility consisted solely of economical and trade related matters. Over time, these policy areas have been added to by areas such as agriculture, education, health, environment, justice, and security. This increase in EU competencies de facto transferred power away from the national parliaments. Gérard Laprat discerns two types of transfers: a transfer of national competencies to Community competencies, and a transfer of national competencies to Union competencies (Laprat, 1995). What separates these two types of transfers is the involvement of the communautaire method of decision making. In the case of Community competencies, legislation comes into being through collaboration by all three communautaire institutions: the European Commission, the Council of Ministers, and the European Parliament. Only one of these communautaire institutions, the Council of Ministers, is involved in the case of Union competencies.

The second development causing national parliaments to lose power is closely related to the above mentioned widening of European Union competencies. Due to various instances of national and Community case law, European Union legislation acquired primacy over domestic law. Being originally the main legislative powers within the European Union member states, national parliaments saw their traditional role diminished (Holzhacker, 2006; Laprat, 1995).

The gradually increasing budget of the European Union forms the final development. Although still small in comparison to the Community gross national product, it is of great

significance for those member states that receive extensive transfers from the European structural funds. Control over the national budget has traditionally been, and still is, one of the most powerful instruments of national parliaments. However, national parliaments now find themselves confronted with an external budget they cannot directly control (Laprat, 1995).

As signified by the above mentioned developments, national parliaments have indeed been losing power - the ability to exercise control and influence over the process of governmental decision making; parliamentary scrutiny – due to the project of European integration. Now, the member states of the European Union hope to correct this situation by means of the new Lisbon Treaty.

Using the Dutch national Parliament as an example, this paper will argue that the instruments national parliaments have at their disposal to exercise scrutiny over the process of government decision-making in the European dimension, including those from the new Lisbon Treaty, can be classified as meagre. For the purpose of this argument, this study will analyse the current workings of parliamentary scrutiny in the Netherlands. As the Lisbon Treaty has not yet been ratified by all member states of the European Union, the provisions from that treaty will be analysed separately.

Therefore, the outline of this study will be as follows. The chapter following this introduction will give an explanation of the term parliamentary scrutiny. What is parliamentary scrutiny, and what is its significance with regard to the process of European decision-making? After that, an analysis of the current workings of parliamentary scrutiny in the Netherlands will take place in chapter III. Chapter IV will continue where the previous chapter left of, namely the Lisbon Treaty. What additional provisions does this new treaty bring the national parliaments, and does it improve their abilities to practice parliamentary scrutiny in the European dimension? Finally, chapter V will host the concluding remarks.

In addition to this outline some last remarks must be made. Since the European Council rarely decides on legislative issues, the focus will be on the process of parliamentary scrutiny involving the Council of Ministers. Furthermore, when speaking of parliamentary

scrutiny in this paper, scrutiny by national parliaments is meant. If used in a broader perspective, for instance including the European Parliament, this will be mentioned explicitly. Next to that, this study focusses solely on the Dutch Lower House because of its political primacy in the Dutch bicameral political order. Therefore the denomination 'Parliament' used throughout this paper points at the Dutch Lower House, or Second Chamber. The Dutch Senate, or First Chamber, will be left out of the equation. Finally, some boundaries have been set on the process of parliamentary scrutiny in the European dimension. The starting point of this process is defined as the moment at which the European Commission issues its white paper. Parliament's optional actions with regard to the ministerial reports following a meeting of the Council of Ministers counts as the end of the period of study.

## Chapter II

### **Parliamentary scrutiny defined**

Since the central argumentation of this study evolves around the term parliamentary scrutiny, it seems appropriate to provide a definition thereof. According to Ronald Holzacker, parliamentary scrutiny can be defined as the exercise of power by the legislative branch to control, influence, or monitor government decision-making (Holzacker, 2006).

This definition calls for some explanation. The practice of parliamentary scrutiny can be traced back to the principle of the Separation of Powers, or Trias Politica. This theory, coined by the French political Enlightenment thinker Baron de Montesquieu (1689-1755), provides in a triple division of state power: the executive, the legislative, and the judicial power. These three respective mandates were to fall upon the monarch, the parliament, and the courts of law. Montesquieu formulated his theory as an attempt to rule out the possibility of despotic rule by possible power hungry monarchs. As history took its course, modern day democracies embraced Montesquieu's theory in large numbers, and simply replaced the element of 'monarch' with 'government' (McKay, Hill, & Buckler, 2003; [www.parlement.com](http://www.parlement.com)).

