



European Institute of Public Administration
European Centre for the Regions

Report

The potential of the Lisbon Treaty: A challenge for the Netherlands and its provinces & municipalities



Table of contents

TABLE OF CONTENTS	2
RESEARCH TEAM	4
LIST OF ABBREVIATIONS	5
1. EXECUTIVE SUMMARY	6
1.1. KEY FINDINGS	6
1.2. CONCLUSIONS	7
2. INTRODUCTION	9
2.1. AIM OF THE STUDY	9
2.2. SCOPE OF THE STUDY.....	10
2.3. METHODOLOGY.....	11
3. THE NEW SHARING OF POWER WITHIN THE EU: ANY IMPACT ON MULTI-LEVEL GOVERNANCE IN THE NETHERLANDS?	12
3.1. A CLEARER DISTRIBUTION OF POWER AT THE EU LEVEL: THE PRINCIPLE OF CONFERRAL AS THE CORNERSTONE FOR DELIMITATING COMPETENCES	12
3.2. MULTI-LEVEL GOVERNANCE IN THE NETHERLANDS.....	14
4. NOVELTIES REGARDING EU INSTITUTIONS AND THE NATIONAL PARLIAMENTS IN THE EU LEGISLATIVE PROCESS: SOME POTENTIALS FOR REGIONAL AND LOCAL AUTHORITIES	22
4.1. A MORE OPEN EUROPEAN COMMISSION.....	22
4.2. THE REINFORCED ROLE OF NATIONAL PARLIAMENTS IN THE SUBSIDIARITY CHECK.....	24
4.3. THE EUROPEAN PARLIAMENT BECOMES A CO-LEGISLATOR WITH THE COUNCIL OF MINISTERS.....	29
4.4. THE NEW QUALIFIED MAJORITY VOTING IN THE COUNCIL OF MINISTERS	32
4.5. NEW RIGHT TO GO TO THE COURT AND OTHER NOVELTIES FOR THE COMMITTEE OF THE REGIONS.....	34
4.6. THE END OF THE EU PILLAR STRUCTURE: AN EXTENDED COMPETENCE FOR THE COURT OF JUSTICE OF THE EUROPEAN UNION.....	37
5. A NEW TYPOLOGY OF EU ACTS AND ITS IMPACTS ON THE POSSIBLE INVOLVEMENT OF LOCAL AND REGIONAL AUTHORITIES IN THE EU DECISION-MAKING PROCESS	39
5.1. ADOPTION OF EU LEGISLATIVE ACTS: THE ORDINARY LEGISLATIVE PROCEDURE AND THE SPECIAL LEGISLATIVE PROCEDURES	40
5.2. ADOPTION OF EU NON-LEGISLATIVE ACTS: THE DELEGATED ACTS AND THE IMPLEMENTING ACTS	42
5.3. RESTRICTION OF COMITOLGY’S SCOPE AND IMPACT ON THE POSSIBLE INVOLVEMENT OF REGIONAL AND LOCAL AUTHORITIES	47
5.4. INFRINGEMENT OF EU LAW / NON-LEGALITY OF AN EU ACT: WHAT ROLE FOR REGIONAL AND LOCAL AUTHORITIES?	48
6. A STRENGTHENED RECOGNITION OF THE ROLE OF THE REGIONAL AND LOCAL AUTHORITIES WITHIN THE EUROPEAN INTEGRATION PROCESS	53
6.1. THE RECOGNITION OF THE REGIONAL AND LOCAL DIMENSIONS OF THE SUBSIDIARITY PRINCIPLE	53
6.2. RESPECT FOR REGIONAL AND LOCAL SELF-GOVERNMENT & CULTURAL AND LINGUISTIC DIVERSITY	54
6.3. INSERTION OF ‘TERRITORIAL COHESION’ IN THE EU OBJECTIVES.....	55
6.4. IMPROVEMENTS REGARDING THE EU OUTERMOST REGIONS’ STATUS.....	57
7. CONCLUSIONS AND RECOMMENDATIONS	59
7.1. CONCLUSIONS	59
7.2. RECOMMENDATIONS.....	60
ANNEXES	64
ANNEX 1: TABLE ON THE MAIN CHANGES BROUGHT BY THE LISBON TREATY INTO THE EUROPEAN TREATIES	64

ANNEX 2: THE DIVISION OF COMPETENCES IN THE NETHERLANDS	70
ANNEX 3: EU POLICY IN THE NETHERLANDS: INVOLVING PROVINCES AND MUNICIPALITIES	74
ANNEX 4: SUBSIDIARITY CHECK IN THE NETHERLANDS	77
ANNEX 5: THE NEW QUALIFIED MAJORITY VOTING IN THE COUNCIL OF MINISTERS	80
ANNEX 6: EIPA QUESTIONNAIRE SENT IN APRIL 2010	83
ANNEX 7: PERSONS TO WHOM THE EIPA QUESTIONNAIRE WAS SENT IN APRIL 2010	86
BIBLIOGRAPHY	87
OFFICIAL DOCUMENTS AND OTHERS	87
ACADEMIC ARTICLES/RESOURCES	90
PRESS ARTICLES	91
USEFUL LINKS	91

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List of abbreviations

In correct alphabetical order

AER: Assembly of European Regions
BNC: Dutch Working Group for the Assessment of New Commission Proposals
BZK: Dutch Ministry of the Interior and Kingdom Relations
CAP: Common Agricultural Policy
CEMR: Committee of European Municipalities and Regions
CFSP: Common Foreign and Security Policy
CIVEX: CoR Commission for Citizenship, Governance, Institutional and External Affairs
CJEU: Court of Justice of the European Union
CLRAE: Congress of Local and Regional Authorities in Europe (Council of Europe)
CoCo: Coordination Committee for European Integration and Association Studies
CoR: Committee of the Regions
COSAC: Conference of Community and European Affairs Committees of Parliaments of the European Union
EABB: European Agenda Binnenlands Bestuur
EC: European Commission
ECB: European Central Bank
ECJ: European Court of Justice
ECSC: European Coal and Steel Community
EESC: European Economic and Social Committee
EGTC: European Grouping of Territorial Cooperation
ENVE: CoR Commission for the Environment, Climate Change and Energy
EOBB: Europa Overleg Binnenlands Bestuur
EP: European Parliament
EU: European Union
EURATOM: European Community for Atomic Energy
EWS: Early Warning System
HNP: House of the Dutch Provinces
IPO: Dutch Interprovincial Assembly (Interprovinciaal Overleg)
LNV: "Landbouw, Natuur, Voedselkwaliteit", Dutch Ministry of Agriculture
MEP: Member of the European Parliament
MS: Member States
NL: The Netherlands
QM: Qualified Majority
QMV: Qualified Majority Voting
RLAs: Regional and Local Authorities
RPS: Regulatory Procedure with Scrutiny
SMN: Subsidiarity Monitoring Network (CoR)
TEC: Treaty on the European Communities
TEU: Treaty on the European Union
TFEU: Treaty on the Functioning of the European Union
VNG: Association of the Netherlands' Municipalities (Vereniging van Nederlandse Gemeenten)
VROM: Dutch Ministry of the Environment

1. Executive Summary

1.1. Key findings

► The Lisbon Treaty potentials: new pressure for better involvement of RLAs in the EU decision-making process

The Lisbon Treaty does not fundamentally change the role of RLAs in the EU multi-level governance system, as for example, there is no article requiring national governments to redesign their EU coordination systems or allocation of competences. However, for the first time, a European treaty explicitly recognises the local and regional self-government principles. The Lisbon Treaty also introduces novelties that will increase the pressure on national and regional/local administrations to rethink their relations in handling EU affairs.

Today, the crucial question regarding EU multi-level governance is as follows: how can RLAs play a more constructive role in the European legislative process thanks to the Lisbon Treaty novelties? With the extension to many policy fields of the former co-decision procedure (now the ordinary legislative procedure) and of the qualified majority voting within the Council, RLAs have greater possibilities to contribute in one way or another to the EU decision-making process. In addition, with regard to the new competences of the Committee of the Regions, especially its new right to go to the Court, RLAs will have to trigger new ideas to enhance cooperation with respect to its work and activities, as well with the CoR members themselves.

This is also true with regard to the decision-making process of executive (the so-called non-legislative) EU acts. In the new system, reformed by the Lisbon Treaty, more acts (delegated acts) will be in the hands of the Commission. Also here, RLAs will have to find their role in the national monitoring of these delegated acts. Legal transposition in the Member States will also be slightly affected by the Lisbon changes: reporting on timely transposition will be more important since financial sanctions can be faced after the first judgement of the Court (while previously two judgements were needed). One particular result of the study is that the involvement of RLAs in the transposition process can be greatly improved in certain policy fields. The increased time pressure brought about by the Lisbon Treaty will also require new ideas for proper consultation.

► A new EU framework and reinforced EU institutions: new challenges for multi-level governance in the Netherlands

The Lisbon Treaty distinguishes three main categories of competences: exclusive, shared and those aimed at supporting or coordinating Member States' actions (described in Article 3 TFEU). It does not confer new exclusive competences to the European Union, but enlarges the scope of shared competences (space and energy as well as those aiming to carry out actions to support, coordinate or supplement Member States' actions (civil protection, tourism, administrative cooperation and sport). Dutch provinces and municipalities will be faced with new European initiatives and legislation in these respective fields. Since certain new areas such as civil protection, energy, tourism and sport touch upon the competence of the Dutch provinces, there is some evidence for a stronger need to involve them in the EU decision-making process.

The most obvious institutional novelty is the reinforced role of the national Parliaments with regard to subsidiarity scrutiny. Thus, the two chambers of the Dutch Parliament (Eerste and Tweede Kamers) have to assess EC legislative proposals on the grounds of subsidiarity compliance. IPO/VNG and the HNP have already developed instruments in the past to assess EC initiatives in this way (i.e. screening of the Commission's work programme). They have been involved in the BNC process but there is no formal role with respect to the abovementioned new subsidiarity checks. It will be up to the two chambers to envisage how they can make better use of the RLAs' expertise within their respective assessments. For the Dutch provinces and municipalities, the subsidiarity check is a good opportunity to enhance their own subsidiarity assessments and provide useful advice to the two chambers in case of serious concerns.

Another important institutional novelty is the recognition of the European Parliament as co-legislator with the Council of Ministers in almost all policy areas. Influencing the national position is only one element of any European strategy for RLAs. With the Lisbon Treaty, a very long list of policy fields has now been decided upon

by the Parliament and the Council under the new ordinary legislative procedure (i.e. the former co-decision procedure). The widely applied “ordinary legislative procedure” will increase pressure on RLAs to rethink and improve their approach regarding the European Parliament. Their relations with Members of the European Parliament (MEPs) are crucial. That of course is not new, and has been discussed in the past. In the Netherlands, the situation today is very diverse given the different approaches of the provinces, IPO, VNG and the HNP. Contacts are on an ad hoc basis and very much depend on policy fields and individual contacts. The HNP in Brussels seems to be in a position to coordinate the relations to some extent and find a certain structure for regular relations. It is evident that this of course cannot only be limited to Dutch MEPs.

Moreover, with the Lisbon Treaty, qualified majority voting in the Council will play an even more important role than in the past. This means that the Dutch position in the Council will be dependent on the ability to join forces with a majority of like-minded Member States. However, the new double majority voting system will only enter into force in November 2014; meanwhile, transitional provisions will apply. In theory, this might slightly decrease the voting power of the Dutch government. Yet, given the dynamics in the Council decision-making, this will probably have no real effect. Other aspects can be much more important for the weight of a national voting, such as finding a clear national position at the right moment, connecting the own position with positions of other Member States, being flexible enough and open to join coalitions with other like-minded Member States. Combining this with a proper consultation process with RLAs was already a challenge under the old treaties: with a more qualified majority, it will of course be even more decisive.

Finally, the Lisbon Treaty granted the Committee of the Regions the right to go to the Court of Justice to protect its own prerogatives (in cases where it has consultation rights), or in cases of the breach of the subsidiarity principle. It can give its opinion on new policy fields (sport, climate change, energy), as well as being well consulted by the European Parliament. These changes do not alter its general nature of being an advisory body. So, for the Dutch provinces and municipalities the general question will be the same: how to effectively use the CoR in order to strengthen their positions? Dutch provinces are already active in the Subsidiarity Monitoring Network. Since the CoR will have a more formal role to play in the monitoring of subsidiarity, it is evident that such an engagement could be strengthened. With regard to certain policy dossiers, no fundamental changes can be detected. This means that successful good practice examples from the past (e.g. EU Strategy on Youth, Air Quality were mentioned by interviewees) will still be a benchmark vis-à-vis CoR's future activities.

1.2. Conclusions

In the Netherlands, the Lisbon Treaty could be an excellent opportunity to strengthen the activities that have already commenced for a more efficient multilevel system of EU coordination. Given the general satisfaction with the multi-level coordination system of EU affairs, the different provincial/local actors (IPO/VNG, the House of the Provinces in Brussels) do not start from scratch. They can refer to a toolbox of best practice cases of multi-level coordination at the national level and lobbying work in Brussels. The results of the study show that it is time to apply some of the elements of current good practices to more policy fields in order to find the right answers to the Lisbon challenges.

In order to analyse the impact of the Lisbon Treaty changes on policy coordination in the Netherlands, within the framework of the preparation of the present study, practitioners from all levels have been asked about the quality of involvement of provinces and municipalities in the different phases of EU policy-making. These are the main conclusions:

1. – The importance of the advisory role of Dutch provinces and municipalities in EU matters.

The Dutch provinces and municipalities have an advisory role in EU affairs which is not comparable to the stronger constitutional positions of other regions in the EU (mainly the German Länder or the Belgian regions). The input is in the first place very much determined by the openness of the national government or single ministry and the capacities at the provincial and local levels to deliver a valuable input in relation to European dossiers. Given the answers to our questionnaire and the additional interviews, there is a reasonable degree of satisfaction with the multi-level coordination of EU dossiers. However, the practices differ greatly depending on the policy field. Two basic preconditions for satisfying coordination were found:

- Efficient human capacities at the provincial and municipal levels to monitor EU policies and provide valuable input in all phases of the EU decision-making. The capacities are very much dependent on stable networks of experts in a certain policy sector;
- Openness and preparedness at the national level (by single ministries) to work with provincial and local experts in a structured way and provide transparency vis-à-vis the evolution of the national position in the Council of Ministers.

The need to get proper information and transparency on the preparation of the national position was also underlined by the Dutch provinces and municipalities.

2. – The need for further formalisation of the procedures to involve Dutch provinces and municipalities in EU affairs.

To a limited extent, involvement of provinces and municipalities can be through formal procedures, such as their contribution to the BNC fiche when a new EC legislative proposal is published. In the environmental field, the system of coordination is the most formalised. The format of dossier teams (amongst IPO/VNG experts, and cross-level dossier teams (interbestuurlijk)) is described as a substantial tool that increases stability in the relations between the levels of government and also improves transparency and information flow at all stages of the policy process. However, this system needs input and capacities from both sides: proactive IPO/VNG networks (like the KEM) and preparedness at the national level in the single ministries. This format certainly does not fit for all other policy fields because of the diverging role of provincial and local administrations and capacities in the different policy areas. However, some elements could be fruitful for the future debate on how to cope with the post-Lisbon Treaty policy process and the new coordination needs.

