

PROOF

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The Dutch Parliament and EU Affairs: Decentralizing Scrutiny

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Introduction

The Netherlands is a constitutional monarchy and a parliamentary democracy with a moderate degree of decentralization.¹ There are 12 provinces with their own regional parliaments on the European mainland and a number of overseas territories with special status.

The stronger chamber of the bicameral Staten-Generaal (national parliament) is the Tweede Kamer. In accordance with the Kieswet (electoral law), direct elections are held every four years, using a system of proportional representation with an open party list. In accordance with the Dutch Grondwet (constitution), the Eerste Kamer (Senate) is elected every four years by members of the provincial councils, also using a proportional system based on open party lists (Articles 54, 55).

Both chambers are involved in lawmaking and have budgetary powers and the right to conduct inquiries. Only the Tweede Kamer, however, has the right to initiate and amend legislation. The Eerste Kamer only meets once a week (on a Tuesday). It does not take oral questions, and written questions are used less frequently than in the Tweede Kamer (Grondwet, Chapter 5). The government is formed by royal decree, taking account of the outcome of the elections to the Tweede Kamer. Ministers cannot be or remain a member of parliament (Grondwet, Article 57).

As one of the six founding members of the European Coal and Steel Community, which later became the European Economic Community, the Netherlands has long experience of European integration. However, the 2005 'no' vote in a referendum on the European Constitutional Treaty revealed a gap between the political elites and the population (De Bruijn, 2011, p. 333). The outcome of the referendum came as a shock and led the Dutch Government to insist on the introduction of the 'orange card' to the Lisbon Treaty (De Bruijn, 2011, p. 334). It also led to a shift to a more critical stance towards the European

Union (EU) by many political parties, which, although still pro-EU, felt the need to pay closer attention to the domestic implications of EU policies.² In the Tweede Kamer, it led to the development of a *systematic* working method that emphasizes *decentralized* scrutiny in sectoral committees and of a *nuanced set* of European and national instruments (Kester and van Keulen, 2011, p. 303).

The institutional setting for parliamentary scrutiny and participation in EU affairs

Limited formal guidance

Unlike neighbouring Germany, the scrutiny of EU affairs is not the subject of detailed legal and constitutional provisions. The Dutch Constitution does not explicitly mention the EU, but articles on international treaties, such as Article 91 and Article 92, also apply to EU affairs. These state that lawmaking and juridical competences can be transferred to international organizations, but that parliamentary approval is needed for such an act. If a treaty departs from the provisions of the Grondwet, a two-thirds majority is required in each chamber before it can be ratified.

Mechanisms for parliamentary oversight of EU affairs are set out in statutory provisions, such as the law on the ratification of the Lisbon Treaty (Rijkswet, 10 July 2008). Similar laws exist for the ratification of the treaties of Maastricht, Amsterdam and Nice, although these have been partially repealed by the new law. The ratification laws, however, are generally quite short: the law on the ratification of the Maastricht Treaty (Rijkswet, 17 December 1992) contains six articles and the law on the ratification of the Lisbon Treaty contains five. Nonetheless, the law on the ratification of the Maastricht Treaty stated that the Dutch Government must seek parliamentary approval prior to a decision on justice or home affairs in the Council of Ministers (Article 3), and before agreement on the final phase of Economic and Monetary Union (Article 5). It also gave the Dutch Parliament the right to be informed about certain economic matters (Article 4). The law on the ratification of the Lisbon Treaty not only sets out the functioning of the scrutiny reserve (see below) but also largely repeals the special rights that parliament gained under previous laws in the area of justice and home affairs (Rijkswet, 10 July 2008, Articles 2–4).

The standing orders of the chambers are a third source of guidance. The standing orders of the Tweede Kamer stipulate the existence of a permanent committee for EU affairs (the European Affairs Committee, EAC) (Article 16) and contain provisions on the right of Dutch Members of the European Parliament (MEPs) to attend and participate in the meetings of the Tweede Kamer (Article 55a). However, apart from these two provisions, the standing orders are marked by their relative silence on the subject of EU affairs, implying that they are to be treated like domestic affairs in terms of procedures and working

practices and that the EAC has the same rights as any other standing committee, that is, the right to hold hearings, request information from ministers, debate with the minister concerned and organize working visits (Article 27, Article 28).

The standing orders of the Eerste Kamer make no specific reference to the EU (Eerste Kamer, 2011c). Instead, a memorandum sets out the approach to EU affairs since the ratification of the Lisbon Treaty, which is discussed below (Eerste Kamer, 2009).

Finally, a word should be said about referendums in the light of the result of the Dutch referendum on the Constitutional Treaty in 2005. The Dutch Constitution does not envisage referendums, which means that they cannot be legally binding. Nonetheless, the government or parliament can opt to call a consultative referendum. The referendum on the Constitutional Treaty was the first referendum to be held at the national level for 200 years (Europa-nu, 2013; Referendum Platform, 2013).

The decentralization of the scrutiny of EU affairs to committees

The Tweede Kamer

The Tweede Kamer sees itself as a working parliament rather than a debating chamber.³ De jure, all legally binding decisions have to be taken in the plenary. De facto, the scrutiny of EU affairs has evolved in such a way that it is mostly in the hands of the committees. In addition, internal reforms since 2006 have decentralized responsibility for EU affairs and put sectoral committees firmly at the heart of the scrutiny of EU affairs (see Tweede Kamer, 2006). There is an EAC as prescribed in the standing orders, but it is mostly responsible for the overall coordination of EU-related business as well as the treatment of general and institutional issues that transcend sectors or policy areas (Tweede Kamer, 2013b). Trends towards a strengthening of sectoral committees in EU affairs have been taking place in other member states as well, but few parliaments have empowered their sectoral committees to the same extent as the Tweede Kamer (Gattermann et al., 2013).