In a political order shaped after the aforementioned theory, what role does Parliament take on? According to Bovend'Eert and Kummeling, Parliament's role consists of enacting laws and holding the executives responsible for government decision-making and the subsequent policy output (Bovend'Eert & Kummeling, 2004). As the earlier definition by Holzacker seems to add up to the second part of this description, it can therefore be concluded that parliamentary scrutiny belongs to Parliament's core business.

In representative democracies, parliamentary scrutiny has an all important function to fulfil. Because of its composition through general elections, Parliament can provide the process of Government decision-making with democratic legitimacy. As a result of this mandate acquired by these elections, Parliament can act as representative of the people when it practices scrutiny over Government policy (Bovend'Eert & Kummeling, 2004). This way, the threat of Government despotism can be neutralised and Montesquieu can rest assured.

These same principles of parliamentary scrutiny can be applied to government decision-making in the European dimension. National parliaments therefore make use of exactly the same instruments they would use while practicing scrutiny in the domestic situation (Kiiver, 2006; 2007).

Now that the concept of parliamentary scrutiny is defined, the following chapters will give an overview and subsequent analysis of its current and near future functioning in the Netherlands.

## Chapter III

### **The current workings of parliamentary scrutiny**

This third chapter will explore the current workings of parliamentary scrutiny in the European dimension as practiced in the Netherlands. Previous to an analysis of the various elements, the theoretical possibilities are described.

*Current process of parliamentary scrutiny*

Information is the foremost requisite for any parliament to be able to practice parliamentary scrutiny to a satisfactory level (Van den Brink, 2004). If a national parliament finds itself devoid of a clear overview of the state of affairs surrounding a certain issue, it will not be able to form an opinion, and will thus be left out of the decision making process (Bovernd'eert, 2006; Pappas, 1995). With regard to parliamentary scrutiny in the European dimension, how does the Dutch Parliament obtain all relevant information?

In this study, the moment at which the European Commission issues a white paper is seen as the start of the process of parliamentary scrutiny. Naturally, obtaining this white paper is the first step parliaments have to take in order to become informed. The Dutch Parliament can call on two ways of provision. First and foremost, through its Article 68 the Dutch Constitution grants Parliament the right to be informed: "Ministers and State Secretaries shall provide orally or in writing the Chambers either separately or in joint session, with any information requested by one or more members, provided that the provision of such information does not conflict with the interests of the State." (Dutch Constitution, 2006). According to this provision, Parliament has but to ask its Government for the required white paper. In addition to this national provision, the European treaties provide Parliament with an extra option. In the Protocol on the role of national parliaments in the European Union attached to the Treaty of Amsterdam, a similar right to be informed is formulated: "All Commission consultation documents (green and white papers and communications) shall be promptly forwarded to national parliaments of the Member States." (Treaty of Amsterdam, Protocol No. 9, 1997). Either way, it can safely be assumed that the Dutch Parliament will be able to obtain any white paper with relative ease.

Since 1991 white papers come to the Dutch Parliament accompanied by a so-called BNC-fiche (Del Grosso, 2000). Upon receiving a white paper from the European Commission, the Dutch Government determines the importance of the concerning legislative proposal through the workings of the interdepartmental working group Beoordeling Nieuwe

Commissievoorstellen (New Commission proposal Evaluation Committee, BNC). If a proposal is considered of substantial importance, this working group then formulates a so-called BNC-fiche in which it presents its judgement on the principles of subsidiarity and proportionality with regard to the proposal. Furthermore, the BNC-fiche gives an overview of the specific Dutch interests involved, and the legal and financial consequences that this future law may have. In short, the BNC-fiche presents the preliminary position the Dutch Government will take in the relevant Council of Ministers.

At this point the Dutch Parliament will want to form its own opinion on the received white paper. Do the conclusions and the subsequent preliminary Government position on the white paper as presented in the BNC-fiche seem valid? To this end Parliament needs to be able to conduct its own fact-finding procedure. Again Parliament has several options available. As in previous case, the Dutch Constitution provides the tools necessary for the job. Through the *Reglement van Orde van de Tweede Kamer* (Rules of Procedure of the Second Chamber of the Dutch Parliament, RvOTK), Parliament can make use of the following instruments: pose oral and written questions to ministers, ask ministers for additional documentation, call hearings, undertake working visits to the European institutions and other national parliaments, and hire the services of external experts to complement the information from BNC-fiches (Article 27, RvOTK, 2006).