3. – The need for enhanced cooperation at all levels in certain policy fields.

With the Lisbon Treaty changes, more policy fields fall within the qualified majority voting of the Council and the ordinary legislative procedure (the Parliament and the Council being on a quasi equal footing as co-legislator). With regard to the outcome of the study, there is evidence that for some policy fields, coordination is not satisfactory from the perspective of the Dutch provinces and municipalities. Best practices from other policy fields may be seen as examples to lead the way to better coordination. Efforts to analyse the coordination deficits and how to improve them have already started in the agricultural policy field for instance: stable networks amongst the Dutch provinces and municipalities and between the latter and the central Government are seen as prerequisites for proper input from the sub-national level to the EU decision-making process. Moreover, cooperation may also be considered to be enhanced at the European level, especially vis-à-vis the European Parliament and the Committee of the Regions due to their new powers granted by the Lisbon Treaty. Close cooperation with the Commission is also of crucial importance for the Dutch provinces and municipalities to have their voice heard at an early stage of the EU decision-making process.

4. – The Lisbon Treaty presents new pressure for sound multilevel coordination.

Most of the Lisbon Treaty novelties concerning regional and local authorities are of a voluntary nature, setting the pre-conditions for a better involvement of the sub-national level in the EU decision-making process. Thus, any progress regarding multi-level governance in the Netherlands will to a great extent depend on the willingness of all stakeholders to make use of the Lisbon Treaty potential. Yet low awareness of the Lisbon Treaty and its novelties has been noticed among the respondents to the questionnaire, as well as the people interviewed; this might thus prevent any progress towards better multi-level governance within the Netherlands. Indeed, Dutch stakeholders' opinions vary from satisfaction with the general result achieved, to the feeling of being deceived after perhaps having had expectations that ran too high. When it comes to the opinions at the provincial and municipal levels, one detects that there is no real knowledge of the Treaty's aspects, important or otherwise. The general impression, however, is that the sub-State level involvement in Dutch policy-making depends a lot on the political willingness of the central level. Most people interviewed are not very optimistic about the new potentialities of the new Lisbon Treaty.

2. Introduction

2.1. Aim of the study

Ever since the 1950s, Europe has been built on successive treaties negotiated by the Member States. After the failure of the Treaty establishing a Constitution for Europe, European institutions and Member States have been struggling to find a comfortable way to deal with such a difficult situation. The debate in the Netherlands – as in other countries - seems to have been concentrated on how to get over the paralysis caused by the defeated constitutional Treaty. The Heads of State and Government agreed to a new revised treaty in 2007. Following a rather difficult ratification process, the Lisbon Treaty entered into force on 1st December 2009. Even if the Treaty is not a rightful constitution, it still contains many constitutional elements and brings Europe one step closer to integration. However, this new treaty is not perceived the same way in all European territories, especially when it comes to the appreciation of the many novelties it offers.

The Lisbon Treaty modifies and revises the previous European treaties, these being the Treaty establishing the European Community (TEC), now called the “Treaty on the Functioning of the European Union” (TFEU) and the Treaty on the European Union (TEU), which retains its name.¹ It is therefore a reform treaty aiming to adapt the former treaties to the changing European context, which also explains the disappearing of the word “Constitution” in its title and with it, the constitutional symbols².

With the Lisbon Treaty, institutional arrangements were adopted to meet multiple challenges, ranging from the European Union’s last enlargements to global economic pressures. However, the actual impact of these changes remains unclear. Moreover, certain provisions of the Lisbon Treaty could be interpreted differently and Member States are concerned about uncertainties regarding the gravity and consequences of some of these elements.³ Of course, concerns may vary in intensity depending on the internal organisation of each State and its specific arrangements and rationales at decentralised levels.

Today, the Dutch public administration is experiencing an increased influence from EU legislation in its everyday work. It has to comply with EU requirements and a large part of this responsibility lies with the Dutch provinces and municipalities. In February 2010, the European Institute of Public Administration, European Centre for Regions (EIPA-ECR), was commissioned by the Dutch Ministry of the Interior to conduct a study on the impact of the Lisbon Treaty on Dutch provinces and municipalities. This study therefore aims to explore to what extent the Lisbon Treaty strengthens the provincial and local levels in the Netherlands, as well as its institutional impact on Dutch multi-level administration.

The research questions of this study are:

- Considering the concrete novelties of the Lisbon Treaty, what are the changes that can be provided in Dutch administration in terms of multi-level governance?
- Which mechanisms and strategies are necessary, already in place or being set up at the European, national and provincial/local levels to make better use of these changes in the different phases of the EU decision-making process? Are those strategies coordinated among the different levels of governance?
- How are these changes perceived by the different stakeholders?

¹ See annex 1 on the main changes brought by the Lisbon Treaty into the European Treaties.

² At the request of several countries such as NL, UK and CZ.

³ This uncertainty, for instance, arises with the use of the term ‘territorial cohesion’.

In order to find the answers to these research questions, we will analyse the institutional and policy-making novelties following the policy-making cycle according to its different phases, and check the Lisbon changes or potentials offered regarding each of these phases. We will also carefully analyse the new decision-making procedure and the new typology of EU acts, linking this Treaty's aspects to concrete findings from our interviews on specific cases: environment and agriculture, with concrete examples regarding biodiversity and the soil directive.

The Lisbon Treaty interacts with current developments related to the growing recognition of the role of regional and local authorities in the European integration process. Many of the novelties related to the sub-State level in Europe inserted in the Treaty are quite general. Thus Member States will have to decide how to involve the sub-State level in the EU policy-making cycle, and more particularly how to consult or to coordinate in a multi-level, efficient way. But the Lisbon Treaty send a clear signal to the Member States: while respecting their prerogatives and sovereignty in their internal administrative structures, the European Commission will be entitled to intensively consult the parties concerned, including regional and local authorities or their representative associations. National parliaments will form the cornerstone of the subsidiarity principle control and European citizens will enjoy greater participation in EU processes that favour the building of a more democratic Europe.

The EU has undergone numerous changes since its creation, notably in terms of size and competences. In order to adapt the EU Treaties to the changing European context, the Lisbon Treaty reforms the institutional architecture of the Union and its decision-making process, and includes a general tidying-up exercise by providing a clearer legal basis for the Union to take action.⁴ The list of amendments is notorious but can not be read in isolation: cross analysis is needed in order to understand the potentials it entails.

In this study, we will analyse whether the changes brought by the Lisbon Treaty are of potential relevance to the Netherlands' multi-level public administration:

- Firstly, a focus study will be conducted on the new situation of power-sharing within the EU with the clearer distribution of power at the EU level thanks to the principle of conferral, and its possible impact on multi-level governance in the Netherlands.
- Secondly, we will examine the Lisbon Treaty novelties with regard to the EU institutions and national parliaments linked to the EU legislative process that will - or might - have an effect on the participation of regional and local authorities, including the Dutch provinces and municipalities.
- Thirdly, we will explain the new typology of EU acts and its impacts on the possible involvement of local and regional authorities in the EU decision-making process, and how this needs to be taken into consideration by the multi-level governance mechanisms already in place or being set up or improved in the Netherlands.
- Finally, we will dedicate a chapter to specific references to the regional and local levels being emphasised throughout different articles of the Lisbon Treaty, recognising their role within the European integration process.

2. 2. Scope of the study

Literature nowadays offers an interesting analysis of the different changes brought about by the Lisbon Treaty. Important novelties such as the Union's new legal personality, the abolition of the pillar structure, the option of adapting new treaties without a formal revision, the option for a Member State to quit the Union, the flexibility and bridging clauses, the area of common foreign and security policy and the related institutional changes, are

⁴ See IIEA Consolidated and annotated version of the Treaties, edited by Peadar o' Broin, Institute of International and European Affairs – Dublin.

numerous. However, the Lisbon treaty itself is not the subject of this study. Here we will only focus on the impact the Treaty has on the Dutch sub-State level and its interaction with the central Government.

There are two kinds of impact that could undergo analysis: the institutional impact (legislative, organisational, competences) and the policy impact (economic, social and environmental). This study will focus on the institutional impact. This institutional impact is understood to mean impact on Member States' internal legislative frameworks, intergovernmental coordination, allocation of resources, appropriate skill development, accountability for EU legislation implementation and respect for the internal allocation of competences at the European, national, regional and local levels.

2.3. Methodology

The basic research methodology is qualitative. The information has therefore been gathered as follows:

Desk Research: Identifying and collecting relevant studies and policy papers on the institutional arrangements and coordination mechanisms in the Netherlands for the different levels of government.

Identifying and collecting different studies performed during the Constitutional process, the publications from the reform treaty period, and its subsequent very recent papers and publications on the novelties of the Lisbon Treaty, including its potentialities.

Questionnaire: The appropriate contact points for the researchers were identified in collaboration with the Dutch Ministry of the Interior. Local and regional associations and other stakeholders were invited to answer a questionnaire. The list of stakeholders interviewed as well as to whom the questionnaire was sent is annexed in Annex 7.

Interviews were carried out with representatives from different levels of Dutch administration, after receiving the answers to the questionnaire and drafting the preliminary findings.

Following the research questions, and based on the described methodology, the potentials and challenges of the Lisbon Treaty for the different levels of government in The Netherlands have been identified. Since the answers to our questions were given at a very early stage in the Lisbon Treaty's implementation, and since the study's conclusions and recommendations are based on these preliminary findings, we advise further research in the future to follow up this analysis, as well as the conclusions reached and the suggested recommendations.

3. The new sharing of power within the EU: any impact on multi-level governance in the Netherlands?

The Lisbon Treaty is innovative - compared to the previous European treaties - by providing a clear delimitation of competences between the European Union and the Member States. Indeed, the new treaty distinguishes three main categories of competences: exclusive, shared and those aimed at supporting or coordinating Member States' actions. This may directly or indirectly impact on the Dutch provinces and municipalities, and thus on multi-level governance within the Netherlands.

3.1. A clearer distribution of power at the EU level: The principle of conferral as the cornerstone for delimitating competences

Previous European treaties have tried to define the European Union and Member State's respective competences in detail but without managing to define the boundaries. The Lisbon Treaty presents a step forward in achieving this aim.

► The principles governing the sharing of power within the EU: conferral of competence, subsidiarity and proportionality

Former Article 5 TEC has been replaced by [Article 5 TEU](#) with the adoption of the Lisbon Treaty, stating that

“1. The limits of Union competences are governed by the principle of conferral⁵. The use of Union competences is governed by the principles of subsidiarity and proportionality.

2. Under the principle of conferral, the Union shall act only within the limits of the competences conferred upon it by the Member States in the Treaties to attain the objectives set out therein. Competences not conferred upon the Union in the Treaties remain with the Member States.

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

The institutions of the Union shall apply the principle of subsidiarity as laid down in the Protocol on the application of the principles of subsidiarity and proportionality. National parliaments ensure compliance with the principle of subsidiarity in accordance with the procedure set out in that Protocol.

4. Under the principle of proportionality, the content and form of Union action shall not exceed what is necessary to achieve the objectives of the Treaties.

The institutions of the Union shall apply the principle of proportionality as laid down in the Protocol on the application of the principles of subsidiarity and proportionality.”

Therefore, the Lisbon Treaty distinguishes three main categories of competences: exclusive, shared and those aimed at supporting or coordinating Member States' actions.

The Lisbon Treaty also introduces [Article 48 TEU](#) which allows, for the first time, the possibility for any national Government, the European Parliament and the European Commission, to request the Council to amend the treaties to increase or reduce the competences conferred on the Union according to the latter.

► EU exclusive competence - New [Article 3 TFEU](#)

⁵ In the Dutch version of the Treaty 'conferral' is translated as 'bevoegdheidstoedeling'.

Article 5(2)TEU establishes the principle of conferral: when we refer to exclusive competences of the Union, it means that the EU shall act within the limits of the treaties and their objectives. Moreover as stated in Article 4(1)TEU the "competences not conferred upon the Union in the Treaties, remain with the Member States".

There are no novelties in the Lisbon Treaty in the field of EU exclusive competences, it still concerns:

- the Customs Union;
- the establishment of competition rules necessary for the internal market to function;
- the monetary policy for Member States which use the Euro;
- the conservation of oceanic biological resources as part of the common fisheries policy;
- the common trading policy;
- and the conclusion of any international agreement when conducted within the EU legislation framework, or when it is necessary to help the EU to exercise an internal competence, or if there is a possibility of the common rules being affected or of their range being changed.

► **Shared competence – New Article 4 TFEU and Protocol n° 25 on the exercise of shared competence**

In areas of shared competence, the objectives of the proposed action have to be weighed against the ability of the Member States to achieve the desired results on their own. If the results can be better achieved by the Union, by reason of scale of the action or its effects, there may be grounds for European action. This results from the application of the principle of subsidiarity, explicitly mentioning for the first time the regional and local levels. In addition, EU action shall be restricted to what is necessary to achieve the objectives of the treaties, according to the principle of proportionality. Thus, the subsidiarity and proportionality principles, along with the conferral principle, provide the basis for identifying which action should be undertaken at which level in areas of shared competence.

The EU and its Member States are jointly responsible for:

- internal market;
- social policy with regard to specific aspects defined in the Treaty;
- economic, social and territorial cohesion;
- agriculture and fisheries except for the conservation of oceanic biological resources;
- environment;
- consumer protection;
- transport;
- trans-European networks;
- area of freedom, security and justice;
- joint security issues with regard to aspects of public health;
- development cooperation and humanitarian aid;
- and research and technological development.

The Lisbon Treaty also added new areas, being:

- energy;
- and space.

► **Support, coordination or supplement provisions - New Article 6 TFEU**

A third type of competences is covered by the so-called support and coordination provisions. Member States remain competent but the EU may provide support in the following areas:

- protection and improvement of human healthcare;
- industry;
- and culture, education, professional training and youth.

The Lisbon Treaty also added new areas, being:

- civil protection;
- tourism;
- sport;
- and administrative co-operation.

The aspect of administrative cooperation is developed in Article 197 TFEU, where it clearly states that any harmonisation of the laws and regulations of the Member State is excluded. Therefore, support actions from the EC to the Member State on administrative cooperation, should be understood as a residual power, which will be exercised only – as was the case before – as an auxiliary competence, as a fall back provision in the context of concrete policy areas. For example in the internal market, fiscality, and environment; there we might expect support and supplementing provisions on administrative cooperation, excluding horizontal harmonisation⁶.

ANALYSIS

Clarification of competences between the EU and the Member States constitutes a decisive element of the EU democratisation process. Citizens want to know who is responsible for what within the European arena: the Lisbon Treaty increases the odds of giving an accurate answer to such a question.