To be involved at an early stage, the Tweede Kamer has since 2007 systematically analysed the Work Programme of the European Commission for the coming year in order to identify its priorities. The sectoral committees scrutinize those parts of the Work Programme that affect them. The EAC discusses the document together with the cabinet member assigned to EU affairs.⁴ An integrated list of priorities is adopted in the plenary. Since 2010, this has also contained an indication of whether the chamber wishes to place a scrutiny reserve on a proposal or whether it intends to conduct a subsidiarity test. Since 2009, the EACs of the two Dutch chambers have used the occasion to conduct a joint debate with the European Commissioner for inter-institutional relations

before taking a final decision on their priorities (Tweede Kamer, 2011a, pp. 3–4). Overall, the approach is selective. In 2011, of the 700 announced Commission initiatives, only four documents were subject to a subsidiarity test and seven subject to a scrutiny reserve. In 2012, there were four subsidiarity tests and four scrutiny reserves (Kester and van Keulen, 2011, p. 307; written reply, Tweede Kamer, 3 May 2013⁵).

Attention is also paid to Commission consultation documents. The Dutch Government usually takes part in these consultations and sends its response to the Tweede Kamer at least 30 days before it is sent to the Commission. While the Tweede Kamer only reacted to one-third of Green Papers and White Papers before 2006, it has examined all 40 of the Green Papers and White Papers published since 2007 (Tweede Kamer, 2011a, pp. 4–5).

Similarly, the number of technical briefings with Commission officials or members of the Dutch Permanent Representation rose from three in 2006 to over ten per year in recent years (Tweede Kamer, 2011a, p. 9). The number of roundtables with stakeholders and experts also increased to about 20 per year (Tweede Kamer, 2011a, p. 10).

One of the more traditional procedures is the *algemeen overleg* (AO), a discussion with a minister organized by a sectoral committee in advance of a meeting of the relevant Council formation. This method mirrors domestic procedures and is not specific to EU affairs (see Article 41 of the standing orders). It has existed since 1996, but initially the core committee was the EAC and the government was represented mainly by the Secretary for European Affairs (Kester and van Keulen, 2011, p. 203). A plenary discussion with the prime minister is held before meetings of the European Council. The government provides the committee with the Council agenda annotated with its own position prior to the AO. If parliament wants to formalize its position and put increased pressure on the government, a *verslag algemeen overleg* is organized in the plenary, during which resolutions (*moties*) can be tabled.⁶ There has been a noticeable increase in the use of this instrument.⁷ These motions are not legally binding but they are politically binding (see the third section of this chapter). If necessary, for instance during recesses, AOs can be replaced with a written procedure to ensure that all Council meetings are covered. The proportion of EU-related motions to the total number of resolutions increased after the reforms (Tweede Kamer, 2011a, p. 13). Ministers usually report back after a Council meeting, often in writing, on how far the previously notified negotiation position was achieved.⁸ This method is relatively powerful, but it does of course take place after the event.

On a more ad hoc basis, parliamentarians can ask written or oral questions or request the attendance of a minister at a debate. In addition, thematic debates in committees can be organized to create pressure at points when issues are high on the EU agenda.

The final stage of parliamentary involvement is in the transposition of directives. Transposition is a fundamental part of the competences of the Eerste and Tweede Kamer, as they hold the legislative competence in the Dutch system. The EAC and staff play an important horizontal coordination role and alert the sectoral committees to expired deadlines or complaints from the Commission about the content of transposition laws. One of the key tasks of parliamentary staff, according to an internal evaluation by the Tweede Kamer, is to distinguish 'gold plating', that is, add-ons by the national government that can be modified or removed, from the genuine requirements of transposition (Tweede Kamer, 2011a, p. 14).

In sum, the committees are at the centre of the scrutiny system of the Tweede Kamer. They are responsible for the selection of priority issues, oversight of the government prior to Council meetings, and the organization of roundtables and briefings. As the sectoral committees have become more active in the scrutiny of EU affairs since 2006, the EAC has increasingly adopted a coordinating role. The precise level of activity of the different committees is difficult to evaluate, however, as it depends not only on the level of motivation of the committee but also on the items on the EU agenda. Based on the internal statistics of the Tweede Kamer on the EU-related activities of its committees, it is possible to say that the committee responsible for economic affairs, agriculture and innovation (and its predecessor committees) was particularly active in 2010. The finance committee, the EAC and the committee on foreign affairs were also extremely active. Nearly all the committees saw some EU affairs-related activity (Tweede Kamer, 2011d).

The Eerste Kamer

The situation is in many respects similar in the Eerste Kamer. Formal resolutions and opinions can only be adopted in the plenary (Eerste Kamer, 2013e). Yet, much of the preparatory work, such as the selection of priorities on the basis of the Commission Work Programme, is in practice done in the committees (Eerste Kamer, 2011a; Eerste Kamer, 2011b).⁹ The EAC is mostly responsible for the coordination of EU affairs and general or institutional issues related to the EU, while the sectoral committees have taken on EU affairs related to their specializations (Eerste Kamer, 2013c).¹⁰ An EAC is not specifically required by the standing orders of the Eerste Kamer.

An important difference between the two chambers that also affects the standing of the committees is the use of AOs. At the heart of the strengths of the committees of the Tweede Kamer lies a deeply rooted de facto mandating system that has developed much political importance since the 1990s. The Eerste Kamer has not emulated this practice. It can request meetings with ministers, but does so much less frequently. As the chamber only meets on Tuesdays, there are organizational obstacles to the arrangement of regular meetings between

ministers and committees.¹¹ The Eerste Kamer still receives annotated agendas from the government before Council meetings as well as feedback on the progress of negotiations. There is also an option to engage in written exchanges with the government (Eerste Kamer, 2011a). The result is that resolutions tend to be formulated more often during plenary debates, compared to the Tweede Kamer.¹² However, the Eerste Kamer generally prefers written questions to resolutions, in part because these can trigger a debate and in part because they can reflect different views.¹³