These Constitutional allocated instruments are further reinforced by two other means of input. As of 2006, the Dutch Parliament has its own permanent representative within the European institutions. Through this 'man on the spot' Parliament is kept in the loop of all developments in the European legislative area (WWR, 2007). In addition to this, the various political parties in the Dutch Parliament can approach 'their' members of the European Parliament in order to receive inside-information on the process of European legislation (Kiiver, 2007).

Evidently the Dutch Parliament is more than capable of providing itself with access to relevant knowledge. Enriched by enough information to critically examine the contents of any BNC-fiche, Parliament is ready to start scrutinising. It does so through the workings of



various permanent parliamentary commissions. Within Parliament every policy area has its own commission that deals with the European Commission proposals and accompanying BNC-fiches relevant to its particular working terrain. These commissions may make use of the aforementioned provisions from the RvOTK in order to form positions vis-à-vis BNC-fiches, and ultimately on the white papers themselves. In this task they are supported by the Permanent Parliamentary Commission for European Affairs (PPCEA) which functions as the co-ordinating body. Very much like a traffic controller, this PPCEA makes sure that white papers and BNC-fiches are received by the right policy area commissions. Furthermore, it initiates cross-sectoral co-operation by bringing commissions together if a certain white paper involves multiple policy areas (Del Grosso, 2000).

The monthly meetings of the Council of Ministers provide Parliament with a window of opportunities in which it can actively practice scrutiny. As a rule, the European Affairs Commission organises a series of subsequent meetings on the Thursday preceding a Council assembly. This series of meetings is called the Europa-overleg. In these meetings, Parliament is represented by its European Affairs Commission and all relevant sectoral commissions, while the Government is represented by its relevant ministers and secretaries of state. Subject of debate are the annotated agenda's of the upcoming Councils through which the Government communicates its intended position on certain white papers. During this debate Parliament has the possibility to suggest changes in that intended Dutch position. While an agreement between Parliament and the Government is most desirable, in case of conflicting opinions the Government has the formal right to choose to ignore Parliament's suggestions (Del Grosso, 2000), in which case Parliament is left with a single last option. If Parliament considers a subject of the utmost importance and disagrees with the Government on fundamental grounds, it can call for a plenary debate in which it can adopt a resolution. It must be noted however that this resolution still has no binding consequences for the minister in question (Del Grosso, 2000).

The second part of this window of opportunities that the monthly meetings of the Council of Ministers provide Parliament with, is the ministerial report which is issued

afterwards, orally and in writing. Through these reports Parliament can control the minister's actions during the negotiations in the Council meeting. In case Parliament is unsatisfied with the minister's performance, it can proceed to place sanctions on this minister. Ultimately this can end in Parliament moving to a vote of no confidence against the concerning minister (Del Grosso, 2000).

Although the above described process of scrutiny is representative of the greater part of all cases, there is however one exception. In the policy areas falling under the third pillar of the European Union structure, Police and Judicial Co-operation in Criminal Matters (PJCC), the so-called assent procedure is in place. This procedure entails that the Government can not take part in Council negotiations before Parliament has expressed its opinion on the concerning legislative proposals. In order to prevent the process of European legislation to be stalled, Parliament only has fifteen days in which it must come to an opinion. After this period of fifteen days, the Government is free to act regardless of whether Parliament actually issued an opinion (Article 3, Rijkswet ter goedkeuring van het Verdrag van Maastricht, 1992).

### *Analysis*

Now that the current workings of parliamentary scrutiny as practiced by the Dutch national Parliament have been described, the time has come to analyse this process as to be able to verify whether it functions to a satisfactory level. In this analysis, the three elements of Holzacker's definition will function as guidelines.

Is the Dutch Parliament capable of monitoring its Government's decision-making process in the European dimension? To this end, Parliament must be able to know its Government's stance and subsequent actions regarding a particular Commission proposal. In this regard easy accessible information is the key. As shown, the Dutch Parliament has multiple ways of obtaining relevant information. Through the earlier mentioned BNC-fiches Parliament gets notified about the preliminary position of its Government concerning a certain Commission proposal. This position is again communicated through the annotated