The Lisbon Treaty does not confer new exclusive competences to the Union, but it does enlarge the amount of shared competences between the Union and the Member States (space and energy) as well as those aiming to carry out actions to support, coordinate or supplement the actions of the Member States (civil protection, tourism, sport and administrative cooperation). How the Commission will implement this in practice remains to be seen. The Commission is currently working on the different aspects of the Lisbon Treaty that need clearer definition (e.g. regarding participatory democracy or the use of the delegated powers). Yet, in the case of Article 6 TFEU, at the time of writing this study, researchers have found no specific positioning by the Commission.

Moreover, the Lisbon Treaty confers the option of proposing a reduction or enlargement of the Union's competences (Art. 48 TEU) on any national government as well as the European Parliament and Commission. Such a provision reveals a certain re-nationalisation trend, which mainly results from the discussions on the dead constitutional Treaty after the “no” to the French and Dutch referendum, which took the form of a significant debate in the Netherlands at that time.

POTENTIAL AND CHALLENGE FOR THE NETHERLANDS

Certain new areas regarding shared and supportive competences such as civil protection, energy, tourism and sport are very much the competences of the Dutch provincial and local authorities. Therefore, new European rules in one of these fields may directly or indirectly impact the Dutch provinces and municipalities, thereby reinforcing thus the need to involve them in the EU decision-making process when one of these new areas of competence is concerned.

As regards supportive competences, it remains to be seen how the Commission intends to implement them; but it has been clearly established in Article 197 TFEU, that harmonisation of the laws and regulations of the Member states is excluded.

3.2. Multi-level governance in the Netherlands

For a detailed description of the division of competences in the Netherlands, please see Annex 2.

► The different phases in the policy-making cycle and its follow up in the Netherlands

⁶ Telephone interview with an official of the Secretariat General of the EC, 15 July 2010.

The new clarification of competences endorsed at the European level could be studied in parallel with the Dutch 'philosophy' presented in the Code on Intergovernmental Relations (2005) and reconfirmed by the Council of State (Raad van State) in its report entitled "Decentraal moet, tenzij het alleen centraal kan" (2009)⁷. The Dutch state's policy on intergovernmental relations is based on the thought that, where possible, action should be taken at the local level. Only if the local administration is not competent should provincial or state authorities become involved. However, local authorities have complained on numerous occasions that this principle has not been always complied with in reality.

Throughout the different phases of the policy-making cycle, from preparatory works to the final compliance phase, the Netherlands has been trying to improve and make its multi-level coordination and participation system in EU matters more efficient.

Pre-legislative phase: being aware of any preparatory works in Brussels

The provincial and municipal levels are represented by IPO (the Association of Provincial Authorities - Interprovinciaal Overleg) and VNG (the Association of the Netherlands' Municipalities - Vereniging van Nederlandse Gemeenten). Both national associations have developed their own lobbying activities in Brussels. Every year the European department of each association consults the European Commission's working plan and makes a list of the most relevant EU planned proposals for the Dutch provinces and municipalities. Then lobbying takes place in order to defend the interests of the sub-State level and to try to influence both EU institutions and national ministries in the decision-making process.

VNG has an office in Brussels but has no permanent personnel based there. VNG representatives are present for important meetings. Cooperation with the association's experts based in the Netherlands is deemed to be important for the European department to justify the absence of full-time staff in Brussels. The Association also seeks influence through European umbrella associations such as through its active membership of the CEMR (Council of European Municipalities and Regions). Such lobbying activity is frequent in the sphere of the European Parliament.

IPO is also represented in Brussels through the 'House of the Dutch Provinces' (HNP) which the Assembly set up with Dutch provinces in 2000. The HNP takes part in all lobbying activities that concern the Dutch provinces within European institutions.

In December 2008, VNG, IPO, the Minister of the Interior and the State Secretary for European Affairs signed an action plan for closer cooperation between the central Government, provinces and municipalities in the field of European policy. The action plan came after the Dutch Parliament adopted a national policy vision on the 'Strength of Internal Governance' in 2007. The Minister of the Interior concluded in this document that Europe has such a major influence on internal governance that the national, provincial and local governments should cooperate more closely.

RESULTS OF THE QUESTIONNAIRE AND INTERVIEWS

The answers given to the questionnaire show that there is a need to improve the action taken by the different levels of administration when it comes to the pre-legislative phase. We consider the pre-legislative phase to be of utmost importance, since any input given to the Commission in its Impact Assessment exercise could help prevent undesired consequences and would support the need, reinforced by the Lisbon Treaty, to base any new policy in qualitative – and where possible quantitative – assessment of the impacts on any given national, regional or local governments.

Research shows that Dutch provinces and municipalities are quite well informed on a number of important EU policies such as state aid and procurement rules, and also follow the ongoing discussion on these issues with

⁷ Decentraal moet, tenzij het alleen centraal kan, Tweede periodieke beschouwing over interbestuurlijke verhoudingen, Raad van State, juni 2009.

great interest. Dutch municipalities are also quite active within various European networks and participate in projects.

The Province of Limburg underlined that: "In the environmental field monitoring 25 dossiers which are of regional and provincial importance (IPO-KEM-matrix) starts in an early phase - from the first Commission proposals. In general, relevant EU dossiers are monitored by HNP/IPO, more or less closely depending on provincial relevance. However, this does not necessarily mean that provinces are always sufficiently involved in ex-ante impact assessments, since in most occasions provinces are not officially participating before a proposal has been published".

During our interviews we have dealt with different examples and in particular with two concrete cases: these are presented in separate boxes throughout the report, in order to devote special attention to the specific needs detected in each one; The case studied are on Agriculture and on the Soil Directive proposal.

CASE STUDY: Agriculture

Triggered by the Lisbon Treaty (especially the reinforced role of the European Parliament) and change of EU policy, a need for improved coordination in agricultural policy has been highlighted by different experts. This is the case for rural policies in the Netherlands: New dynamics in the agricultural sector correspond with big changes made by the previous decade's new policies - the ongoing shift from direct product-related payments to a broader concept of rural development in particular. The debate on abolishing the milk production quota is a case in point. Since rural development instruments have increased in importance, so too has the role of the provinces become more important than in the past. The provinces are initiating increasing numbers of assignments to trigger the socio-economic development and assure the environmental quality of rural areas. These assignments include parts of the EU's rural policies from the second pillar of agriculture policy. Since provincial administrations are faced with difficulties emerging from rural development legislation, they see the need to be more involved in lobbying for adjustments vis-à-vis the European institutions. According to provincial experts, potential further changes related to rural development stipulate closer monitoring by RLAs. It was said that today, the agriculture sector is - next to the well organised environmental sector – a sector where monitoring and networks have been very much improved. Amongst provinces, the Work Programme of the Commission in the agricultural field is being monitored in a much more intensive way than in the past. Also the House of the Provinces is investing more time in agricultural dossiers and in contacts with the European Parliament. As concerns relationships to the European Parliament, an attempt has been made to improve contacts. Strangely enough there are currently no Dutch full members on the agriculture committee. Given the fact that this is the first time that the European Parliament has a major say in agricultural policy, this seems to be a strange, negative situation for both the National Ministry and the RLAs. The situation has been very different in the Committee of the Regions. A Member of the provincial executive of Zuid Holland has obtained a rapporteurship to draft an opinion on the "Health Check" Legislative report. The writing of this report was done with the input from Dutch provincial agricultural experts. This is seen by experts involved as a success story, since important points were incorporated in the final European legislation.

Finally, according to the answers to the questionnaire given by provincial experts, the relationship with the Ministry of Agriculture, Nature and Food Quality (LNV) will be even more important than in the past. It is the question whether and how some elements from other policy fields could help to structure the provincial and local inputs between the network of provincial agricultural experts working with IPO and the national ministry. These coordination tools may include detailed regular analysis of up-coming dossiers which clearly define the expert's delegated functions in certain provinces (like the matrix does of the environment KEM working group). And as a second element, a closer cross-level coordination via nominated 'dossier teams' coordinated by the LNV Ministry

Legislative phase: adoption of EU legislation

When it comes to the legislative phase, the coordination procedure with the central level formally goes through five phases (to be seen below). In the Dutch system, the central government is responsible for the EU policy process. However, local and provincial governments are also involved in the process of determining positions and

the implementation process. There is a monthly forum where VNG, IPO and the ministerial relevant departments discuss developments regarding EU issues. The Minister of the Interior, the Minister of Foreign Affairs and the VNG and IPO political boards discuss these developments bi-annually. The latter are also members of the National Assessment Board that deals with the new EC proposals. This board explores the possible impact of EU new legislation and formulates the Netherlands' initial position regarding said legislation.

The Dutch Code on Intergovernmental Relations governs municipalities' and provinces' involvement in the formation and implementation of EU legislation, which may affect said municipalities and provinces. This involvement can take several forms. Ministries and decentralised governments can either choose bilateral relations or a more intensive inter-governmental cooperation through the so-called 'dossiers team'.

In the Netherlands, the Ministry of Foreign Affairs has been responsible for negotiations regarding the transposition of EU rules since 1972. It also has the main responsibility for interdepartmental coordination of European policy. The coordination procedure is officially triggered whenever the European Commission submits new proposals and consists of five interdepartmental coordination phases⁸:

Phase 1: New EC proposals are discussed in the 'Working Group for the Assessment of New Commission Proposals' (Werkgroep Beoordeling Nieuwe Commissievoorstellen – BNC), which was formed in 1989 and is chaired by the Ministry of Foreign Affairs. The Working Group meets on a weekly basis in order to exchange information about new EC proposals and to appoint the responsible departments. Dutch provincial and local governments also participate in this working group. Local governments are represented by VNG, while the provinces are represented by IPO. The meetings result in a so-called 'BNC-fiche', which contains:

- A note on the departments and the levels of government involved in the matter;
- A reflection on the EC proposal influence on the Dutch policy;
- An evaluation of the EC proposal effects on the national budget and the use of personnel;
- An overview of the demands of good (EU) legislation, subsidiarity and the method of implementation in the Dutch legal framework;
- A draft opinion from the central Government on the proposal, which is used as the basis for further negotiation in Brussels.

Through the Coordination Committee for European Integration and Association Studies (CoCo), the BNC-fiches are approved by the Ministerial Council and sent to the Dutch Parliament to inform the parliamentarians.

Phase 2: An inter-departmental meeting, with all the relevant ministerial departments, takes place and to which the Council Working Groups (Raadswerkgroepen) takes part. At this stage, the departments play a relatively autonomous role. The Dutch opinion on the proposal is generally fully drafted during this meeting.

Phase 3: A permanent representation instruction meeting is held, at which the Dutch contribution for the Permanent Representatives Committee (COREPER) is formulated.

Phase 4: A meeting of CoCo in a sub-council of the Ministerial Council takes place, chaired by the State Secretary for European Affairs. The sub-council meets once every two weeks to determine the new 'BNC-fiches' and prepares the meetings of the Council of Ministers meetings. The CoCo coordinates the Dutch draft opinions on the EC proposals and prepares the Dutch Ministerial Council's decision-making process.

Phase 5: CoCo conclusions are decided in the weekly Ministerial Council .

⁸ Steur, B.F. de Goede, P.J.M & Schmeets, H.H.J (2004). Nationale coördinatie van Europees beleid, best belangrijk. In: Bestuurskunde, Vol. 13, No. 6.

Although this system seems a very formal means of involving every level of government, prominent Dutch scholars believe that the influence of provinces and municipalities on the European policy-making process is rather limited.⁹

RESULTS OF THE QUESTIONNAIRE AND INTERVIEWS

According to the results of the interviews, the legislative phase has quite complete and efficient procedures, yet either the involvement of provinces and municipalities is not sufficient or the central Government does not exploit their contributions to a sufficient extent to value the expertise existing at the provincial and local levels.

In fact, the answers to the questionnaire show a different perception according to whether the central or the provincial/ municipal level in the Netherlands is being considered. At the central level¹⁰ *“Although the procedure works well, VNG and IPO hardly make use of the possibility to come to the meeting and provide input”*. Is this due to a lack of manpower at VNG and IPO? Would they then attend more often to meetings and / or send more written input to the central level?

In contrast, the respondents' view of the sub-State levels differs: *“IPO and VNG are generally trusted for their good work. However, the RLAs' internal expertise is not sufficiently used. The timeframe is too short. The last steps may not be transparent enough. In general, it seems the strategic moment for improvement is in early stage as well as at the very end of the process”*.

For example, during our interviews, biodiversity questions were mentioned as an example of something needing improvement. According to our research, since biodiversity issues are handled by the competences of the Ministry of Agriculture, biodiversity is also mentioned as a policy field where cooperation could be improved from the provincial perspective. According to the provincial experts interviewed, provinces in the past have not been sufficiently invited to share their experiences and ideas on EU dossiers. Provinces of course also used other channels such as the CoR or the CEMR as an alternative way to voice their positions in Brussels on this matter.

In our questionnaire, we asked if the participation of the provinces and municipalities in the *Werkgroep Beoordeling Nieuwe Commissievoorstellen* (BNC) is a satisfactory mechanism to allow adequate provincial / local level participation, especially as regards the preparation of the Dutch position within the EU Council of Ministers. The answers¹¹ clarified that *“BNC is not a mechanism for preparing the Dutch position in the Council. BNC is an instrument to obtain an overview of incoming proposals from the Commission and to have a preliminary point of view from the Dutch government. But BNC is useful in establishing first contact with the responsible civil servants from the departments involved. Preparing the national position in Council negotiations does not take place within BNC but via participation in preparatory council working groups, chaired by the department which is responsible for the subject. Improvements could be made in the way BNC follows up on procedures; when VNG indicates within the BNC procedure that it wishes to be involved in further developments, they cannot take for granted that the departments responsible will allow it. This seems to be due to poor communication within a department on the role of VNG within the BNC procedures and its follow-up”*.

Moreover, a lack of transparency or a lack of understanding on how the national position is being prepared and adopted has been underlined by the respondents. Clarity on the role the different stakeholders will play during the preparatory phase of the national position within the EU legislative process and its follow-up in Brussels is of major importance.

In order to improve the actual shortcomings in the decision-making process using a more efficient participation and use of expertise of the sub-State level, different suggestions have been collected during our research:

⁹ Steurs, B.F., de Goede, P.J.M. & Schmeets, H.H.J. 'Nationale coördinatie van Europees beleid, 'best belangrijk.' In: *Blad Bestuurskunde*, No. 13-6, pp. 255-262.

¹⁰ Answers to the EIPA questionnaire, Marianne de Jong, Permanent Representation of the Kingdom of the Netherlands to the EU.

¹¹ Answers to the EIPA questionnaire, VNG.

- Existing structures put in place during the EU Dutch presidency, such as the High level Group on Governance and the EU, should be used more efficiently for raising awareness;
- Direct consultations with RLAS in order to find out new mechanisms for improvements of the decision-making process;
- To wait for the evaluation of the 'Actieplan Europa en decentrale overheden' (2008) between the central level, IPO and VNG on European Relations, which will take place at the end of 2010, to detect the shortcomings of the system and to improve it;
- To structure the European debate along separate policy lines and organise expertise groups on different subjects;
- In order to avoid the formal and fragmented top-down approach among the different levels of government, to make further use of the very informal Dutch practice of debate and take a more inclusive approach from the central level;
- Transposition (where necessary) and implementation of EU legislation: in the Netherlands, EU Directives are transposed by the central level without the formal involvement by the provinces and municipalities.