Thus, the main instruments of scrutiny used by the Eerste Kamer, excluding the instruments created in the context of the Lisbon Treaty, are resolutions and plenary debates supported by debates with the government on specific issues of importance. The precise level of activity of the different committees is difficult to assess. However, an analysis of the resolutions adopted and the plenary debates held on EU affairs in 2010 and 2011 shows that the main focus was on data protection, activities related to the area of freedom, security and justice, the financial crisis and, to a lesser extent, human rights and the accession of new member states. The interest in issues related to justice and home affairs is most likely due to the fact that both chambers used to have particularly strong powers in that policy area, which they lost with the ratification of the Lisbon Treaty,¹⁴ and that the Eerste Kamer has many legal experts among its members (written reply, Eerste Kamer, 3 May 2013).¹⁵

Legal instruments of government control

De jure, the Dutch Parliament has few means of forcing the government to adopt its views. The strongest instrument in this regard is probably the scrutiny reserve, which forces the government to hold a debate with parliament on a specific issue and to agree a course of action before allowing negotiations at the EU level to proceed (see the discussion on post-Lisbon instruments below). Resolutions (moties) are not legally binding. Similarly, there is no legal obligation to hold AOs before Council meetings and the positions expressed by the committees are not binding. Nonetheless, in practice, the moties and positions of the committees are seen as 'politically binding', and it is regarded as 'unthinkable' that the government should go against an AO in a Council meeting (Eerste Kamer, 2011a; Tweede Kamer, 2011a, p. 13).¹⁶ The ministry and the committee usually set out the 'mandate' in a letter, and the government often reports back after the Council meeting referring specifically to how the outcome relates to the position taken in the chamber.¹⁷ Overall, the Tweede Kamer controls the government more closely than the Eerste Kamer, as the comparison of plenary debates and moties in Table 12.1 shows.

Finally, letters to and from ministers are a more informal but frequently used means of communication with the government. Letters allow a chamber or committee to raise points for consideration or generate debate rather than bind

Table 12.1 Plenary debates and moties on EU affairs in the Dutch Parliament*

		Plenary debates	Adopted moties
Eerste Kamer	2010	2	0
	2011	2	6
Tweede Kamer	2010	13	26
	2011	16	70

Note: *The data were collected in 2010 and 2011 as part of the OPAL project. The statistics do not include activities related to the transposition of EU policies.

Source: Author's Compilation.

the government to a particular position. As is noted above, the Eerste Kamer in particular prefers this type of communication to resolutions as it is more in line with its self-image as a place for reflection or debate, and because it allows for a diversity of views.¹⁸ Letters can also be used to request information or to follow up on whether, and if so how, the government has acted on a motie.

The role of administrative staff

The EU staff in the Tweede Kamer has been organized to reflect the division of labour between committees. Each sectoral committee is allocated an expert, usually shared with another committee, who works exclusively on EU affairs but is embedded in the committee staff of the standing committees. Including EAC staff, there are nine full-time experts and a coordinator who ensures horizontal coordination in EU affairs at the administrative level (Tweede Kamer, 2011b). The EU staff team at the Tweede Kamer meets every Tuesday to coordinate EU activities and debates. Both the EAC staff and the staff of sectoral committees are in regular contact with the relevant staff members in the other chamber, to alert each other to potentially problematic documents and assist the chambers with adopting joint opinions where they share similar views.¹⁹

Scrutiny of EU affairs by the Eerste Kamer has also undergone several reforms in the past decade, including a transition from a dominant EAC to the empowerment of sectoral committees in EU affairs.²⁰ However, as a part-time parliament, the Eerste Kamer only has about 25 staff in total and thus cannot accompany this political decentralization of EU affairs with special EU support for each committee. As a result, the EAC currently only has two members of staff, who also serve other committees. The clerks to the sectoral committees have to take on EU affairs related to their committee.²¹ There are also information specialists who are responsible for the maintenance of EuropaPoort, the EU affairs website of the Eerste Kamer, as well as the extraction of information from IPEX, the electronic system for information-sharing between parliaments and the websites of the European institutions.²²

The range of tasks is similar for both chambers. Among the tasks of the EU staff are to circulate relevant EU documents to the committees and to act as the 'institutional memory', that is, to be aware of previous positions on similar issues.²³ Subject to political approval, they also preselect the documents they deem important from among the Commission Work Programme and other incoming documents, and draft letters to the government. In the Tweede Kamer, the EU staff of the sectoral committees takes on this task for their committees.²⁴ In addition, the EU staff provides procedural advice in the form of brochures and reports in specific situations. The staff of the Tweede Kamer has produced about 100 EU briefings per year since 2007 (Tweede Kamer, 2011a, p. 5). The Eerste Kamer manages an extensive website on EU affairs – EuropaPoort. Moreover, the staff of the Tweede Kamer provides balanced content-related arguments (for example, on the advantages and disadvantages of a policy), while the smaller staff at the Eerste Kamer provides advice on request.²⁵ EU staff members also help with the drafting of the final responses and with the organization of briefings and roundtables (Tweede Kamer, 2011a, p. 9). Finally, the staff writes an EU newsletter for the parliamentarians and staff of their respective chambers, which is also distributed to relevant external stakeholders such as journalists, lobby groups and public affairs professionals.

Parliamentary activity since Lisbon

New procedures

Article 4 of the law ratifying the Lisbon Treaty creates a new instrument, the parliamentary reserve (*parlementair behandelvoorbehoud*). Within two months of the publication of a Commission proposal, either chamber can ask the government to place a parliamentary reserve on it. Within four weeks of such a request, an AO between the government and the chamber must take place in which agreement is reached on how parliament is to be kept informed about negotiations with the Commission. This leads to the lifting of the reserve (Eerste Kamer, 2009, p. 6; Tweede Kamer, 2011a, p. 6). The minister only has to give the parliament time to conclude its deliberations. He or she does not require the consent of parliament, but there is political pressure to comply with its view (van Mourik, 2009, pp. 319–320). As of early 2012, the Eerste Kamer had not used the scrutiny reserve, deeming its normal instruments of control to be sufficient (Eerste Kamer, 2010a).²⁶ By contrast, the scrutiny reserve has been employed many times in the Tweede Kamer. It was used twice in 2010, seven times in 2011 and three times in the first half of 2012 (Kester and van Keulen, 2011, p. 306; Steunenberg and De Ruiter, 2012).