agenda provided for by the Government prior to a Council of Ministers meeting. At this point Parliament's view on its Government's position towards a Commission proposal may get hazy. As explained, a round of negotiations between Parliament and the Government takes place in the week preceding the actual Council assembly. When consensus about a definite Dutch position towards a certain Commission proposal is reached, Parliament will have knowledge of its outlook. However in the event of conflicting opinions, the Government is free to ignore Parliament's suggestions and directions (Del Grosso, 2000). When this happens Parliament will have no definite knowledge of what position its Government will take in the upcoming Council negotiations. Under any other circumstances it would be expected that the position taken by the Government will become clear through observation of the concerning meeting. Alas, as the Council of Ministers holds session behind closed doors, Parliament has no way of monitoring the position nor the subsequent actions of its Government (Kiiver, 2006). It is through the ministerial report issued by the Government afterwards that Parliament is brought up to speed. To a certain extent that is. As a result of the fact that Council meetings take place behind closed doors, no report in the form of minutes is made public afterwards (Kiiver, 2006). This lack of written factual records impedes Parliament's ability to monitor its Government's actions independently. Recalling Montesquieu's principle of Trias Politica, this is not to be desired.

Unfortunately the shortcomings of Parliament's ability to monitor its Government's stance and actions regarding a particular Commission proposal do not stop there. The annotated agenda of the Council of Ministers mentioned above does not provide Parliament with a complete picture of the decision-making process. As it turns out, most negotiations regarding Commission proposals for legislation take place at the lower European administrative level of the Committee of Permanent Representatives (Coreper). When consensus on a particular Commission proposal is reached at this level, it will appear on the annotated agenda as a so-called A point. This then indicates that no further discussion is needed in the Council of Ministers meeting, and that only a formal approval is required (Del Grosso, 2000). Because of the fact that consensus is already reached, Parliament is not

informed on the substance of these A points. Of course Parliament can insist on being informed, but since it misses the required overview of this decision-making process due to a lack of transparency, Parliament would not know when or what to ask (Kiiver, 2006). This thus indicates that any proposal which reached consensus during the Coreper meetings, will not even be touched by Parliament. The previous description of parliamentary scrutiny therefore only concerns disputable topics; the so-called B points (Del Grosso, 2000). It is these B points that form the subject of discussion during the earlier mentioned Europa-overleg.

When the matter of the closed-doors policy of the Council of Ministers and the matter of the A points are considered together, it can be concluded that the practice of monitoring the Government's decision-making process in the European dimension by the Dutch Parliament is anything but watertight.

The second element to be considered is the ability of the Dutch Parliament to influence its Government's decision-making process in the European dimension. Two conditions must be met for Parliament to be able to influence its Government's stance and actions towards a particular Commission proposal. First, Parliament must have knowledge of the Government's intended position on a certain Commission proposal. As told, Parliament is provided with this information through the relevant BNC-fiche and the annotated agenda of the upcoming assembly of the Council of Ministers. The second condition consists of Parliament's ability to form its own opinion on the concerning Commission proposal. To this end, Parliament must be able to conduct its own fact-finding mission. This is where Article 27 of the RvOTK comes into play.

For any form of influence to be successful, some sort of leverage is needed. In this case Parliament can make use of the principle of ministerial accountability (De Grosso, 2000; Kiiver, 2006). This may work as follows. Parliament can only influence the Government by making suggestions during the Europa-overleg prior to a Council of Ministers assembly. Unfortunately for Parliament, the Government has the formal right to ignore these suggestions (Del Grosso, 2000). The same goes for any resolution Parliament may choose

to adopt in order to persuade the Government (Del Grosso, 2000). However if Parliament were to hint at the possibility of sanctions afterwards, the Government might want to reconsider its position. This way, the ex post instrument of ministerial accountability can be applied as an ex ante instrument (Kiiver, 2007). Although this may seem as a perfect way for Parliament to influence its Government's decision-making process in the European dimension, it does not always guarantee the desired outcome.

The fact that the minister representing the Dutch Government is only one out of twenty-seven members attending a Council of Ministers meeting, may reduce the value of influencing that single minister. This depends on the decision-making procedure used in the concerning Council of Ministers meeting. When a Council decision requires unanimity, the vote of one of the attending ministers makes all the difference since every participant de facto has the availability over a veto. In this situation Parliament can hold its Government accountable if the outcome is undesirable and the concerning minister failed to use his or her veto (Del Grosso, 2000). In case where a Council decision is reached by a qualified majority vote (QMV), the Dutch participant is just one out of twenty-seven votes, and can therefore be outvoted. When this happens Parliament cannot hold its Government accountable for not reaching the desired outcome (Kiiver, 2006 & 2007).