In our questionnaire, we also asked whether the existing consultation and coordination mechanisms are adequate to ensure that the national transposing law sufficiently considers any specific regional and local impact. The answers varied once more. They pointed out the problem that when it comes to implementation, possible impacts when not previously detected or practical problems not properly solved, lack adequate instruments for a proper multi-level solution.

VNG said *"The people working on implementing of EU law are often not the same as those who are involved in negotiating the Council working groups. This means that positions, particular issues, and also networks of people need to be communicated, re-established between the associations and the various departments. However we do see that the recognition of the importance of continuity in all phases of policy making and implementation is growing both on the EU as well as the national level. A good example of this is the implementation of the Services Directive. There are also good examples in the cooperation between VNG and the Ministry of Housing, Spatial Planning and the Environment. In other areas such as procurement rules, the cooperation which already exists on the national level between the departments and the associations is continued into the discussion in Brussels."*

The creation of the 'dossier teams' has established a multi-level system of participation in the transposition phase. However, these teams are not used in all policy areas. Furthermore, since these teams absorb quite an important number of high level officials, they are immediately dismantled once the deadline for transposing a given directive has been met.

VNG specified *"The 'dossier teams' have been very successful in ensuring the interest of local government in various EU dossiers in the negotiations stage. We hope this way of working will be expanded to other policy areas than environment. However, these teams have up till now not been used in the implementation phase (emphasis added). The first pilots in this area (on Industrial Emissions, IPPC) will start soon once the directive has been adopted."*

Meanwhile other stakeholders interviewed stated that *"While acknowledging the benefits of such system, warn that it should remain bounded to priority dossiers"*.¹²

► Information flow in the Netherlands & coordination mechanisms

In June 2005, an advisory committee¹³ concluded while referring to the provinces and municipalities that more administrative levels should be involved in the EU law-making and implementation processes. During the same year, the guidelines for general cooperation were laid down in the 'Code on Intergovernmental Relations'. One of the main principles of the Code states that action should be taken where it can be best achieved. One year later,

¹² Answers to the EIPA questionnaire, ROB VAN EIJKEREN, IPO / House of Dutch provinces in Brussels.

¹³ Gemengde Commissie Sturing EU-aangelegenheden, under presidency of Mr. B.J. Baron van Voorst tot Voorst.

in October 2006, the Advisory Board (*Raad van State*) analysed the use of the Code and concluded that things did not work the way they were planned: too much tension existed between the different administrative levels. As a follow-up to the Code, the relations between the national government and sub-State administrations were improved thanks to different agreements made in 2007 and 2008.

One of the agreements between the administrations was the so-called 'Action Plan Europe and Decentralised Governments' signed by the Ministry of the Interior, IPO and VNG. The existing meeting structure was formalised with the creation of the monthly *Europa Overleg Binnenlands Bestuur* (EOBB). Its main goal was to formalise and structure the information flow on EU topics. The participants were the Ministry of the Interior, IPO, VNG and, occasionally, other departments and the water boards. The common EU Agenda (topics considered to be of interest) is called the '*European Agenda Binnenlands Bestuur*' (EABB). This agreement will be evaluated in December 2010. VNG criticised the EOBB by stating that the meetings are only to exchange information and nothing is done to enlarge the sub-State level's input in the Commission's expert groups or in the work of the expert groups preparing the Dutch position in the Council. The substantial content-wise aspects of the discussions are outside the scope of the EOBB, which, according to VNG, reduces the potential of such meetings.¹⁴

Three years after the first evaluation of the Code, things appear to improve. In June 2009, the Advisory Board (*Raad van State*) concluded in its report entitled '*Decentraal moet, tenzij het alleen centraal kan*'¹⁵ that relations between the different levels of administration in the Netherlands had been improved. Yet, it pointed out that the attitude and plans of the central Government towards decentralisation had still too little follow-up with concrete activities. However, the Board was positive about the cooperation between the different levels of government regarding European affairs.

ANALYSIS

At the European level, a reflection on the need to involve more local and regional authorities in the EU decision-making process was re-launched with the Committee of the Regions' (CoR) 'White paper on Multi-level Governance'¹⁶. The same tendency was observed in the Council of Europe's conference of European Ministers responsible for Local and Regional Government held in Utrecht on 16-17 November 2009, chaired by the Dutch Minister of the Interior Ms Ter Horst, during which 'Good local and regional governance in turbulent times: the challenge of change' was discussed.

POTENTIAL AND CHALLENGE FOR THE NETHERLANDS

After analysing the different mechanisms established in the Netherlands towards better and more efficient multi-level governance, and in view of the comments received during our research, there seems to be room for better awareness and participation in the early stage of the policy-making cycle. Formal involvement of the Dutch provinces and municipalities only starts when they are notified by the European Commission of a legislative proposal. How the Commission services obtain input from the regional and local levels in its *ex-ante* impact assessment is not clear, as there are no formal procedures. Furthermore, the results of our interviews show differing levels of satisfaction once the EC proposal has been made public, depending on the policy area at stake and therefore the ministries to be involved.

It is important to bear in mind the advisory/assistance role of the Dutch provinces and municipalities in the policy-making cycle. They do not have a co-deciding role with the national government. Their utmost purpose then is to assist in the initial stages with their expertise, as well as in the final making of the instructions for the discussions

¹⁴ VNG Report "VNG- deelname aan internationale organisaties en netwerken" prepared by the VNG Department called Directie Europa-internationaal (EUI).

¹⁵ *Decentraal moet, tenzij het alleen centraal kan*, Tweede periodieke beschouwing over interbestuurlijke verhoudingen, Raad van State, juni 2009.

¹⁶ Own-initiative opinion on 'The Committee of the Regions' White Paper on Multilevel governance' adopted on 17 June 2009, CdR 89/2009 fin, 2009.

in the Council. In cases such as agriculture, there is a lack of clarity on how the Dutch position is finally established. If stable networks exist, together with an open culture of transparency, it is easier to be able to play an efficient advisory role. Therefore, informal contact, good networking and personal commitment, together with the right openness on the side of the central ministries, can often provide better results in the making of the national instructions.

There seems to be room for improvement in the existing coordination mechanisms. These mechanisms should be formalised and extended to all policy areas, and not left to the willingness of the different departments and people involved. In order to mainstream a real multi-level culture in the Dutch public administration, the fragmented, formal, top-down approach could be reinforced with a more inclusive and flexible focus, which could make it possible to expand the best multi-level practices, in the environmental field, for example, into other closer and more hierarchical policy-making approaches.

The conclusions of the Advisory Board (*Raad van State*) are confirmed by the answers to our questionnaire. Most of the answers show that there is a reasonable degree of satisfaction surrounding the decentralised governance system in the Netherlands. It must be added, however, that the opinion that there is room for improvement is almost unanimous. There is a common understanding that the potential of the Lisbon Treaty will depend very much on the focus and understanding from the central level on how to improve the existing multi-level mechanisms in the Netherlands. Both the formal and the informal channels of participation could be improved¹⁷.

But it will also depend very much on the capacity and ability of the RLAs to really participate and make efficient use of already existing channels for their participation, as well as the use of the new channels that might be launched in the near future as a result of the Lisbon Treaty.

¹⁷ (See the case study on agricultural policy as explained in points 3.2 and 3.3 of this study).

4. Novelties regarding EU institutions and the national parliaments in the EU legislative process: some potentials for regional and local authorities

The European Union has been in a stalemate for the last few years. The Lisbon Treaty represents the cornerstone of important institutional reforms to respond to the need to adapt EU institutions and their decision-making process due to Europe's successive enlargements in 2004 and 2007. The general impression is that these reforms contain both direct and indirect potentials for the Member States and their respective regional and local authorities. The dynamics that will derive from some of them are already evident. These include easier access to the European Commission, the new powers gained by the European Parliament or the new right to go to the European Court of Justice attributed to the Committee of the Regions. Others are more subtle and might interact with other parallel developments including the new power dedicated to the national parliaments in the subsidiarity check.

In order to stay within the scope of our study, we will not analyse the European Council in this chapter, it now being an EU institution, the European Central Bank or the other consultative body being the European Economic and Social Committee, as numerous other articles deal with these institutional changes. Our attention will chiefly focus on the main decision-making triangle - the European Commission, the European Parliament and the Council of Ministers - as well as the Committee of the Regions and the European Court of Justice.

4.1. A more open European Commission

The Lisbon Treaty ensures open access to the European Commission throughout different provisions referring to: ample consultations or an open, transparent and regular dialogue. But it also ensures a more open and concerned Commission regarding the results or impact that EU legislation may have by conducting systematic impact assessments on any draft EU legislative proposal, for which the EC right of initiative has also been confirmed by the new Treaty.

► A reaffirmation of the EC right of initiative for EU legislative proposals

Normally it is the European Commission which holds the right of initiative for EU legislative proposals, as [Article 17 TEU](#) states: "1. The Commission shall promote the general interest of the Union and take appropriate initiatives to that end. [...] 2. Union legislative acts may only be adopted on the basis of a Commission proposal, except where the Treaties provide otherwise. Other acts shall be adopted on the basis of a Commission proposal where the Treaties so provide". Within the framework of the ordinary legislative procedure [Article 294\(2\) TFEU](#) adds that: "The Commission shall submit a proposal to the European Parliament and the Council". However as [Article 289\(4\) TFEU](#) specifies "In the specific cases provided for by the Treaties, legislative acts may be adopted on the initiative of a group of Member States or of the European Parliament, on a recommendation from the European Central Bank or at the request of the Court of Justice or the European Investment Bank".

► Consultation of local and regional authorities before adopting EC proposals for legislative acts

[Article 2 of Protocol n°2 on the application of the principles of subsidiarity and proportionality](#) states that "Before proposing legislative acts, the Commission shall consult widely. Such consultations shall, where appropriate, take into account the regional and local dimension of the action envisaged. In cases of exceptional urgency, the Commission shall not conduct such consultations. It shall give reasons for its decision in its proposal". This provision is interpreted as an obligation on the Commission's part when making proposals of legislative acts. The non-legislative acts, as explained in part 5 of this study, remain outside the scope of this obligation.

► New provision on participatory democracy: another open window for associations representing RLAs to express their views to the EC

The new [Article 11 TEU](#) on participatory democracy provides that "1. The institutions shall, by appropriate means, give citizens and representative associations the opportunity to make known and publicly exchange their views in

all areas of Union action. 2. The institutions shall maintain an open, transparent and regular dialogue with representative associations and civil society. 3. The Commission shall carry out broad consultations with parties concerned in order to ensure that the Union's actions are coherent and transparent."

► **Taking into account local and regional levels in EC impact assessments**

Article 5 of Protocol n°2 on the application of the principles of subsidiarity and proportionality states that "Draft legislative acts shall be justified with regard to the principles of subsidiarity and proportionality. Any draft legislative act should contain a detailed statement making it possible to appraise compliance with the principles of subsidiarity and proportionality. This statement should contain some assessment of the proposal's financial impact and, in the case of a directive, of its implications for the rules to be put in place by Member States, including, where necessary, the regional legislation. The reasons for concluding that a Union objective can be better achieved at Union level shall be substantiated by qualitative and, wherever possible, quantitative indicators. Draft legislative acts shall take account of the need for any burden, whether financial or administrative, falling upon the Union, national governments, regional or local authorities, economic operators and citizens, to be minimised and commensurate with the objective to be achieved".

It should also be quickly mentioned here that due to harsh discussions after the 'no' vote from the Irish referendum held on 12 June 2008, the Lisbon Treaty ensures that Member States will keep one Commissioner each until 31 October 2014¹⁸, contrary to the Nice Treaty and the defunct Constitutional Treaty (Article 17(4)TFEU).

RESULTS OF THE QUESTIONNAIRE AND INTERVIEWS

During our interviews, the emphasis appeared to be on the role played by the House of the Dutch Provinces in preparing impact assessments on the basis of priority list they draft, based on the Annual Commission work plan. They carry out very important work, but how this is communicated in the horizontal administration, how the specialist in Brussels receive timely quality feedback from the provinces, seems to present some shortcomings.

In addition, the answers to our questionnaire reveal that provinces and municipalities are not formally involved until the moment the EC presents the formal proposal.

ANALYSIS

Article 2 of Protocol n° 2 and Article 11 TEU endorse a common practice that the Commission has developed over the past years, that is to say, consulting stakeholders either through 'Green Papers' or 'White Papers'. Yet this is the first time that a reference is made to the 'regional and local dimension' in particular in the European treaties.

With Article 5 of Protocol n°2, it is now legally recognised that the European Commission, when it justifies its legislative proposals, includes an impact analysis considering the local and regional levels, particularly in financial terms. On this matter, the Committee of the regions believes that "*It is very important (...) that the territorial aspect of new legislation should have a key position in the Commission's current impact assessments. In order to assess this territorial aspect properly, the Commission's departments should explain the consequences of new legislation for the regions and municipalities in good time*".¹⁹

¹⁸ "As from 1 November 2014, the Commission shall consist of a number of members, including its President and the High Representative of the Union for Foreign Affairs and Security Policy, corresponding to two thirds of the number of Member States, unless the European Council, acting unanimously, decides to alter this number.

The members of the Commission shall be chosen from among the nationals of the Member States on the basis of a system of strictly equal rotation between the Member States, reflecting the demographic and geographical range of all the Member States. This system shall be established unanimously by the European Council in accordance with Article 244 TFEU" - Article 17(5)TFEU.

¹⁹ CdR 89/2009 fin, p.26.

POTENTIAL AND CHALLENGE FOR THE NETHERLANDS

When the European Commission consults on a matter with strong regional and local aspects, the participation of and contribution by the Dutch provinces and municipalities could be envisaged, as should the respective associations representing them.

Moreover the provision on participatory democracy refers to 'representative associations' as well as the 'parties concerned'. This should include associations representing regional and local authorities either nationally, such as the Inter-provincial Assembly (IPO) and the Association of Netherlands Municipalities (VNG), or at the European level, such as the Council of European Municipalities and Regions (CEMR), of which IPO and VNG are members. A broadened participation in the EU decision-making process might be envisaged for both IPO and VNG through this new Article 11 TEU.

Regarding the impact assessment of draft EU legislative acts, the question could be raised of whether the Dutch provinces and municipalities, or IPO/VNG, will develop their own assessment system or not? This might be valuable when participating in EC consultations at a very early stage of the EU law-making process or to reinforce cooperation with the Dutch Parliament when dealing with the subsidiarity check.

4.2. The reinforced role of national parliaments in the subsidiarity check

With the Lisbon Treaty a great importance is given and recognised to the role of the national parliaments. This was especially highlighted by changing the order of the protocols concerning national parliaments. Indeed, they are now taking the first two positions of the protocols attached to the EU Treaties - Protocol n°1 on the role of national parliaments in the European Union and Protocol n°2 on the application of the principles of subsidiarity and proportionality – whereas they were before respectively ranked Protocols n°9 and n°30.