The second new procedure is the Early Warning Mechanism (EWM) which gives the parliaments of all member states eight weeks to raise subsidiarity concerns in the form of a reasoned opinion concerning an EU legislative proposal.

The Dutch Parliament had already had some experience with subsidiarity tests on EU legislative proposals through its participation in the Political Dialogue and the Conference of Parliamentary Committees for Union Affairs (COSAC) subsidiarity tests. Initially, the two chambers used a joint committee, the *Tijdelijke Gemengde Commissie Subsidiariteitstoets*. In 2009, however, the Eerste Kamer ended this cooperation because differences in the schedules of the two chambers prevented it from being fully effective.²⁷ Since 2009, the relevant sectoral committees have been responsible for identifying possible subsidiarity problems during their scrutiny of the Commission Work Programme, testing the Commission proposal, drafting a reasoned opinion and recommending its adoption to the plenary within the eight-week deadline (Eerste Kamer, 2009, pp. 3–6). Parliament receives from the government a so-called BNC-fiche (Beoordeling Nieuwe Commissievoorstellen) with the government's evaluation of the Commission proposal within six weeks of its publication, which facilitates the work of the committees (Eerste Kamer, 2009, p. 5). If a document is earmarked for a subsidiarity test or the scrutiny reserve, the BNC-fiche must be sent within three weeks. However, parliaments have only eight weeks to adopt a reasoned opinion and it is not uncommon for the fiches to arrive late. The two chambers, and especially the better staffed Tweede Kamer, therefore actively gather additional information on the background and context of each proposal, and the positions of other member states and the European Parliament, through the representative of the Dutch Parliament in Brussels and the parliamentary networks (Tweede Kamer, 2009–2010, p. 11; Dutch Association for European Law, 2010, p. 507; Tweede Kamer, 2011a, pp. 8–9).

In addition, if the chambers have substantive concerns, they can address an opinion to the Commission and use the Political Dialogue with the Commission. The same procedure applies as for the subsidiarity test, but without the strict deadlines. There have been complaints, however, that replies from the Commission often arrive late – sometimes even after the final decision has been taken.²⁸

The Tweede Kamer issued two reasoned opinions as part of the subsidiarity test and one opinion as part of the Political Dialogue in 2010, and four reasoned opinions in 2011. The Eerste Kamer issued three opinions and two reasoned opinions in 2010, and four opinions and three reasoned opinions in 2011. Several of the reasoned opinions were joint opinions from both chambers, and one of the 2010 reasoned opinions was sent after the deadline. In 2012, the Tweede Kamer adopted a reasoned opinion on the Monti-II proposal, the only dossier to have received a yellow card (between 2009 until mid-2013), on the last day of the deadline (Meuwese, 2012, p. 322).

After the first subsidiarity tests, Kiiver concluded that the reasoned opinions prepared by civil servants were highly legalistic and resembled the kind of quality control that an independent advisory body like the *Raad van State* can

provide for national legislation (Kiiver, 2010a, p. 200). However, civil servants have since changed their methods and now present the spokespersons with balanced advice, leaving the final choice of argument to politicians. This has led to a politicization of the process, whereby reasoned opinions are increasingly used to support or undermine a policy (Kester and van Keulen, 2011, p. 312). Nonetheless, compared to other parliaments, such as the United Kingdom, reasoned opinions remain concise and focused on subsidiarity (Kiiver, 2011, pp. 322–323).

Finally, national parliaments have gained the right to ask their government to bring an action for annulment on the grounds of subsidiarity before the Court of Justice of the EU, as well as the right to veto a transition to the ordinary legislative procedure under the so-called *passerelle* clauses. The first of these rights has not yet been adopted into national legislation in the Netherlands. The right to veto the use of the *passerelle* clauses is regulated, however, in the law ratifying the Lisbon Treaty. It simply requires parliamentary consent for its use (Rijkswet van, 10 July 2008, Article 3).

The dependency on other parliaments under the EWM is seen as a disadvantage, but in general it is felt that the EWM is an opportunity for greater involvement.²⁹ The Dutch Parliament is not overly concerned about the low number of yellow cards issued under the EWM. It is pleased that the Commission withdrew its proposal after the first yellow card was used, and feels that, in general, the low number of cards is due to attempts by the Commission to avoid subsidiarity problems.³⁰ The emphasis in both chambers, even for parliamentarians from the government parties, remains on control over the national government and mandating.³¹ Until recently, this has resulted in an argument between the government and the two chambers about access to the documents at the lower Council levels. On important issues, the chambers sometimes ask other parliaments for these documents.³² However, in the light of the COSAC report of mid-2012, which showed that the Dutch Parliament lagged behind in information supply, the government agreed in March 2013 to give both chambers access to the extranet database (written reply, Tweede Kamer, 3 May 2013³³).