Judging from this analysis, two conclusions can be reached. First, by using the principle of ministerial accountability as an ex ante instrument, Parliament can indeed influence its Government's stance and actions towards a particular Commission proposal. Second, this does however not automatically mean that Parliament can influence the final outcome of the legislative process. Depending on the procedure of decision-making used in the Council of Ministers, this influence may be considerable or almost negligible.

The final element of Holz hacker's definition to be analysed is the ability of the Dutch Parliament to control its Government's decision-making process in the European dimension. Due to the fact that the Council of Ministers meetings take place behind closed doors, and the fact that no minutes are made public afterwards, Parliament is completely dependent on the ministerial report (Del Grosso, 2000). Since Parliament has no means to check the

validity of this report, independent and objective examination of the minister's actions cannot take place. The fact that no sanctions have ever been placed on a minister as a result of his or her performance during the Council of Ministers meetings, illustrates Parliament's inability to control this process of decision-making in the European dimension (Del Grosso, 2000).

Summarising this analysis of the current workings of parliamentary scrutiny in the European dimension as practiced by the Dutch Parliament, the following can be noticed. First, the mechanism of controlling Government's actions is sound. However, Parliament's ability to monitor its Government's decision-making process suffers heavily from the lack of transparency regarding the decisions reached at the level of Coreper. This in turn dilutes the workings of the controlling mechanism which otherwise would function just right. Second, through the principle of ministerial accountability Parliament has the possibility of influencing its Government's actions in the Council of Ministers. However, as the proceedings of the Council of Ministers remain unknown, the leverage derived from the possibility to control and if desirable issue sanctions afterwards is seriously weakened.

These findings lead to the inevitable conclusion that the workings of parliamentary scrutiny in the European dimension as practiced by the Dutch Parliament are fit for improvements. Whether the Lisbon Treaty is able to provide in those much needed improvements will become clear in the next chapter.

## Chapter IV

### **The Lisbon Treaty to the rescue?**

As shown in the previous chapter, the Dutch Parliament's abilities to practice scrutiny over the process of European legislation are in need of improvement. This chapter will take a look at the new Lisbon Treaty, and will determine whether it will be of any added value in this respect.

Concerning the provision of information the Lisbon Treaty provides the national parliaments with extended accessibility. Currently, the agenda's and minutes of the Council of Ministers meetings are not published openly. This means that the national parliaments are dependent upon their governments to provide them with an account of what happened during the Council negotiations (Del Grosso, 2000; Kiiver, 2006). The new Treaty will bring about change concerning this aspect: "The agendas for and the outcome of meetings of the Council, including the minutes of meetings where the Council is deliberating on draft legislative acts, shall be forwarded directly to national Parliaments, at the same time as to Member States' governments." (Art. 5, Protocol on the role of national parliaments in the European Union, Treaty of Lisbon, 2007).

Additionally, the current period of six weeks available to national parliaments in which they are supposed to examine, and form an opinion upon legislative proposals coming from the European Commission before they are forwarded to the Council of Ministers and the European Parliament, will be extended with an additional two weeks (Art. 6, Protocol on the role of national parliaments in the European Union, Treaty of Lisbon, 2007).

These above mentioned provisions notwithstanding, the additions concerning the Early Warning System (EWS) seem to attract the most attention by far. This EWS enables national parliaments to send legislative proposals back to the European Commission on the grounds of non-compliance with the principle of subsidiarity. To this end all national parliaments get allocated two votes. For member states with a bicameral system, this means that the votes will have to be shared between both parliamentary chambers. When at least one third of all the votes allocated to the national parliaments are negative on the principle of subsidiarity concerning a certain legislative proposal, the European Commission must reconsider. After that the Commission may decide to maintain, amend or withdraw its proposal (Art. 7 sub. 1 & 2, Protocol on the role of national parliaments in the European Union, Treaty of Lisbon, 2007).

Due to Dutch insistence, a second version of the EWS was admitted in the new Treaty. This EWS-plus differs from its above mentioned kin in the sense that in the event of a

simple majority of negative votes, the European Commission will have considerably more difficulty maintaining its proposal. In case the Commission chooses to maintain its proposal, the legislators of the European Union – the Council of Ministers and the European Parliament – will examine the issue of compatibility with the principle of subsidiarity, and will take an internal vote on the matter. In the event of a negative majority of 55% in either the Council of Ministers or the European Parliament, the proposal will be given no further consideration (Art. 7 sub. 3, Protocol on the role of national parliaments in the European Union, Treaty of Lisbon, 2007).