► The national (and possibly regional) parliaments at the core of the Early Warning System (EWS): An ex-ante subsidiarity control

Under the Lisbon Treaty, the role of the national parliaments has been strengthened as regards control over the subsidiarity principle (but not the proportionality principle). Article 12 b. TEU states that "National parliaments shall contribute actively to the good functioning of the Union [...] by seeing to it that the principle of subsidiarity is respected in accordance with the procedures provided for in the Protocol on the application of the principles of subsidiarity and proportionality".

National parliaments will have an important role to play in the Early Warning System, which is in fact an *ex-ante* subsidiarity control. According to Article 6 of Protocol n°2 on the application of the principles of subsidiarity and proportionality, "Any national parliament or any Chamber of a national parliament may, within eight weeks from the date of transmission of a draft legislative act, in the official languages of the Union, send to the Presidents of the European Parliament, the Council and the Commission a reasoned opinion stating why it considers that the draft in question does not comply with the principle of subsidiarity. It will be for each national parliament or each Chamber of a national parliament to consult, *where appropriate, regional parliaments with legislative powers*".

Article 7 of Protocol n°2 on the application of the principles of subsidiarity and proportionality adds that: "The European Parliament, the Council and the Commission, and, where appropriate, the group of Member States, the Court of Justice, the European Central Bank or the European Investment Bank, if the draft legislative act originates from them, shall take account of the reasoned opinions issued by national parliaments or by a Chamber of a national parliament. Each national parliament shall have two votes, shared out on the basis of the national parliamentary system. In the case of a bicameral Parliamentary system, each of the two Chambers shall have one vote." This is also underlined in Article 8 of Protocol n°1 on the role of national parliaments in the European Union that "Where the national parliamentary system is not unicameral, Articles 1 to 7 shall apply to the component Chambers."

Still according to Article 7 of Protocol n°2 on the application of the principles of subsidiarity and proportionality, a draft European legislative act must be reviewed within the eight week time limit if one third (one quarter in the area of freedom, security and justice) of the national parliaments oppose its subsidiarity arguments. The procedure is called the “yellow card”. The Commission, a group of Member States or the European Institution from which the draft originates, may decide to maintain, amend or withdraw the draft. Reasons must be given for each decision.

Furthermore, the Lisbon Treaty - contrary to the defunct Constitutional Treaty (2003) – also establishes another procedure called the “orange card” which applies only to the draft European legislative acts to fall under ordinary legislative procedure, formerly the co-decision procedure. If more than 50 percent of the national parliaments oppose such an act on the ground of subsidiarity arguments, the latter must be reviewed. The European Commission may then decide to maintain, amend or withdraw the proposal. If the European Commission decides to maintain its proposal, then it has to provide a reasoned opinion justifying why the Commission considers the proposal to be in compliance with the subsidiarity principle. On the basis of this reasoned opinion, and that of the national parliaments, the European legislator (by a majority of 55 percent of the members of the Council or a majority of the votes cast in the European Parliament) shall decide whether or not to block the EC proposal.

Subsidiarity check with national Parliaments

- Draft legislative acts must be sent to the national Parliaments.
- National Parliaments have 8 weeks for sending reasoned opinions on subsidiarity.
- National Parliaments have 2 votes each (one per Chamber for bicameral parliamentary system).
- If 1/3 oppose a draft (1/4 for freedom, security or justice matters), the draft must be reviewed.
- If a simple majority is opposing, the draft must be reviewed. If the Commission maintains its proposal, the Council and the European Parliament decide.

► National parliaments and Infringement of the subsidiarity principle: An ex-post subsidiarity control

According to Article 8 of Protocol n°2 on the application of the principles of subsidiarity and proportionality, “The Court of Justice of the European Union shall have jurisdiction in actions on grounds of infringement of the principle of subsidiarity by a legislative act, brought in accordance with the rules laid down in Article 263 of the Treaty on the Functioning of the European Union by Member States, or notified by them in accordance with their legal order on behalf of their national parliament or a Chamber thereof.”

RESULTS OF THE QUESTIONNAIRE AND INTERVIEWS

According to **HNP** experts, there is at the moment no structured system of subsidiarity checking that combines the activities of the Eerste Kamer and Tweede Kamer with the activities of the provinces and municipalities when an EC proposal is presented. So far, during the eight-week period it is the first and the second Chamber that organise their assessments internally. So far there has also been no debate within IPO on how to link their own assessment with the work of the two Chambers. In fact we have detected that there is no spread awareness on the subsidiarity check instrument. However, experts see there a point for further dialogue at the national level. There is of course the assumption that in the first place it is the Senate – and its members with provincial/local

backgrounds - which will bring in the provincial/local perspective in their own assessment. Secondly, it is pointed out that the regular input of IPO/VNG vis-à-vis the Government's subsidiarity assessments of EC proposals (BNC-fiches) also go to the Chambers and to some extent also represents their views on subsidiarity. The most important tool mentioned by HNP experts is the detailed assessment, where subsidiarity questions can be highlighted, undertaken by IPO/VNG of the EC annual work programme, which is communicated broadly to the Government and the Parliament. It is obvious that the involvement of provinces and municipalities in the Dutch parliamentary subsidiarity test could be based on the work that has already been done. An interesting aspect however is that, according to provincial experts, there were not many real breaches of the subsidiarity principle detected by the Dutch provinces and municipalities.

In our questionnaire, we asked our stakeholders whether they see a need for closer cooperation between provinces and municipalities and the Dutch parliament. The answer was a unanimously positive. The reason for this was that provinces and municipalities are closest to the people and this might strengthen their voice. Common positions would then reach higher relevance. **VNG** specified that *"Parliament is a key player in defining the Dutch position on EU proposals. VNG and IPO work closely with the national Government within the framework of BNC. This framework is limited to overcoming different opinions which require a political debate. BNC is an instrument to have an overview on incoming proposals from the Commission and to have a preliminary point of view from the Dutch Government. Furthermore, Parliament plays a key role in the cooperation with the Dutch members of the Committee of the Regions."*

CASE STUDY: The EC Soil Directive proposal

The example of the EC Soil Directive proposal shows that before the Lisbon Treaty, the Dutch provinces and municipalities already had the possibility to carry out subsidiarity assessments vis-à-vis a Commission proposal. These assessments were done in the first place to influence the position of the Dutch Government; therefore the assessments were more targeted towards the ministries/Government (and only indirectly to the Parliament). An annual tool to do so has been the general review of the Commission's annual work programme presented by IPO. Today it is still seen as the major instrument to indicate whether Dutch provinces and municipalities have a major concern on certain EC proposals.²⁰

Another more ad-hoc instrument is the VNG/IPO joint positions written mainly for certain sectoral ministries, but also for the Parliament. This instrument was also used in the case of the Soil Directive. In December 2006, IPO and VNG came with a joint position paper as a reaction to the Thematic Strategy on Soil and on the proposal for a Soil Directive²¹ presented by the Commission on 22 September 2006. In this document, they clearly stated that the EU should follow a strategy with stimulating and supporting policies vis-à-vis soil protection; therefore, the nature of the Directive should be flexible and should not cover qualitative norms.²² This point of view was already communicated to the Commission in the 2005 joint position paper of the Dutch Government and its provinces and municipalities. This demonstrates that it is not so much the single position paper that has a strong influence.

In the case of the Soil Directive, the national debate was possible due to a solid cross-level structure and an early coordination. In the 2005 joint document, was underlined the support of the Netherlands for an EU soil policy but not for a directive. This position apparently influenced Dutch MEPs who voted against the Directive in the November 2007 EP plenary session. Their major argument was the lack of flexibility and too much bureaucratic burden for RLAs.²³ Finally, the Dutch Parliament asked the Government to reject the Directive proposal in the Council of Ministers with regard to the subsidiarity argument. Consequently, the Netherlands joined a blocking minority in the Council, which made it impossible to find a common position on the proposal.

²⁰ See: The Netherlands' position paper on the EU soil strategy, September 2005, page 10. www.international.vrom.nl/docs/internationaal/pospaper.pdf.

²¹ COM(2006)232.

²² VNG/IPO Standpunt, December 2006.

²³ See: Nederlandse Europarlementariërs tegen Europese bodemrichtlijn, http://www.nl-prov.be/nl-prov/news.nsf/_/11F2AFAE05C8314EC1257398003F093F.

Thus, the very close partnership between the VROM ministry and IPO/VNG was very positive with respect to the provinces' and municipalities' input into the national position. In this case, a cross-level 'dossier team' (IBDT) was established under the chairmanship of IPO (the responsibility for the dossier was in the hands of VROM). An internet-based platform²⁴ was also established, to be the meeting place for all experts/officials involved in European dossiers linked to soil policy. With regard to this case study, it is evident, that a fruitful input from IPO/VNG on the question of subsidiarity (and especially with the new Lisbon subsidiarity check) will depend on the overall structures of coordination of European policies between the different levels of government in the Netherlands.

ANALYSIS

The abovementioned Lisbon Treaty provisions strengthen the national parliaments' role and constitute a substantial breakthrough for regional parliaments with legislative powers too. Their role is also to enhance, but only in certain cases and at the discretion of the national parliaments which will consider when it is appropriate or not to involve them. These novelties are the result of the political will to stimulate participation of national Parliaments in EU matters and to bring Europe closer to its citizens.

At the European level, under the supervision of the Conference of Community and European Affairs Committees of Parliaments of the European Union (COSAC), an experimental subsidiarity test was launched in 2006 to prepare the implementation of the Early Warning System in practice before the Lisbon Treaty came into force. In total 33 national parliaments from 23 Member States participated. The results from the experience shed light on several difficulties and weaknesses of the mechanisms. The initial time limit of six weeks was considered to be too short to conduct a substantive subsidiarity check; this led to an eight-week delay on the Lisbon Treaty. National parliaments also found it particularly difficult to distinguish subsidiarity issues from proportionality concerns; the latter not being covered by the yellow and orange procedures, as well as from substantive examinations of the proposals' policy content. Overall, few parliaments identified significant non-compliance problems with the subsidiarity principle.

The last eighth COSAC coordinated subsidiarity check under the provisions of the Lisbon Treaty,²⁵ was held from October to December 2009. It resulted in the publication of the May 2010 COSAC report²⁶. 36 out of 40 national parliamentary Chambers from 25 Member States took part in the test, which included the Dutch Upper and Lower Houses. One national parliament and one chamber started the check but had difficulties in completing it within the set deadline. The Belgian *Sénat* was the only one to find the EC proposal in breach of the principle of subsidiarity. In general, a number of national parliaments issued opinions either supporting the EC proposal or expressing concerns over its contents, legal basis or compliance with the principle of proportionality, even if this is outside the scope of Protocol 2, which might be the sign of the increased interest on the part of national parliaments in various aspects of the EU draft legislation.²⁷

Moreover, the IPEX website (Interparliamentary EU Information Exchange)²⁸ was seen by the participating parliaments as the principal source of information on the state of play of the subsidiarity check in other national parliaments. However, the analysis of the information uploaded by the participating parliaments on IPEX after the

²⁴ www.bodem-europa.nl.

²⁵ See the eighth COSAC coordinated subsidiarity check on the Proposal for a Regulation of the European Parliament and of the Council on jurisdiction, applicable law, recognition and enforcement of decisions and authentic instruments in matters of succession and the creation of a European Certificate of Succession (COM (2009) 154 final) conducted under the provisions of the Lisbon Treaty during the period of eight weeks, from 21 October until 17 December 2009.

²⁶ See the May 2010 Report on the Results of the Subsidiarity Check on the Commission Proposal for a Regulation of the European Parliament and of the Council on jurisdiction, applicable law, recognition and enforcement of decisions and authentic instruments in matters of succession and the creation of a European Certificate of Succession, prepared by the COSAC Secretariat and presented to XLIII Conference of Community and European Affairs Committees of Parliaments of the European Union, 31 May - 1 June 2010, Madrid.

²⁷ See p. 4 of the May 2010 COSAC Report.

²⁸ See www.ipex.eu/.

eight-week deadline revealed a number of shortcomings.²⁹ The participants also reported bilateral contacts and intensive exchange of information through their permanent representatives in Brussels.

These first subsidiarity check tests provided national parliaments with incentives to consider draft European legislative acts at an early stage of the EU law-making process. The thresholds for the 'yellow and orange cards' have underscored the need for greater inter-parliamentary cooperation, e.g. by exchanging respective parliaments' contributions, in order to establish a common interpretation of subsidiarity in Europe.

Furthermore, we could also consider that national parliaments now have the possibility of participating in an *ex-post* subsidiarity control, if the Lisbon Treaty provides that an action might be brought to the European Court of Justice by a Member State in the name of its parliament or one of its Chambers if it is bicameral parliamentary system, if the latter considers that a legislative act does not respect the subsidiarity principle (Art. 8 of Protocol n°2).

Regarding the potential for regional and local authorities, Petr Schlesinger, a legal expert for the Union of Towns and Municipalities of the Czech Republic (SMOČR), declared he is convinced that "*the 'subsidiarity check' harbours both the biggest potential and the biggest challenge for regional and local authorities. He recognised that while these bodies cannot directly play the "yellow card," they have ample new opportunities to influence the EU legislative process, by pressuring MPs to act in case of a breach of the subsidiarity principle.*"³⁰

POTENTIAL AND CHALLENGE FOR THE NETHERLANDS

Protocols n°1 and n°2 of the European Treaties underline both Chambers' involvement in the Early Warning System. Thus, the new Lisbon Treaty provisions regarding national parliaments offer the Dutch Senate (*Eerste Kamer*) – which is elected by the members of the provincial councils - a greater role to play in the European law-making process as a component Chamber of the Dutch parliament.

The Netherlands appears to be one of the most advanced countries in preparing the subsidiarity review process.^{31,32} During the first tests, Dutch parliament highlighted the weaknesses and defaults of the Early Warning System in practice, which as the other national parliaments found lacked the time to correctly conduct the subsidiarity check. Moreover, the defunct 'Temporary Committee for Subsidiarity Review' (*Tijdelijke Commissie Subsidiariteitstoets*) reported that when reviewing EC proposals, the sectoral parliamentary committees, being asked to give an opinion, went beyond mere subsidiarity clearance. In fact, the Early Warning System, initially designed to 'warn' the European Commission of possible subsidiarity breaches, seems to be now seen as a mechanism to alert sectoral parliamentary committees about EU proposals of potential relevance to the Dutch Parliament.

During the eighth COSAC coordinated subsidiarity check (October-December 2009), as the 'Joint Subsidiarity Committee' ceased to operate in autumn 2009, each Chamber of the Dutch Parliament followed its own procedures for checking subsidiarity. In the Dutch *Tweede Kamer*, the check was conducted by the Subsidiarity Check Committee, which endorsed the opinion of the Standing Committee on Justice. In the *Eerste Kamer*, the check was conducted solely by the Standing Committee for the Justice and Home Affairs Council. Both Chambers respectively took the final decision through plenary deliberation. In this particular case, the *Eerste Kamer* arrived at the same opinion as the *Tweede Kamer*: no breach was found regarding the subsidiarity principle.³³ Therefore,

²⁹ See p. 13 of the May 2010 COSAC Report.