Cooperation at the European level and with other national parliaments

One of the most important points of contact with other parliaments and EU institutions is the parliamentary representative at the European Parliament (NPR). The post was created in 2004, during the Dutch Council Presidency, and serves both chambers (Tweede Kamer, 2002–2003). The two Dutch NPRs to date have had experience of working in the national parliament, giving them a good understanding of working practices and preferences at home. The post has three main functions: first, to monitor EU politics and alert the domestic level to new developments in priority areas defined by parliament; second, to

facilitate working visits in Brussels and contacts with MEPs or Commissioners; and, third, to develop relations with the NPRs of other member states. The 'Monday Morning Meetings' of NPRs, in particular, allow NPRs to exchange information on which parliaments intend to raise subsidiarity concerns on which proposals.³⁴ This instrument of everyday coordination has become even more relevant since the introduction of the EWM, as it facilitates coalition formation among national parliaments with a view to obtaining the number of reasoned opinions required for a yellow or orange card. Coalition formation is seen as important by some in the Tweede Kamer as, 'we want to be a pioneer in the issuance of a yellow card. It does not really matter what topic. It is just to test the system, how it works and what the Commission does'.³⁵

The formal arena for the exchange of reasoned opinions is IPEX. However, not all EU member states upload opinions in English, upload opinions on time or upload them at all. This makes it more difficult for other parliaments to use the opinions as blueprints. In addition, if proposals are flagged even one week after publication, it might already be too late for a number of parliaments to be able to adopt an opinion within the eight-week deadline.³⁶

There have been attempts by administrators to develop direct contacts between parliamentary administrations – rather than through Brussels and the NPRs – but these have been slow to take off.³⁷ Nevertheless, COSAC has created a website with the contact details of the administrations and a Dutch initiative led to a meeting of EAC clerks during the COSAC meeting in Copenhagen.³⁸ Committee clerks of the Tweede Kamer have a lot more contact with administrators in the Commission on specific issues. They are also often in touch with the relevant committees or clerks at the European Parliament or with assistants to MEPs.³⁹ The current EU affairs coordinator encourages her clerks to make regular visits to Brussels every few weeks to build up a network.⁴⁰ However, the EAC clerks at the Eerste Kamer, which has lower staff numbers, say that they have little regular contact with the Commission beyond an annual visit to Brussels by the EAC.⁴¹

At the political level, the Dutch Parliament is connected with other parliaments through COSAC, the Speakers Conference and interparliamentary committee meetings. Delegations to interparliamentary conferences are always joint delegations of both chambers, but participation from the Tweede Kamer is perceived as low. This is thought to be the result of the relatively small size of the parliament, and the absence of a clear majority which makes its members reluctant to travel (written reply, Tweede Kamer, 3 May 2013⁴²). There have been attempts to encourage participation at the administrative level.⁴³ Attendance by members of the Eerste Kamer is higher. Participants usually do not have a mandate, as the focus is on networking.⁴⁴ However, some question the quality of debate and feel that, while the exchange of best

practice in the biannual reports is useful, the general meetings are mostly a discussion forum.⁴⁵ There is similar scepticism about the effectiveness of interparliamentary committee meetings.⁴⁶

There are usually also several visits to and from other national parliaments each year. However, these tend to be of a 'diplomatic' nature and focused on general networking.⁴⁷ Commission officials and Commissioners also visit the Dutch Parliament for technical briefings and debates, and Dutch committees are increasingly organizing working visits to Brussels (Tweede Kamer, 2011a, p. 11). The link between the European Parliament and the Dutch Parliament is mainly through the Dutch MEPs, who have the right to attend meetings of the EAC of the Tweede Kamer but not those of the Eerste Kamer (Tweede Kamer, 2012a, p. 55a).

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In addition, there is some coordination with MEPs along party lines and some cooperation with other parliaments at the level of individual parliamentarians. For example, members participate in delegations to interparliamentary conferences of the EU, and some are also members of the assembly of the Council of Europe, the North Atlantic Treaty Organization or the Benelux Assembly, where they might also meet other parliamentarians.⁴⁸ Many Dutch political parties have liaison staff who work as a link between the European Parliament and the national parliament.⁴⁹

Nevertheless, beyond a general networking function, the level of informal contact between parliamentarians from different member states should not be overestimated. There is some scepticism in both chambers about the extent of contacts. Asked about her contacts in relation to the EU military operation, Operation Atalanta, a member of the party D66 who was very active in the Dutch debates said that, 'I don't really have contact with members of other parliaments, due to limits on my capacity and time. I talked to a British and a German MP in Brussels once, but about EU defence and foreign affairs in general. But I don't really talk to members of other parliaments. More with MEPs, that is the Dutch MEPs'.⁵⁰ This is generally in line with the reactions of other interviewees (EPEC, 2010).⁵¹

EU affairs in parliamentary political practice: The seasonal workers directive

The working practices of the Dutch Parliament, and especially the Tweede Kamer, were well illustrated by its response to the Directive of the European Parliament and of the Council on the conditions of entry and residence of third-country nationals for the purposes of seasonal employment (the Seasonal Workers Directive). This involved European legislation, which means that the full range of scrutiny mechanisms including reasoned opinions was available to national parliaments (Eerste Kamer, 2011b, p. 29). In the Netherlands, the

proposal was highly political and controversial, as EU affairs and immigration policy overlapped (Kester and van Keulen, 2011, p. 311).

The treatment of the proposal illustrates a number of features of the Dutch scrutiny system. In the first instance, it highlights the ability of the Dutch Parliament to pursue a *dual-track approach* that targets both the national government and the European institutions. At the national level, the Tweede Kamer identified the dossier for scrutiny reserve and a subsidiarity test on the basis of its political sensitivity when it discussed the Commission Work Programme (Kester and van Keulen, 2011). As a result, the government provided an early BNC-fiche, in time for both chambers to debate the issue once the legislative proposal had been published. The BNC-fiche contained, among other things, the government's assessment of subsidiarity and proportionality, and of the policy and financial implications, as well as its targets in the negotiations (Tweede Kamer, 2010a). The general tenor was critical, in particular with regard to subsidiarity, the broadness of the definition of 'seasonal work' and the potentially negative implications for the Dutch system of tackling abuse and illegal immigration (Tweede Kamer, 2010a).