The last change the Lisbon Treaty will bring about, worth mentioning in this context, is the increased number of policy areas in which the Council of Ministers will henceforth decide by QMV. Generally speaking this will include most of the third pillar; freedom, security and justice ([www.lisbontreaty2008.ie](http://www.lisbontreaty2008.ie)).

### *Analysis*

Does the Lisbon Treaty, through the above mentioned additional provisions, provide in any tangible improvements to the abilities of the Dutch national Parliament to exercise scrutiny?

Regarding Parliament's ability to monitor the process of Government decision-making, the disclosure of the agenda's and minutes of the assemblies of the Council of Ministers fills one of the two existing information gaps. Although the problems concerning the practice of decision-making at the level of Coreper remain, it is safe to conclude that the new Lisbon Treaty greatly improves Parliament's ability to monitor its Government's decision-making process in the European dimension.

With regard to Parliament's ability to influence the process of Government decision-making in the European dimension, the Lisbon Treaty has several consequences. Due to the provision stating that the Council of Ministers will henceforth hold session in a public setting, the instrument of ministerial accountability gains in significance. Parliament will now have full knowledge of its Government's actions during the assemblies of the Council of Ministers. As already mentioned in the previous chapter, this piece of information is essential for



Parliament to be able to exercise control over its Government's actions. A well functioning controlling mechanism enables Parliament to hold the Government accountable for its deeds, and gives it the chance to place sanctions on a certain minister if this were to be desirable. Therefore, the actual leverage derived from the principle of ministerial accountability has become more potent. It can thus be concluded that the Lisbon Treaty improves Parliament's ability to influence its Government's decision-making process.

When Parliament's ability to influence the final outcome of the European legislative process is taken into consideration however, the Lisbon Treaty may turn out to be not so much of a blessing. By enlarging the scope of policy areas in which the Council of Ministers decides by QMV, the Lisbon Treaty greatly reduces the value of Parliament's improved ability to influence its Government. As explained before, any minister can now be outvoted in the Council of Ministers, regardless of its Parliament's influential ability. This means that no matter how fateful a minister follows up on Parliament's suggestions, no guarantee about the final outcome of the Council negotiations can be given.

What about Parliament's ability to control the process of Government decision-making? In this regard the provision concerning the accessibility of relevant documentation does bring real improvement. By making the meetings of the Council of Ministers more transparent, by providing Parliament with both the agenda's and minutes, the Lisbon Treaty enables the Dutch Parliament to control its minister's actions. This is important in relation to the principle of ministerial accountability. Now that Parliament can acquire objective information – the ministerial reports can not be checked on their objectivity – on the part a minister has played during a particular Council meeting, it can hold the concerning minister responsible for his or her actions.

Where does the much debated Early Warning System fits in? What improvements does it bring to Parliament's ability to monitor, influence or control its Government's decision-making process? As Kiiver rightly points out, the creation of the Early Warning System does little to give the Dutch Parliament additional possibilities to practice scrutiny in the European dimension (Kiiver, 2007). It all comes down to interparliamentary co-operation. As there are

no laws prohibiting national parliaments to work together and co-ordinate their opinions concerning Commission proposals, the Early Warning System does nothing more than formalise this possibility of interparliamentary co-operation (Kiiver, 2007).

Although this may be true, the Early Warning System with time may prove to be a valuable instrument for national parliaments to influence the outcome of the European process of legislation. By co-ordinating their opinions on a certain Commission proposal, the national parliaments can force the European Commission to see things their way. How does this work? Again, the principle of ministerial accountability proves to be at the basis. Presuming that all national parliaments are more or less capable of influencing their governments, a majority of national parliaments with regard to the Early Warning System can be translated to a majority in the Council of Ministers. It must be noted again however, that national parliaments have always had an informal version of this instrument at their disposal but failed to use it. Therefore, for the Early Warning System to have any real impact on the decision-making process, an active institutionalised interparliamentary co-operation must come into being.

Judging from the above mentioned provisions, it can be concluded that the Lisbon Treaty can be seen as a mixed blessing for national parliaments. While it improves the abilities of national parliaments to influence their Government's decision-making process in the European dimension by providing them with essential additional information, the Lisbon Treaty through the extended use of QMV simultaneously cuts back hard on the actual impact national parliaments can have on the final outcome of the European legislative process.