³⁰ "Regions hope to wield new powers with Lisbon Treaty", Published on *EurActiv* on 10.06.2010: <http://www.euractiv.com/en/regional-policy/regions-hope-wield-new-powers-lisbon-treaty>.

³¹ See Annex 4 on the subsidiarity check in the Netherlands.

³² According to COSAC-information, so far only four EU Member States formally established an early warning mechanism for national parliaments: Denmark, Finland, Lithuania and the Netherlands. Out of these four, only the Netherlands has a bicameral parliament. <http://www.cosac.eu/en/info/earlywarning/overview/>.

³³ The findings were published in the official Parliamentary Records for the *Tweede Kamer*, and on the *Europapoorte* website of the *Eerste Kamer*.

they considered it adequate to send a joint letter, signed by the presidents of both Chambers, to the vice-president of the European Commission on the results of this subsidiarity check. Thus, cooperation between both Chambers seems to continue to exist, but these kinds of decisions are taken on an *ad hoc* basis³⁴. It was also noticed that the central Government sent both Chambers a 'BNC fiche' containing a brief analysis of the EC proposal and providing information on its compliance with the subsidiarity principle. Yet, no cooperation was undertaken with other national parliaments.³⁵

However, some questions have to be raised here. In the long term, how will internal cooperation be conducted in the Netherlands between both Chambers (the House of Representatives and the Senate), the Parliament and the provinces and municipalities, the Parliament and the central Government? How will the Dutch parliament develop inter-institutional cooperation with other national parliaments and other European institutions and bodies, especially the European Parliament and the Committee of the Regions? The latter has already expressed its willingness "to work in close partnership with the national and regional parliaments to enhance mutual information exchange, to analyse the territorial impacts of Commission proposals and whether Commission proposals would be better addressed at a national, regional or local level"³⁶.

Moreover, with the Lisbon Treaty, the Netherlands can now bring an action to the European Court of Justice if the Dutch Parliament, or one of its Chambers, believes that a draft legislative act infringes the subsidiarity principle. This in turn raises general questions with respect to internal coordination. How will coordination take place between the Senate, the House of Representatives and the central Government? And will the Dutch provinces and municipalities be involved in such *ex-post* subsidiarity control?

4.3. The European Parliament becomes a co-legislator with the Council of Ministers

One of the most important novelties brought about the Lisbon Treaty concerning the European Parliament is the extension of the ordinary legislative procedure (formerly co-decision) to many new policy areas (around 40). The ordinary legislative procedure ([Article 294 TFEU](#)) will be studied further in detail below. It is even more important that, it is now the European Parliament that will take a position on the first reading of the EU legislative proposals and not the Council as it was the case under the former co-decision procedure.

The following areas³⁷, to which the ordinary legislative procedure now applies, may be of interest to local and regional authorities:³⁸

Existing legal basis

Common organisation of agricultural markets and other provisions to pursue of the objectives of the common agricultural policy and the common fisheries policy – [Art. 43\(2\) TFEU](#)

Asylum policy – [Art. 78\(2\) TFEU](#)

Immigration policy – [Art. 79\(2\) TFEU](#)

General principles governing transport policy – [Art. 91 TFEU](#)

Structural Funds – [Art. 177\(sub-paragraph 1\) TFEU](#)

Cohesion Fund – [Art. 177\(sub-paragraph 2\) TFEU](#)

³⁴ See pp. 8-9 of the May 2010 COSAC Report.

³⁵ See p. 21 of the May 2010 COSAC Report.

³⁶ "A new treaty: a new role for regions and local authorities", CoR publication, 2010, p. 6.

³⁷ This list is not exhaustive.

³⁸ For a more complete list of the domains falling under the ordinary legislative procedure, see EC document "Treaty on the European Union - Treaty on the Functioning of the European Union, List of decision-making procedures by article" (updated 17/12/2009) - http://ec.europa.eu/codcision/docs/Legal_bases.pdf.

Rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers – [Art. 291\(3\) TFEU](#)
Adoption of financial rules – [Art. 322\(1\) TFEU](#)

New legal basis

The Citizens' initiative – [Art. 11\(4\) TEU](#) and [Art. 24 TFEU](#)
Regulations on services of general economic interest – [Art. 14 \(sub-paragraph 2\) TFEU](#)
Integration of third country nationals – [Art. 79\(4\) TFEU](#)
Incentive measures in the field of sport – [Art. 165\(4\) TFEU](#)
Public health: incentive measures to protect human health and in particular to combat the major cross-border, health scourges, and measures to tackle tobacco and alcohol abuse – [Art. 168\(5\) TFEU](#)
Implementation of the European research area – [Art. 182\(5\) TFEU](#)
Energy, excluding measures of a fiscal nature – [Art. 194\(2\) TFEU](#)
Tourism: measures to complement the action of the Member States in the tourism sector – [Art. 195\(2\) TFEU](#)
Civil protection against natural and man-made disasters – [Art. 196\(2\) TFEU](#)
Administrative cooperation in implementing Union law by Member States – [Art. 197\(2\) TFEU](#)
European Administration – [Art. 298\(2\) TFEU](#)

With the Lisbon Treaty, the ordinary legislative procedure becomes the common one and the European Parliament almost obtains equal footing with the Council of Ministers as co-legislator. Yet, some scholars have underlined the fact that there is still not a perfect equality as the European Parliament can approve the Council decision by a majority of the votes cast but has to reject it, or propose amendments, by a majority of its component members.³⁹ Moreover, some important areas are still not covered by the ordinary legislative procedure but by a special legislative procedure such as legislation regarding the Union's annual budget, the multi-annual financial framework, taxation or social security. Nevertheless, [Article 48\(7\) TFEU](#) provides a 'general bridging clause' by stipulating that where the TFEU provides for legislative acts to be adopted by the Council in accordance with a special legislative procedure, the European Council may adopt - acting by unanimity after the consent of the European Parliament (voting by a majority of its component members) - a decision allowing for the adoption of such acts in accordance with the ordinary legislative procedure. National parliaments will have to be notified of this initiative. If a national parliament opposes such a change, the European Council's decision will not be adopted. However, the decision may be adopted in the absence of opposition. This clause enables a change of procedure in adopting an EU legislative act without recourse to the Inter-governmental Conference (IGC) mechanism requiring ratification by all Member States.

Furthermore, [Article 14\(2\) TEU](#) caps the number of MEPs to 751 (instead of 736 in the former treaties) - 750 members plus the president. The number of members for each national delegation has been fixed to a maximum of 96 and a minimum of 6. Any change regarding the composition of the European Parliament will now be adopted by unanimity through a decision of the European Council at the initiative of the European Parliament and with its approval, and thus, will no longer necessitate a change of European treaties as it was the case previously.

ANALYSIS

Created with the Maastricht Treaty and extended with the Amsterdam and Nice Treaties, the co-decision procedure has over the years become the most frequent procedure used to pass legislation at EU level, thereby ever strengthening EP powers and giving it the right to have its say regarding EU legislative proposals in the domains concerned. Thus the Lisbon Treaty is the logical continuation of this process by making the co-decision procedure the ordinary legislative procedure and recognising the European Parliament as a real co-legislator for most of the domains covered by the EU Treaties. The European Parliament is the institution to gain the most from the new powers awarded by the Lisbon Treaty, as the latter strengthens its role in terms of legislation, budget and political control.

³⁹ See "Le Traité de Lisbonne - Texte et commentaire article par article des nouveaux traités européens", François-Xavier Piollaud et David Sirtzky, La Documentation française, Paris, 2008, especially p. 367.

These innovations brought by the Lisbon Treaty represent a major step in recognising the important role the European Parliament - as the representative of the EU citizens - plays in the EU law-making process, compared to its simple consultative role at the inception of the European Community. Diego López Garrido, the Spanish Secretary of State for EU affairs, declared at the end of his country's six-month presidency of the Council of Ministers that "*We feel the governments were not sufficiently aware of the new situation, of the new powers of the new Parliament*" which illustrates the point nicely.⁴⁰ Indeed the European Parliament created the surprise amongst the Member States when, during its plenary on 11 February 2010, withholding its consent to the conclusion of the EU-US agreement on data-sharing on bank transfers, for which Dutch MEP Jeanine Hennis-Plasschaert was rapporteur⁴¹, especially as it was not presenting enough guarantees to safeguard the data and privacy of European citizens, nor was the European Parliament sufficient involved in the preparation of this agreement.

MEPs represent the people in their respective constituencies where they were elected. However, during the legislative process, they might also be approached by CoR members or representatives of regional and local interests when an issue with a 'territorial' dimension is at stake and under the scrutiny of the European parliament. By gaining more powers within the law-making process for numerous policy areas, this widens the window through which local and regional authorities might try to voice their concerns and have a possible satisfying outcome in having EU legislation adopted, especially regarding the new domains falling under the ordinary legislative procedure listed above that might be of interest for them.

POTENTIAL AND CHALLENGE FOR THE NETHERLANDS

In the Netherlands, MEPs are not elected in specific electoral districts as in certain countries. The whole country forms a single electoral area and the citizens vote in the municipality where they are registered. The detailed regulations governing the right to vote for the European Parliament, but also for the two Houses of the national Parliament, the provincial and municipal councils, are set out in the Elections Act and the Elections Decree based thereon. The regulations governing the European elections are close to those concerning the elections of the Lower House.⁴²

Under the Lisbon Treaty, the Netherlands gained one seat with 26 MEPs, instead of 25 under the Nice Treaty. As the Lisbon Treaty had not yet entered into force when the European elections of June 2009 took place, 25 MEPs were elected and one seat remained to be attributed for the 2009-2014 legislature.⁴³ The Council of State was consulted on the matter and concluded that, if the election had been conducted for 26 seats as the Lisbon Treaty decrees, the seat would have been awarded to the Party for Freedom. Thus, on 9 October 2009, the Dutch Government decided, in line with the Council of State's opinion, that the 26th seat will be awarded to the Party for Freedom when the Lisbon Treaty comes into effect.

⁴⁰ European Voice, 'Spain 'underestimated' power of MEPs', By Constant Brand, 01.07.2010: <http://www.europeanvoice.com/article/imported/spain-underestimated-power-of-meps/68376.aspx?lg=1>.

⁴¹ Recommendation on the proposal for a Council decision on the conclusion of the Agreement between the European Union and the United States of America on the processing and transfer of Financial Messaging Data from the European Union to the United States for purposes of the Terrorist Finance Tracking Program, (05305/1/2010REV – C7-0004/2010 – 2009/0190(NLE)), Committee on Civil Liberties, Justice and Home Affairs, Rapporteur: Jeanine Hennis-Plasschaert.

⁴² See the document entitled "Elections in the Netherlands" at the following web link <http://www.minbzk.nl/contents/pages/6154/electionsindenetherlands.pdf>.

⁴³ See the following web link towards the European Parliament's website to have an overview of the Dutch MEPS: <http://www.europarl.europa.eu/members/public/geoSearch/search.do?language=EN&country=NL>

Moreover, it has to be noted that during the June 2009 European elections, the Netherlands Antilles and Aruba were authorised to participate whereas they were used to be excluded from these elections on the grounds that they were not part of the EU territory.⁴⁴

This could raise some questions regarding Dutch provincial and municipal authorities. For example, what are the current connections between Dutch MEPs and the provincial and local levels? What kind of cooperation/contact could be developed between MEPS and provinces and municipalities? And finally what kind of cooperation/contact could be developed between MEPs and the Dutch CoR members (no matter whether they are from the same political party or not)?

4.4. The new qualified majority voting in the Council of Ministers

The Council of Ministers can adopt EU acts either by qualified majority or unanimity. Along with the extension of the co-decision procedure through the new ordinary legislative procedure, the Lisbon Treaty also extends the use of qualified majority as well as the option of using it under certain conditions for some cases where unanimity normally applies. It also brings changes with a new qualified majority voting system. All these novelties aim at facilitating and accelerating the EU law-making process in order to avoid any blocking effect that unanimity vote can imply, especially when sensitive subjects are dealt with.

According to Articles 16(4)TEU and 238(2)TFEU, the new qualified majority voting system will, starting from 1st November 2014, be based on both the representativeness of the Member States as such and the EU population, being thus called the 'double majority'. For a complete explanation of the double majority voting system and of the transitional provisions applying until 1st November 2014 and thereafter, consult Annex 5 of this study.

The Lisbon Treaty extends qualified majority voting to around 40 policy areas. Article 16(3)TEU confirms that it will become the common voting system stating that "The Council shall act by a qualified majority except where the Treaties provide otherwise".

The following areas⁴⁵, to which qualified majority now applies, may be of interest to local and regional authorities:

Existing legal basis

Freedom, security and justice: administrative cooperation – Art. 74 TFEU
Asylum policy – Art. 78(2) TFEU
Immigration policy – Art. 79(2) TFEU
General principles governing transport policy – Art. 91 TFEU
Incentive measures in the field of culture – Art. 167(5) TFEU
Structural Funds – Art. 177(sub-paragraph 1) TFEU
Cohesion Fund – Art. 177(sub-paragraph 2) TFEU
Rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers – Art. 291(3) TFEU
Adoption of financial rules – Art. 322(1) TFEU

New legal basis

⁴⁴ The Council of State ruled that it was illegal to make a difference in law between people with Dutch nationality in Europe and outside. Thus the Government granted all persons of Dutch nationality voting rights for the June 2009 European elections. Before the Council of State's verdict, only people who had lived in the Netherlands for 10 years or longer were allowed to vote. This new ruling increased the number of people entitled to vote by 210,000. However, only 20,944 people registered to vote from the islands in this election, but the turnout of registered voters in the Netherlands Antilles and Aruba was high: 77%. Source: [http://en.wikipedia.org/wiki/European_Parliament_election,_2009_\(Netherlands\)](http://en.wikipedia.org/wiki/European_Parliament_election,_2009_(Netherlands)).

⁴⁵ This list is not exhaustive.

<p>The Citizens' initiative – Art. 11(4) TEU and Article 24 TFEU</p> <p>Regulations on services of general economic interest – Art. 14 (sub-paragraph 2) TFEU</p> <p>Freedom, security and justice: evaluation – Art. 70 TFEU</p> <p>Integration of third country nationals – Art. 79(4) TFEU</p> <p>Incentive measures in the field of sport – Art. 165(4) TFEU</p> <p>Public health: incentive measures to protect human health and in particular to combat the major cross-border health scourges, and measures to tackle tobacco and alcohol abuse – Art. 168(5) TFEU</p> <p>Implementation of the European research area – Art. 182(5) TFEU</p> <p>Energy, excluding measures of a fiscal nature – Art. 194(2) TFEU</p> <p>Tourism: measures to complement the action of the Member States in the tourism sector – Art. 195(2) TFEU</p> <p>Civil protection against natural and man-made disasters – Art. 196(2) TFEU</p> <p>Administrative cooperation in implementing Union law by Member States – Art. 197(2) TFEU</p> <p>European Administration – Art. 298(2) TFEU</p> <p>Composition of the Committee of the Regions – Art. 300(5) TFEU</p>
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However, unanimity voting still applies to several policy areas, for example EU Membership, EU citizenship, foreign policy, social security, taxation, defence, etc. Nevertheless, [Article 48\(7\) TUE](#) (the 'general bridging clause') can be used to extend the qualified majority to areas which unanimity applies. To do so, the European Council may adopt a decision authorising the Council to act by qualified majority. However, this shall not apply to decisions with military implications or to those concerning defence. National parliaments can oppose such a decision.