Within the Tweede Kamer, in line with the chamber's *decentralized* approach, the responsible committee was the Justice Committee (the Committee for Immigration and Asylum took over responsibility after a restructuring in October 2010). Overall, the committee shared the government's critical view. As part of the national track, a scrutiny reserve was adopted on 23 September 2010. This was followed by an AO with the two relevant ministers on 28 October, during which the Justice Committee, the Committee for Social Affairs and Employment, the EAC and the Committee for the Interior defined their positions and requested regular updates on the EU-level negotiations (Tweede Kamer, 2010b, 2010c). Before the AO, the Tweede Kamer had gathered information on the directive in a roundtable meeting with stakeholders on 6 October (Kester and van Keulen, 2011, p. 311). The government implemented the conditions of the parliamentary reserve by regularly reporting back in writing on important developments. Letters from the government set out the extent to which the individual demands of parliament had been accepted in the Council negotiations, and the chances of success in future negotiations (Tweede Kamer, 2010e; Tweede Kamer, 2012b). Although the Eerste Kamer was less proactive than the Tweede Kamer, it initiated a written AO through a letter to the minister of 10 May 2011, to which he replied on 27 June 2011 (Eerste Kamer, 2011d).

On the EU track, the plenary of the Tweede Kamer adopted the draft reasoned opinion proposed by the temporary committee on subsidiarity, which in turn had followed the advice of the Justice Committee (Tweede Kamer, 2010d; Kester and van Keulen, 2011, p. 310). The plenary of the Eerste Kamer adopted the draft reasoned opinion of the Tweede Kamer on the recommendation of its committee on Justice and Home Affairs without a debate on 12 October (Eerste

Kamer, 2010b). The joint reasoned opinion was sent to the Commission on 14 October 2010 (Staten-Generaal, 2010). This *joint* approach to the EWM is not uncommon for the Dutch Parliament. After it became clear that there would be no yellow or orange card under the EWM, the two chambers reinforced their domestic efforts in a joint letter that called on the government to address the concerns raised in their reasoned opinion. The sectoral committees were again in the lead: the Committees for Social Affairs and Employment, for the Justice and Home Affairs Council and for Justice in the Eerste Kamer, and the Committee for Immigration and Asylum in the Tweede Kamer. A letter from the minister for immigration and asylum responded to each concern individually (Tweede Kamer, 2011c).

The case of the Seasonal Workers Directive illustrates not only the general approach of the two chambers to the scrutiny of EU affairs but also some of the internal dynamics. In the first instance, while all formal decisions were taken in the plenaries, there were no plenary debates on the directive. Instead, all the substantive work was done in the committees, in particular the sectoral committees. In addition, documents and interviews further illustrate the extent to which the Tweede Kamer has also become a working chamber in relation to EU affairs. For instance, while the AO of 28 October 2010 was officially held by four committees, there were only six members of the Tweede Kamer present – the spokespersons of the various political parties in this specific policy area (Tweede Kamer, 2010b). The six represented four committees, each of them represented one party (using formulations such as ‘we want’ or ‘the PVV wants’) and together they formulated a mandate on behalf of the parliament. The highly specialist membership of the meeting also affected the content of the debate: the parliamentarians covered general attitudes to Europe and immigration as well as statistics on immigration and specific elements of and problems with the Dutch system of controlling seasonal labour. The small number of participants meant that each participant could intervene on an average of ten occasions during the debate. The use of specialist committees to scrutinize EU affairs has therefore had a positive effect by producing debates that are both ideological and substantive (Kester and van Keulen, 2011, p. 312). This method of scrutiny by a small but specialist group of parliamentarians is typical of the Tweede Kamer, where AOs are generally attended by the policy spokespersons or their substitutes (Kester and van Keulen, 2011, p. 304).

In the case of the Seasonal Workers Directive, some differences between the parties were discernible during the debates, on both migration issues and attitudes to the EU. The spokesman for *GroenLinks* (the Greens) presented his party as generally pro-European and clearly in favour of a directive, whereas the spokesman for the PVV (*Partij voor de Vrijheid* – Party for Freedom) expressed a general desire to protect national sovereignty and was critical of the EU. The *Socialistische Partij* (Socialist Party) and the VVD (*Volkspartij voor Vrijheid* en

Democratie – People’s Party for Freedom and Democracy) strongly opposed the directive on grounds of subsidiarity, and also raised a number of substantive concerns. Finally, the *Partij van de Arbeid* (Labour Party) and the *Christen-Democratisch Appèl* (Christian Democratic Appeal) presented themselves as in favour of a directive on seasonal migration, but opposed to this specific directive on substantive grounds (see Tweede Kamer, 2010b). It is arguable that the positions of the four parties in the centre reflect the change in attitude since the failed referendum on an EU constitution: there is now a feeling that EU proposals must be subjected to substantive scrutiny before they can be approved, as even a pro-European attitude cannot justify the assumption that all things European are positive.

In sum, this means that a generally critical parliament was in line with a generally critical government, with the exception of GroenLinks which supported the directive. Some of the opposition parties, such as the *Partij van de Arbeid*, used the AOs to attack the government on aspects of its domestic immigration policy, but the majority ultimately included part of the opposition. Similarly, all the political parties, including government parties, put pressure on the government to report regularly to parliament and to defend their core demands – and the government was perceived as having complied with these demands.⁵²

This situation appears to be in line with party politics on EU affairs more generally. Several administrators and politicians from the Eerste Kamer and the Tweede Kamer observed that party politics were somewhat less pronounced in EU affairs than in domestic politics, with the possible exception of the more anti-EU political parties that could end up in a strange opposition coalition between right (the PVV) and left (the *Socialistische Partij*).⁵³ Dutch governments are coalitions in a multi-party context, which encourages and necessitates a certain culture of cooperation – at least among coalition partners. The governing coalition in 2010–2012 was a minority government made up of the VVD and the Christen-Democratisch Appèl supported by the PVV. The PVV is a Eurosceptic party, which meant that on some occasions the government had to seek support on EU issues from opposition parties. This situation strengthened the hand of the Tweede Kamer, which is seen to have increased its influence during that time.⁵⁴ The current government lacks a majority in the Eerste Kamer (30 seats out of 75). It is noteworthy that even parliamentarians from the government parties prefer to mandate the government rather than scrutinize documents which indicates that the ability to influence the government is highly valued.⁵⁵