## Chapter V

# Conclusion

Now that the practices of parliamentary scrutiny have been explained and analysed, it is time to draw up conclusions about its workings. As shown by chapter III, the current workings of

parliamentary scrutiny as practiced in the Netherlands has some flaws in it. Regarding the ability of the Dutch Parliament to monitor its Government's decision-making process in the European dimension, it turns out that Parliament misses out on some of the most important pieces of information. Because of the fact that a large part of the negotiations concerning Commission proposals for legislation take place at the European lower administrative level of the Committee of Permanent Representatives (Coreper), Parliament only monitors the negotiating process which takes place during the Council of Ministers meetings. To add insult to injury, due to the fact that the assemblies of the Council of Ministers take place behind closed doors, Parliament again misses out on the possibility to monitor its Government's behaviour. It can therefore be concluded that Parliament is not able to monitor its Government's decision-making process in the European dimension to a satisfactory level.

Luckily for Parliament, the Lisbon Treaty will bring some change to this practice. By providing Parliament with written records of the negotiations during the Council of Ministers meetings, the new treaty enables Parliament to monitor its Government's actions during those meetings. However, the problem involving the negotiations taking place at a lower administrative level is not solved. As a result, the provisions from the Lisbon Treaty notwithstanding, Parliament's ability to monitor its Government's decision-making process in the European dimension will remain defective.

With regard to the current ability of the Dutch Parliament to influence its Government's decision-making process in the European dimension, it turns out that Parliament can indeed influence the Government's actions, but that it mostly fails to influence the final outcome of the legislative process. By using the principle of ministerial accountability as an ex ante instrument, Parliament can influence the Government's position and actions regarding Commission proposals. However, the influence upon the final outcome of the legislative process depends on the decision-making procedure used in the Council of Ministers. In case where unanimity is required, every Government de facto has the availability over a veto. Therefore by influencing its own Government, Parliament can have some real impact on the outcome. Whenever the procedure of qualified majority voting is in

use, the Government represents only one out of twenty-seven votes. No matter whether the Government follows the exact opinion of Parliament, it can always be outvoted in the Council of Ministers. If that happens, the influence of the Dutch Parliament in the final outcome of the European process of legislation is small.

Concerning the element of influence, the Lisbon Treaty is a mixed blessing. On the one hand it improves the credibility of the principle of ministerial accountability when used as an ex ante instrument to pressure the Government, but at the same time the Lisbon Treaty expands the scope of policy areas in which the Council of Ministers decide by means of QMV, thereby reducing the actual influence of Parliament upon the final outcome of the legislative process.

The much debated Early Warning System turns out to be less of a novelty as one would expect at a first glance. By promoting interparliamentary co-operation, the EWS in fact only formalises collective parliamentary performance while this has been possible all along. However, if practiced to the right extent, the EWS can provide the national parliaments with a much desired means to influence the outcome of the European legislative process. By coordinating the instructions national parliaments provide their governments with prior to a Council of Ministers assembly, even the influence diminishing effect of Qualified Majority Voting can be overcome.

Finally, the current ability of the Dutch Parliament to control its Government's decision-making process in the European dimension suffers from the same constraints as its ability to monitor that same process. Objective control of minister's actions in the Council of Ministers is impossible because of the fact that these meetings take place behind closed doors. As no minutes of these assemblies are made public, Parliament has no way of examining its Government's performance during the process of negotiations.

As already explained, the Lisbon Treaty will remediate this lack of crucial information thereby enabling the Dutch Parliament to exercise full control over its Government's actions in the Council of Ministers. Unfortunately, Parliament's inability to control the decision-making process that takes place at the European lower administrative level remains unchanged.

Using the Dutch example while investigating parliamentary scrutiny on Government decision making within the European Union, the current paper merely concludes on the current and near future level of possible parliamentary scrutiny. A following step would be to examine the desirability and possibility of a higher level of national parliamentary scrutiny on decision making within the European Union.