A qualified majority with an 'emergency brake', referred to as a veto right by some scholars, is also provided by the Lisbon Treaty for the following areas: Free movement of workers/Social security, Judicial cooperation in criminal matters and Approximation of definitions of criminal offences. Qualified majority normally applies to the abovementioned fields, yet a Member State may request to refer to the European Council if the adoption of an EU act - by qualified majority - could affect fundamental aspects of its social security system ([Article 48\(b\) TFEU](#)) or its legal system ([Articles 82\(3\) TFEU and 83\(3\) TFEU](#)). The ordinary legislative procedure may then be suspended for up to four months.

Finally, it should be emphasised that because of [Article 16\(8\) TEU](#), the Lisbon Treaty ensures that public meetings are held within the Council when it deliberates and votes on a draft legislative act. This contributes to making the EU legislative process more transparent.

ANALYSIS

The complexity of the issue may result from the fact that it was one of the most debated points during the Intergovernmental Conference (ICG) and the Lisbon Treaty negotiations. This could be explained by the sensitivity of the issue. The proper functioning of the law-making process must be ensured in an efficient way on one hand, and on the other, keep a balanced representation and participation of the Member States in this process (based mainly on the population criteria within the Nice Treaty weighting system of votes and with the Lisbon Treaty with two criterion: the number of Member States and a certain level of the total EU population).

Compared with the Nice Treaty qualified majority system, the double majority established by the Lisbon Treaty (55 percent of MS and 65 percent of the total EU population) might, according to some scholars, favour Member States with a high or low level of population according to the 'Banzhaf index' which determines the capacity of a Member State to make a coalition succeed or fail, and thus determines the result *a priori* of the decision to be taken within the Council), and consequently, disfavours medium-sized countries.⁴⁶ For others, "This new system is both more democratic and more effective in comparison with the present system applying via the Nice Treaty since it facilitates the formation of majorities and therefore the decision-making, which is vital in a Union comprising 27 States".⁴⁷

⁴⁶ <http://www.cairn.info/revue-economie-et-prevision-2004-2-page-101.htm>.

⁴⁷ Fondation Robert Schuman, The Lisbon Treaty - 10 easy-to-read fact sheets, December 2007

POTENTIAL AND CHALLENGE FOR THE NETHERLANDS

The Netherlands have been granted a vote weighting 13 votes under the Nice Treaty, representing around 3,8% out of a total 345 votes, after the accession of Bulgaria and Romania on 1 January 2007. This will not change with the implementation of the Lisbon Treaty nor the current qualified majority system which will remain in force until 31 October 2014. With the double majority system applying starting as of from 1 November 2014, the percentage of the Dutch population compared to the total EU population should not change much from that of 3,8 percent in the current system. In 2010, for a population of 16,78 million⁴⁸ and a total EU population of 492,039 million⁴⁹, it would represent 3,4%.⁵⁰ Thus the influence of the Netherlands on Council's decisions might depend a lot on its capacity to aggregate to coalitions of Member States being either in favour of an EU draft act or opposed to it. Moreover, the qualified majority system should not be overestimated, as the quality of the national contributions can sometimes weigh much more in the balance to convince other Member States than its own weight in the QMV.

Moreover, with the publicity of the Council meetings to discuss and adopt a European legislative act, an analysis could be made among the representatives of the regional and local authorities, and thus the Dutch provinces and municipalities, to mobilise them to attend or follow those meetings and relay the information amongst themselves. This would help them to be fully aware of the EU legislative process, the nature of the discussions, as well as to know the position taken by their respective governments. Such a novelty really strengthens the transparency of the EU law-making process.

4.5. New right to go to the Court and other novelties for the Committee of the Regions

The Lisbon Treaty introduces a number of novelties concerning the Committee of the Regions (CoR), the most important one being the right to bring a case before the European Court of Justice.

► Right to bring a case before of the European Court of Justice

The Lisbon Treaty brings one of the biggest novelties concerning the CoR since its creation by the Maastricht Treaty: the right to bring a case before the European Court of Justice to protect its own prerogatives (Art. 263 TFEU), but only when the consultation with the CoR is obligatory - that is to say when it is foreseen in the European treaties⁵¹, as well as in respect to the subsidiarity principle regarding legislative acts for the adoption of which the EU treaties provide its consultation (Art. 8 of the Protocol n°2 on the application of the principles of subsidiarity and proportionality).

These new provisions are proof that the complaints expressed in 1995 by the CoR about how difficult it is to bring a case before the Court for any infringement of the subsidiarity principle by an EU institution, have finally been partially heard: "In the case of annulment proceedings, Community procedures confer on the Commission,

(Updated in December 2009 at the time of the entry into force of the Lisbon treaty), p.7. <http://www.robert-schuman.eu/doc/divers/lisbonne/en/10fiches.pdf>.

⁴⁸ http://www.statistiques-mondiales.com/population_par_pays.htm.

⁴⁹ http://www.statistiques-mondiales.com/union_europeenne.htm.

⁵⁰ Regarding the comparative approach and the calculation method, see: See "Le Traité de Lisbonne - Texte et commentaire article par article des nouveaux traités européens", François-Xavier Piollaud et David Siritzky, La Documentation française, Paris, 2008, especially pp. 84-85.

⁵¹ According to the European Treaties, the Committee of the Regions must be consulted in the following policy areas: economic, social and territorial (new) cohesion; trans-European networks, transport, education, youth and sport (new), vocational training, culture, employment policy, social policy, health, environment (including climate change (new)) and energy (new).

Council and Member States the general right to bring actions, whereas the Parliament [this is not the case anymore] and European Central Bank may only bring actions to protect their prerogatives. Other natural or legal persons [including thus the CoR at that time] have to demonstrate that a legal act affects them directly and individually [...]. With some modification the same procedure applies to proceedings in the event of failure to act, i.e. when Union institutions have infringed the Treaties by neglecting to take action. The Committee of the Regions and its constituent members are in an extremely weak position in respect of this system. The nature of the subsidiarity principle coupled with the lack of direct effect make it impossible to appeal against an act or a failure to act of a Union institution in breach of the above principle, insofar as the plaintiff has to provide proof that he has been directly and individually affected. *Consequently, the Committee and its constituent members find themselves in practice in a situation where they are unable to defend themselves - something which is contrary to the spirit of Community law.*⁵²

However, the Lisbon Treaty did not change anything and did not grant any new rights to the CoR regarding the proceedings in the event of failure to act by the EU institutions that would infringe the subsidiarity principle (now Article 265 TFEU).

► Consultation of the CoR by the European Parliament

Like the Council of Ministers and the European Commission, the European Parliament can now consult the CoR for the areas provided by the European treaties. This is another important novelty that the Lisbon Treaty brings regarding the CoR (Art. 307 TFEU).

► Consultation of the CoR for new areas: Sport, climate change and energy

With the Lisbon Treaty, obligatory consultation of the CoR by the European Parliament, the Council of Ministers and the European Commission, has been extended to three new areas: sport (Art. 165(4)TFEU), climate change (Art. 191 and 192(1)TFEU) and energy (Art. 194(2)TFEU).

► Mandate for CoR Members extended to five years

With Article 305 TFEU, the mandate of the CoR members is extended from 4 years to 5 years and is now aligned with the mandate of the members of the European Parliament as well as of the European Commission.

► Election of the CoR chairman and officers for a term of two and half years

With Article 306 TFEU, the CoR chairman will now be in office for two and a half years instead of two years under the former Nice Treaty.

► Maximum number of CoR members still capped at 350

Today the CoR has 344 members (full members and alternative members) and the maximum number of CoR members is still 350 under the Lisbon Treaty, yet "The Council, acting unanimously on a proposal from the Commission, shall adopt a decision determining the Committee's composition". It is important to note here that the rules regarding the CoR composition are no longer fixed in the European treaties but by a Council decision adopted by unanimity on the proposal of the European Commission (Art. 305 TFEU).

RESULTS OF THE QUESTIONNAIRE AND INTERVIEWS

According to the results of our interviews there is reasonable degree of satisfaction in the role played by the CoR Dutch members and the existing information flow and coordination mechanisms. Some examples of best practice were given by VNG: "The CoR opinion on the EU strategy on Youth which was prepared by mayor Rombouts did

⁵² CdR 136/95, Opinion of the Committee of the Regions on the "Revision of the Treaty on European Union and of the Treaty establishing the European Community", Special Commission for Institutional Affairs, 21 April 1995, Rapporteur: Mr PUJOL i SOLEY.

not only influence the policy at the EU level but also had a spin off at the national level. Air quality is another example where the activities of the Dutch representatives of the CoR supported the lobby activities of the national associations in other EU institutions and on the national level."

Another example of best practice was given by a provincial agricultural expert: "*Ms Lenie Dwarshuis, member of the provincial executive of Zuid Holland and member of the DEVE committee (now NAT) of the CoR, has in 2008 obtained the rapporteurschap for the opinion to the EC on the Health Check Legislative proposals for the Common Agriculture Policy. The writing was performed by a provincial expert. The report was welcomed by all CoR members. Most parts of the report were embraced by the EC and text amendments ended up in the final legislation. In 2010, Ms Dwarshuis will do a second report, on request of Commissioner Ciolos, on Local Food Systems*". It was underlined that the CoR is a platform for input from the Dutch provinces (if they have a rapporteurship) as was the case with the "health-check" of the agricultural policy. However, some provincial officials have also articulated that the role of the CoR Dutch members could still be improved with respect to agricultural dossiers. This is certainly an important option when it is considered against the background of upgrading the CoR within the context of the Lisbon Treaty.

ANALYSIS

Since its creation, the Committee of the Regions has a limited influence as being an "advisory body" of the European Union. With the Lisbon Treaty, the CoR gains the new important right to bring a case before the European Court of Justice for the annulment of an EU act infringing its own prerogatives or in breach of the subsidiarity principle. On that point, the former CoR President, Luc Van den Brande, declared "*We see this new right to challenge EU laws in court more as a deterrent than an actual threat. We are convinced that this new possibility will deepen our relations with other EU institutions and national parliaments. We will exercise this right with caution, but with great conviction in cases where we feel it is necessary to defend the subsidiarity principle in EU law-making. However, we hope that swift implementation of all Lisbon Treaty provisions, which reinforce subsidiarity already in the pre-legislative stage and during the adoption of new EU laws, will ensure that it never comes to that*".⁵³

Other novelties of the Lisbon Treaty concerning the CoR respond to its requests made during the Convention on the future of Europe, and even before during the reform process of the former European treaties, however the one demanding to be recognised as an EU institution remained unanswered. Nevertheless, the adoption of the Lisbon Treaty can be considered as an important step for the CoR regarding its place and its role in the European institutional arena.

POTENTIAL AND CHALLENGE FOR THE NETHERLANDS

The CoR Dutch delegation has 12 members and is equally composed of 6 provinces' representatives and 6 municipalities' representatives. This should not change except if the composition of the CoR is modified by the Council (Art. 305 TFEU). The Dutch CoR members are now elected for 5 years instead of 4. This might favour cooperation with their counterparts elected to the European Parliament. In order to adapt to the Lisbon Treaty, the CoR also revised its procedural rules as well as its structure. Competences to CoR commissions were redistributed, favouring the creation of new ones to take new fields of consultation into account such as ENVE dealing with climate change, or former commissions being cast together (like CIVEX). Dutch members will have to then be prepared to work in this new environment and on these new themes.

⁵³ See Article "Regions hope to wield new powers with Lisbon Treaty", published on EurActiv: <http://www.euractiv.com/en/regional-policy/regions-hope-wield-new-powers-lisbon-treaty>, 10.06.2010.

When it comes to the subsidiarity check and the assisting role played by the Subsidiarity Monitoring Network (SMN)⁵⁴ of the CoR, we see that some Dutch partners are already involved within that network: *Interprovinciaal Overleg* (IPO); *Netwerk Stad Twente*; the Province of Flevoland and the Province of *Overijssel*⁵⁵. More participation could very likely be envisaged, especially as the network might be useful for the CoR to conduct its work on impact assessment.

4.6. The end of the EU pillar structure: An extended competence for the Court of Justice of the European Union

The Maastricht Treaty (entered into force on 1 November 1993) established the European Union and organised it around the so-called pillar structure until the Lisbon Treaty entered into force on 1 December 2009. It respectively dealt with:

- First pillar: The three European Communities: the European Community (EC), the European Community for Atomic Energy (EURATOM) and the defunct European Coal and Steel Community (ECSC) which expired on 23 July 2002);
- Second Pillar: The common foreign and security policy (The Amsterdam Treaty had already launched an initial transfer of the visas, asylum and immigration policies in the first pillar with a transitional period);
- Third Pillar: The police and judicial cooperation in criminal matters.

The Lisbon Treaty puts an end to the EU pillar structure with its Article 1(in fine) TEU, stating that “The Union shall replace and succeed the European Community”, implying consequently that the ‘Community method’ (i.e. the use of the ordinary legislative procedure and of the qualified majority for the EU acts based on an EC proposal) now also applies to the former second and third pillars. Thus, the former legal instruments of the second and third pillars (e.g. the framework decisions) also disappear, and legal instruments of the former first pillar (regulations, directives and decisions) will now be adopted in the new fields concerned. This facilitates, accelerates and makes visible action at the European level in those fields, especially in the area of justice, freedom and security.

However, some exceptions remain, such as the following domains for which unanimity vote still applies as well as a special legislative procedure (with the consultation of the European Parliament): family law, the possible creation of a public prosecutor, operational police cooperation and administrative cooperation between Member States.

Another consequence is the new (almost) full competence of the Court of Justice for acts adopted in the fields covered by the former second and third pillars, whereas it previously had very limited jurisdiction. This also explains the Court’s change of name from the ‘Court of Justice’ to the ‘Court of Justice of the European Union’ (CJEU) (Article 19 TEU). However, some arrangements were made either to limit the Court’s competence or to settle specific provisions for a transitional period.

⁵⁴“The network operates on several levels: enabling the political participation of local and regional authorities in monitoring implementation of the subsidiarity and proportionality principles, raising awareness of the practical application of the subsidiarity and proportionality principles, keeping CoR rapporteurs and members abreast of input related to subsidiarity and proportionality emanating from a representative network of local and regional players, identifying measures for better law-making, cutting red tape and increasing the acceptance of EU policies by EU citizens.”

<http://www.cor.europa.eu/pages/EventTemplate.aspx?view=folder&id=66e2c45b-37a2-4598-a645-11d7fc19f462&sm=66e2c45b-37a2-4598-a645-11d7fc19f462>.

⁵⁵ http://subsidiarity.cor.europa.eu/part_enreg/tabid/226/Default.aspx.