Concluding remarks

To conclude, the Dutch system of scrutiny of EU affairs has undergone a number of changes under pressure from the failed referendum and in anticipation

of a new European Treaty with new opportunities for national parliaments. In an attempt to widen political interest in the EU and improve the quality of scrutiny, both chambers have shifted responsibility for EU affairs from the EAC to sectoral committees. Domestic reforms and European opportunities have provided the Dutch Parliament with a string of instruments that allow scrutiny at different stages of the decision-making process, addressed to both national and European actors. Since 2007, many existing instruments have been used much more extensively and become deeply institutionalized, even in the absence of formal legal rights and obligations. The case of the Seasonal Migrants Directive suggests that the Dutch Parliament is able to voice its concerns in a number of ways and that the mainstreaming of the scrutiny of EU affairs has led to informed debate on EU issues.

Nonetheless, there are still differences in the use of the various instruments that lead to the conclusion that the two chambers lean towards somewhat different ideal types. The Tweede Kamer is generally more active. Its emphasis is on controlling and shaping the Dutch position in the Council of Ministers. To this end, there are regular meetings with ministers before Council meetings, where *de facto* mandating takes place. After Council meetings, the government reports back, mostly in written form, on the outcome of the negotiations. On contested policies, resolutions are used to formalize the position of the Tweede Kamer. In addition, the Tweede Kamer regularly considers the use of the subsidiarity test, Political Dialogue and the scrutiny reserve for priority issues. It thus focuses on its role as a *policy shaper* and a *government watchdog* and – in the process – has become a *European player* (Table 12.2).

The Eerste Kamer uses the EWM and Political Dialogue more regularly and somewhat more frequently than the Tweede Kamer. There is not a big difference

Table 12.2 Models of parliamentary scrutiny of EU affairs: The Dutch Parliament

	<i>Public forum</i>	<i>Government watchdog</i>	<i>Policy shaper</i>	<i>Expert</i>	<i>European player</i>
Overall assessment	Neutral	Yes	Yes strongly	Not much	Yes
Coherent with the dimension	A number of plenary debates on larger questions	Very regular meeting of committees and ministers; letters to check on progress ex post	Regular mandating; use of resolutions; moderate use of EWM and Political Dialogue	Some meetings with experts	Moderate use of pas and Political Dialogue

Table 12.2 (Continued)

	<i>Public forum</i>	<i>Government watchdog</i>	<i>Policy shaper</i>	<i>Expert</i>	<i>European player</i>
Incoherent with the dimension	Not the priority of parliament. Emphasis on scrutiny of documents and ministers in committees	Committee meetings are primarily ex ante		No emphasis on producing reports	
Specificities of the upper chamber	Not much Few plenary debates	Not much Fewer meetings with government	Neutral Limited use of resolutions. Mainly EWM and Political Dialogue; Some use of letters and questions.	Not much Low output of reports	Yes strongly Emphasis on EWM and Political Dialogue;

AQ2



in absolute numbers, but if one takes into account the fact that it uses the instruments targeted at the *national government* far less frequently than the Tweede Kamer, it is safe to say that it is predominantly a *European player*.

Nevertheless, it should be noted that both Chambers define their main task as the control of the national government and that there remains considerable scepticism in both Chambers about the quality and extent of interparliamentary cooperation in Europe.

Notes

1. This paper includes data collected in 2011 and 2012 as part of the NWO-funded OPAL project. Many thanks go to our student assistants Max Meulendijks and Linda Strazdina for their support.
2. Interview with a Member of the Tweede Kamer for VVD, The Hague, 26 March 2012; interview with an *EU expert* at the Tweede Kamer, The Hague, 9 December 2011.
3. Interview with an *EU expert* at the Tweede Kamer, The Hague, 9 December 2011; interview with an *EU expert* at the Tweede Kamer, The Hague 28 March 2012.
4. Interview with an *EU expert* at the Tweede Kamer, The Hague, 9 December 2011.
5. Written reply from an administrator of the Tweede Kamer, 3 May 2013.

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6. Interview with a Member of the Tweede Kamer for VVD, The Hague, 26 March 2012.
7. Interview with an *EU expert* at the Tweede Kamer, The Hague, 9 December 2011.
8. *Ibid.*; interview with a Member of the Tweede Kamer for VVD, The Hague, 26 March 2012; interview with a Member of the Tweede Kamer for D66, The Hague, 20 June 2012.
9. Interview with a committee clerk at the Eerste Kamer, The Hague, 16 October 2012.
10. Interview with a Member of the Eerste Kamer for LinksGroen, The Hague, 20 September 2012.
11. Interview with a committee clerk at the Eerste Kamer, The Hague, 16 October 2012.
12. Interview with a Member of the Eerste Kamer for LinksGroen, The Hague, 20 September 2012.
13. Interview with two committee clerks at the Eerste Kamer, The Hague, 11 January 2012; interview with a Member of the Eerste Kamer for LinksGroen, The Hague, 20 September 2012.
14. Interview with a Member of the Eerste Kamer for LinksGroen, The Hague, 20 September 2012.
15. Written reply from an administrator of the Eerste Kamer, 3 May 2013).
16. NLTKP, 26 March 2012; interview with an *EU expert* at the Tweede Kamer, The Hague, 9 December 2011.
17. Interview with a Member of the Tweede Kamer for VVD, The Hague, 26 March 2012.
18. Interview with two committee clerks at the Eerste Kamer, The Hague, 11 January 2012; interview with a Member of the Eerste Kamer for LinksGroen, The Hague, 20 September 2012.
19. Interview with two committee clerks at the Eerste Kamer, The Hague, 11 January 2012; interview with a Member of the Eerste Kamer for LinksGroen, The Hague, 20 September 2012; interview with a Member of the Tweede Kamer for VVD, The Hague, 26 March 2012.
20. Interview with a committee clerk at the Eerste Kamer, The Hague, 16 October 2012.
21. Interview with two committee clerks at the Eerste Kamer, The Hague, 11 January 2012.
22. Interview with a committee clerk at the Eerste Kamer, The Hague, 16 October 2012.
23. Interview with a Member of the Eerste Kamer for LinksGroen, The Hague, 20 September 2012.
24. Joint interview with two *EU experts* at the Tweede Kamer, The Hague, 27 March 2012.
25. Interview with an *EU expert* at the Tweede Kamer, The Hague, 9 December 2011; interview with two committee clerks at the Eerste Kamer, The Hague, 11 January 2012; interview with a Member of the Eerste Kamer for LinksGroen, The Hague, 20 September 2012.
26. Interview with two committee clerks at the Eerste Kamer, The Hague, 11 January 2012.
27. Interview with the Permanent Representative of the Dutch Parliament to the EU, The Hague, 9 December 2010.
28. Interview with a Member of the Eerste Kamer for LinksGroen, The Hague, 20 September 2012; interview with two committee clerks at the Eerste Kamer, The Hague, 11 January 2012.
29. Interview with a Member of the Tweede Kamer for VVD, The Hague, 26 March 2012.
30. Interview with a committee clerk at the Eerste Kamer, The Hague, 16 October 2012.
31. Interview with a Member of the Tweede Kamer for VVD, The Hague, 26 March 2012; interview with a Member of the Eerste Kamer for LinksGroen, The Hague, 20 September 2012.