## References

- van den Berg, J. Th. J., Broeksteeg, J. L. W., & Verhey, L. F. M. (eds.), (2007). *Het parlement*. Nijmegen: WLP.
- Bovend'Eert, P. P. T. & Kummeling, H. R. B. M. (eds.), (2004). *Het Nederlandse Parlement*. Deventer: Kluwer.
- van den Brink, A. (ed.) (2004). *Regelgeving in Nederland ter implementatie van EU-recht* [Setting Legal Norms in the Netherlands for the Implementation of European Union Law]. Deventer: Kluwer.
- Del Grosso, N. Y. (ed.), (2000). *Nederlands parlamentsrecht, Monografie 10: Parlement en Europese integratie*. Deventer: Kluwer.
- De Wetenschappelijke Raad voor het Regeringsbeleid (eds.), (2007). *Europa in Nederland*. Amsterdam: Amsterdam University Press.
- Dinan, D. (ed.), (2005). *Ever Closer Union: An Introduction to European Integration*. Houndmills, Basingstoke, Hampshire: Palgrave MacMillan.
- Holzacker, R. L. (2002, Aug) "National Parliamentary Scrutiny in the EU: Comparing Rules, Institutions, and Party Behavior" *Paper presented at the annual meeting of the American Political Science Association, Boston Marriott Copley Place, Sheraton Boston & Hynes Convention Center, Boston, Massachusetts.*

- Holzacker, R. L. (2006). 'National Parliaments', in: Graziano, P., & Vink, M. (eds.), (2006). *Europeanization: New research agendas*. Basingstoke, Hampshire: Palgrave MacMillan.
- Graziano, P., & Vink, M. (eds.), (2006). *Europeanization: New research agendas*. Basingstoke, Hampshire: Palgrave MacMillan.
- Kiiver, P. H. (ed.), (2006). *The National Parliaments in the European Union: A Critical View on EU Constitution-Building*. The Hague: Kluwer Law International.
- Kiiver, P. H. (2007). 'Het Parlement en de Europese Unie', in: van den Berg, J. Th. J., Broeksteeg, J. L. W., & Verhey, L. F. M. (eds.), (2007). *Het parlement*. Nijmegen: WLP.
- Laprat, G. (1995). 'Parliamentary Scrutiny of Community Legislation: An Evolving Idea', in: Laursen, F. & Pappas, S. A. (eds.), (1995). *The Changing Role of Parliaments in the European Union*. Maastricht: European Institute of Public Administration.
- Laursen, F. & Pappas, S. A. (eds.), (1995). *The Changing Role of Parliaments in the European Union*. Maastricht: European Institute of Public Administration.
- McKay, J. P., Hill, B. D., & Buckler, J. (eds.), (2003). *A History of Western Society*. Boston: Houghton Mifflin Company.
- Pappas, S. A. (1995). 'Concluding Remarks: Towards a European Parliamentarian Partnership?', in: Laursen, F. & Pappas, S. A. (eds.), (1995). *The Changing Role of Parliaments in the European Union*. Maastricht: European Institute of Public Administration.
- Peters, J. A. (2007). 'Het Tweekamerstelsel in Nederland: nut en doel', in: van den Berg, J. Th. J., Broeksteeg, J. L. W., & Verhey, L. F. M. (eds.), (2007). *Het parlement*. Nijmegen: WLP.
- The Lord Norton of Louth (2007). 'National parliament in Europe: recent development', in: van den Berg, J. Th. J., Broeksteeg, J. L. W., & Verhey, L. F. M. (eds.), (2007). *Het parlement*. Nijmegen: WLP.

Wallace, H. (2005). 'An Institutional Anatomy and Five Policy Modes', in: Wallace, H., Wallace, W., & Pollack, M. A. (eds.), (2005). *Policy-Making in the European Union*. New York: Oxford University Press.

Wallace, H., Wallace, W., & Pollack, M. A. (eds.), (2005). *Policy-Making in the European Union*. New York: Oxford University Press.

### **Legal references**

'Grondwet voor het Koninkrijk der Nederlanden', in: (2006) *Kluwer College Bundel 2006-2007, Wetsteksten, II Publiekrecht*. Deventer: Kluwer.

Protocol on the Role of National Parliaments in the European Union as attached to the Treaty of Amsterdam, 1997.

Protocol on the Role of National Parliaments in the European Union as attached to the Treaty of Lisbon, 2007.

'Reglement van Orde van de Tweede Kamer der Staten-Generaal', in: (2006) *Kluwer College Bundel 2006- 2007, Wetsteksten, II Publiekrecht*. Deventer: Kluwer.

'Rijkswet ter goedkeuring van het Verdrag van Maastricht', 1992.

### **Online references**

[www.lisbontreaty2008.ie](http://www.lisbontreaty2008.ie)

[www.parlement.com](http://www.parlement.com)