32. Interview with a committee clerk at the Eerste Kamer, The Hague, 16 October 2012; interview with a Member of the Eerste Kamer for LinksGroen, The Hague, 20 September 2012.
33. Written reply from an administrator of the Tweede Kamer, 3 May 2013.
34. Interview with the Permanent Representative of the Dutch Parliament to the EU, The Hague, 9 December 2010; interview with the Permanent Representative of the Dutch Parliament to the EU, The Hague, 9 December 2010; interview with the Permanent Representative of the Dutch Parliament to the EU, The Hague, 24 January 2013.
35. Interview with an *EU expert* at the Tweede Kamer, The Hague, 9 December 2011; Joint interview with two *EU experts* at the Tweede Kamer, The Hague, 27 March 2012.
36. Interview with an *EU expert* at the Tweede Kamer, The Hague, 27 March 2012; interview with two committee clerks at the Eerste Kamer, The Hague, 11 January 2012.
37. *Ibid.*, The Hague, 9 December 2011.
38. *Ibid.*, The Hague, 27 March 2012.
39. *Ibid.*, The Hague, 9 December 2011; Joint interview with two *EU experts* at the Tweede Kamer, The Hague, 27 March 2012.
40. *Ibid.*, The Hague, 9 December 2011.
41. Interview with two committee clerks at the Eerste Kamer, The Hague, 11 January 2012.
42. Written reply from an administrator of the Tweede Kamer, 3 May 2013.
43. Interview with an *EU expert* at the Tweede Kamer, The Hague, 9 December 2011.
44. Interview with two committee clerks at the Eerste Kamer, The Hague, 11 January 2012.
45. *Ibid.*; Joint interview with two *EU experts* at the Tweede Kamer, The Hague, 27 March 2012
interview with a Member of the Eerste Kamer for LinksGroen, The Hague, 20 September 2012.
46. Interview with a Member of the Eerste Kamer for LinksGroen, The Hague, 20 September 2012; interview with a Member of the Eerste Kamer for VVD, The Hague, 23 October 2012.
47. Interview with two committee clerks at the Eerste Kamer, The Hague, 11 January 2012.
48. Joint interview with two *EU experts* at the Tweede Kamer, The Hague, 27 March 2012; interview with a Member of the Eerste Kamer for VVD, The Hague, 23 October 2012.
49. Interview with the Permanent Representative of the Dutch Parliament to the EU, The Hague, 24 January 2013.
50. Interview with a Member of the Tweede Kamer for D66, The Hague, 20 June 2012.
51. Interview with a Member of the Tweede Kamer for VVD, The Hague, 26 March 2012; interview with an *EU expert* at the Tweede Kamer, The Hague 28 March 2012; interview with a Member of the Tweede Kamer for VVD, The Hague, 28 March 2012; interview with a Member of the Eerste Kamer for LinksGroen, The Hague, 20 September 2012; interview with a committee clerk at the Eerste Kamer, The Hague, 16 October 2012; interview with a Member of the Eerste Kamer for D66, The Hague, 16 October 2012; interview with an *EU expert* at the Tweede Kamer, The Hague, 27 March 2012; interview with an *EU expert* at the Tweede Kamer, The Hague, 27 March 2012.
52. Interview with a Member of the Tweede Kamer for VVD, The Hague, 28 March 2012.
53. Interview with a Member of the Eerste Kamer for LinksGroen, The Hague, 20 September 2012; interview with a Member of the Eerste Kamer for VVD, The Hague,

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- 23 October 2012; interview with a committee clerk at the Eerste Kamer, The Hague, 16 October 2012; interview with two committee clerks at the Eerste Kamer, The Hague, 11 January 2012; interview with an *EU expert* at the Tweede Kamer, The Hague, 9 December 2011; Joint interview with two *EU experts* at the Tweede Kamer, The Hague, 27 March 2012.
54. Interview with a Member of the Eerste Kamer for D66, The Hague, 16 October 2012.
 55. Interview with a Member of the Tweede Kamer for VVD, The Hague, 28 March 2012; interview with an *EU expert* at the Tweede Kamer, The Hague, 9 December 2011.

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QUERIES TO BE ANSWERED BY AUTHOR (SEE MARGINAL MARKS)

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Chapter 12

Query No.	Page No.	Query
AQ1	263	Please confirm whether the page no “55a” is Ok here.
AQ2	267	Please provide source for the table 12.2, if needed.
AQ3	268	Please check if the italicization of “EU expert” throughout is OK