Concerning the second pillar, some exceptions are provided by operational cooperation for example. However for these domains, it is now also possible for the Commission to launch infringement proceedings and for national courts to refer cases to the CJEU.

Concerning the third pillar, the CJEU competence is still restricted as it has “no jurisdiction to review the validity or proportionality of operations carried out by the police or other law-enforcement services of a Member State or the exercise of the responsibilities incumbent upon Member States with regard to the maintenance of law and order and the safeguarding of internal security” (Article 276 TFEU). Moreover, the competence of the Court is constrained by a transitional period of five years starting 1 December 2009. However, according to the European Treaties, any Member State can at any time accept the CJEU competence via a Declaration when it comes to third pillar acts.

Regarding the particular case of Ireland, the United Kingdom and Denmark, as they do not participate in the Schengen border control scheme, they will have a special arrangement allowing them to decide on a case by case basis whether to participate or not in legislation in the new policy areas concerned.

ANALYSIS

These new provisions brought by the Lisbon Treaty regarding the new competence of the CJEU for the areas covered by the former second and third pillars represent a big change. The end of the EU pillar structure is significant; there is now only one institutional framework that applies to every policy area, yet some restrictions or exceptions still prevail. Consequently, this means the common use of the qualified majority and/or the ordinary legislative procedure in these domains widens the possibility of influence for the regional and local authorities (e.g. through the European Parliament). This is particularly true for legal migration policy.

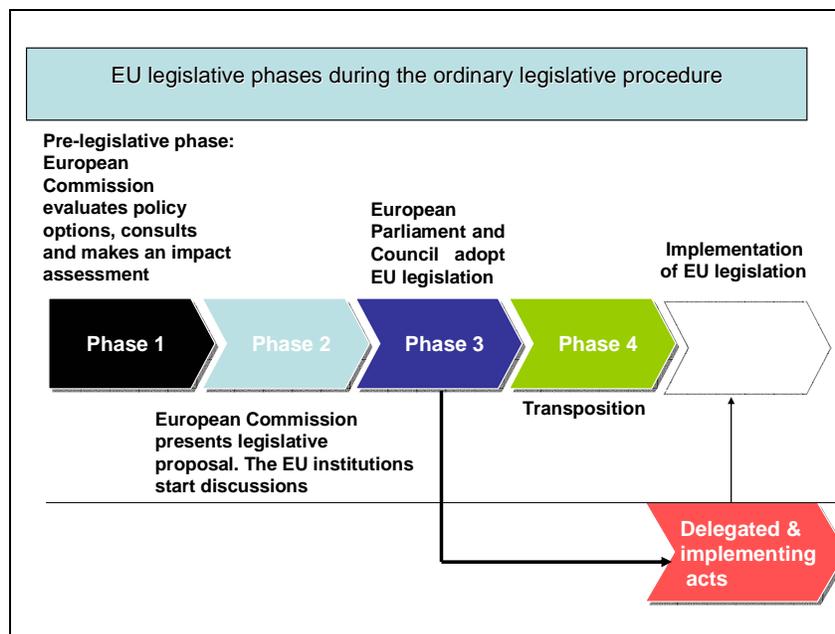
POTENTIAL AND CHALLENGE FOR THE NETHERLANDS

Numerous fields covered by the former second and third pillars may be of interest to regional and local authorities, and thus Dutch provinces and municipalities. Therefore, it might be worthwhile to reflect on more multi-level coordination in the way of working in these fields in the Netherlands.

5. A new typology of EU acts and its impacts on the possible involvement of local and regional authorities in the EU decision-making process

The Lisbon Treaty tries to establish a clear distinction between the legislative and the executive within the EU system. We will talk now in Europe about legislative acts (produced by the legislative) and the non legislative acts (produced by the executive). As we will see in the following paragraphs the new typology of EU acts is complex and difficult to understand at first sight. We try in this context to explain the complexity of the system in a hopefully clear way, highlighting the different role the institutions play in one or another type of norm. and the importance this might have.

It is due to the end of the EU pillar structure, that the Lisbon Treaty establishes a new typology of acts. As said, it distinguishes between legislative acts and non-legislative acts. The Union's legislative acts are either adopted under the ordinary legislative procedure or under one of the special legislative procedures. However, those legislative acts are the basic law (or framework law) that will be in need of specific norms of development. For that purpose, they will contain an article, empowering the European Commission to adopt non-legislative acts. For the non legislative acts, the Lisbon Treaty provides two categories: the 'delegated acts', also called 'quasi-legislative acts', and the 'implementing acts'. This implies an important change in the mechanisms foreseen for controlling the Commission when performing these powers. The new system restricts the scope of the control by the national civil servants (sitting in the so-called comitology committees).



It is important here to remember that the definition of a 'legislative act' under the EU Treaties is of particular importance, as it determines the scope of application of the Protocols n°1 on the role of the national Parliaments and n°2 on the principles of subsidiarity and proportionality. Both protocols apply only to draft legislative acts or legislative acts. We will deal with this in the following paragraphs.

In the following paragraphs we explain in detail the procedures for adopting legislative acts (5.1) and the ones for non legislative acts (5.2).

5.1. Adoption of EU legislative acts: The ordinary legislative procedure and the special legislative procedures

There are two kinds of procedure to issue EU legislative acts: the ordinary legislative procedure (previously the co-decision procedure) and the special legislative procedures. The result of these procedures will always be a 'legislative act'.

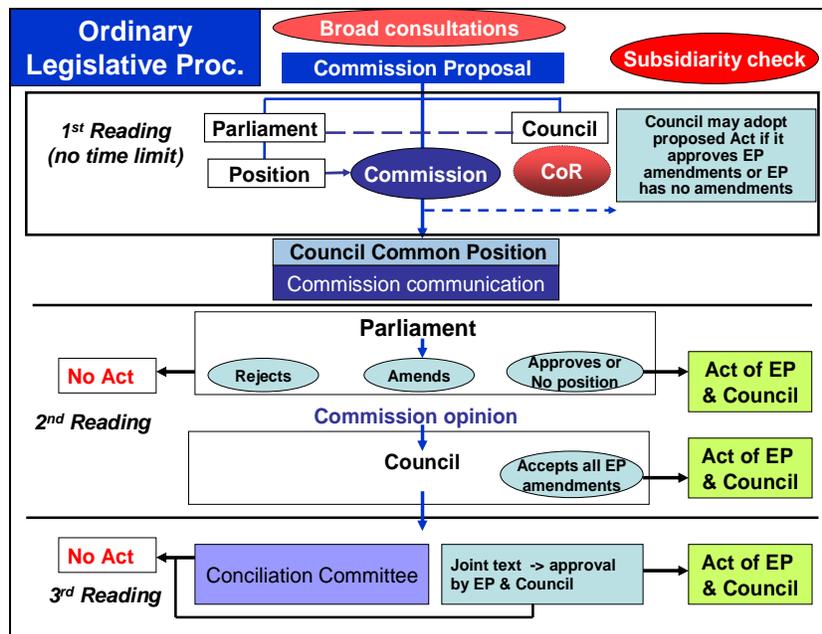
► The ordinary legislative procedure

With the Lisbon Treaty, the former co-decision procedure is renamed the 'ordinary legislative procedure' in order to keep denominations in line with the reality of the European law-making process.

According to [Article 289\(1\) TFEU](#), "The ordinary legislative procedure shall consist in the joint adoption by the European Parliament and the Council of a regulation, directive or decision on a proposal from the Commission". [Article 289\(3\) TFEU](#) underlines that "Legal acts adopted by legislative procedure shall constitute legislative acts".

Over the years, the former 'co-decision procedure' has become the most common manner to pass legislation at EU level, yet with the Lisbon Treaty, some important areas are still not covered by this procedure (e.g. multi-annual financial framework, taxation, social policy, etc.) as will be shown below.

[Article 294 TFEU](#) describes the different steps of the ordinary legislative procedure. What is new compared to the former co-decision procedure of Article 251 TEC, is that the European Parliament now pronounces itself with a first reading and not just through a simple opinion.



Source: PPT presentations by Edward Best, Unit Head at Eipa

CASE STUDY: Agriculture

With the Lisbon Treaty, the ordinary legislative procedure becomes the general rule to pass EU legislation in the agricultural field. This means that with the expanded role of the European Parliament, the balance of power is being changed. Whereas in the past, the ministries responsible for agriculture played the dominant role in the Brussels arena, they now have to share their legislative power with the European Parliament, which was only consulted before the Lisbon Treaty was adopted.

As in many other Member States, EU dossiers linked to agricultural policy have been dominated by the Dutch LNV Ministry of Agriculture, Nature and Food Quality (*LNV, Landbouw, Natuur, Voedselkwaliteit*) for a very long

time. Indeed, coordination with Dutch provinces and municipalities has been described by provincial officials as not as intensive and open as in other policy fields such as environment. Even though there have been inter-provincial networks composed of experts from the provinces and IPO, no structured inter-levels dossier teams with the LNV Ministry were being set up. It has been underlined that provinces have a structural problem to express their point of view and share their specific expertise regarding agricultural matters throughout the different phases of the EU policy cycle. Consequently, provincial experts still see the need to improve coordination in the future, even if cooperation between the LNV Ministry and provinces has been recently improved with a more regular and structured scheme.

Moreover, IPO newly created a more stable expert committee on CAP-related EU dossiers. Agriculture experts especially mentioned that this is to some extent also a success story, where a process of evaluation of deficits and the implementation of measures has been on its way. Nowadays the IPO-committee members meet with the LNV Ministry representatives to join forces in all stages of the EU policy process. Thus, attempts are currently being made to strengthen the role of the Dutch provinces and municipalities to improve their possibilities of influencing positions in Brussels in cooperation with the central Government.

► The special legislative procedures

The special legislative procedures are used to adopt legislative acts when the ordinary legislative procedure, now the common one, does not apply. These procedures mainly cover the former 'assent procedure' and the 'consultative procedure'. However, the Lisbon Treaty puts an end to the 'cooperation procedure'.

Article 289(2) TFEU provides that "In the specific cases provided for by the Treaties, the adoption of a regulation, directive or decision by the European Parliament with the participation of the Council, or by the latter with the participation of the European Parliament, shall constitute a special legislative procedure".

On this matter, the European Scrutiny Committee of the House of Commons (UK) manifested its concerns over a strict interpretation of what are called the 'special legislative procedures' and its consequences. Indeed, there are several articles where the EU Treaties provide the adoption of an act with the participation of the European Parliament, but where no reference is made to any special legislative procedure. These provisions cover significant EU policies, including for example: administrative and judicial cooperation, criminal procedure and emergency asylum procedures; competition and state aid; employment, transport and economic policies.⁵⁶ According to the European Scrutiny Committee of the House of Commons (UK), due to the participation of the European Parliament provided for in these provisions, the aforementioned articles could be understood in such a way that special legislative procedures apply to them. But the interpretation so far applied by the Commission and Council legal services indicates that "the relevant Treaty legal basis must *explicitly* refer to the legislative procedure, whether special or ordinary, for it to constitute a legislative act".⁵⁷ Thus the concerned acts cannot be interpreted as 'legislative acts' but as 'non-legislative acts'.

If those acts are considered as 'non-legislative acts', consequently the Early Warning System for the subsidiarity check of the national parliaments does not apply (Protocol n°1). It also means, that important duties of the EU institutions do not apply, such as the obligation of the Commission to consult widely, including taking the regional and local considerations into account, the obligation when proposing a measure to prepare a 'detailed statement'⁵⁸, the obligation to notify the proposals to the national parliaments, the reasoned opinion procedure

⁵⁶ European Scrutiny Committee, House of Commons, Note on the definition of legislative acts under the EU Treaties.

⁵⁷ European Scrutiny Committee, House of Commons, Note on the definition of legislative acts under the EU Treaties, page 3. Presented at COSAC Chairperson's meeting 4-5 February 2010, Senate, Madrid.

⁵⁸ A detailed statement should appraise compliance with subsidiarity and proportionality, should assess financial impact, the implications for existing rules in the MS, including regional legislation, subsidiarity check and the consideration of any burden on national governments, regional or local authorities, economic operators and citizens to be minimised and proportional with the objectives to be achieved.

(the yellow and orange cards' procedures) and the right of national parliaments to bring a case, through its national government, before the CJEU on the grounds of infringement of the subsidiarity principle.

ANALYSIS

The ordinary legislative procedure becomes the ordinary procedure to pass EU legislation. This means that the new areas described in part 2.3 of this report will be affected by this new way of making law. For example, in the case of the Common Agricultural Policy (CAP), the European Parliament will have an equal legislative standing with the Council of Ministers. This will affect the way of preparing the national positions, the way of working in Brussels, as well as the way of promoting regional and local authorities' interests in those fields.

Regarding the special legislative procedures, the restrictive interpretation of what policy areas fall or do not fall under them has raised concerns in some countries, as the determination of a legislative act or a non-legislative act has an important impact on the right of recourse to the consultation and control mechanisms facilitated by the new Lisbon Treaty for the national authorities and their regional and local entities, as will be shown below.

POTENTIAL AND CHALLENGE FOR THE NETHERLANDS

There is a clear need for improved coordination triggered by the Lisbon Treaty and the changes with regard to EU policy-making for some important areas affecting the Netherlands. The case of Common Agricultural Policy (CAP) is an interesting example (see the case study above).

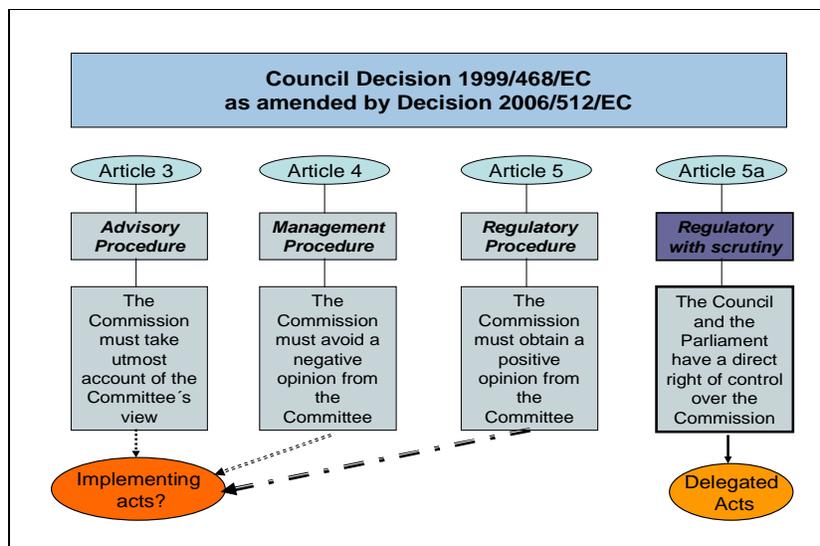
However, within the context of the Lisbon Treaty changes, the question could be raised of whether there is a need for more intensive dialogue between the national level and the provincial and local authorities in the Netherlands?

5.2. Adoption of EU non-legislative acts: The delegated acts and the implementing acts

The legislative procedures studied above may last for a year or more if no agreement is reached among the EU institutions in the early phases of the legislative process. Thus to avoid the inconveniences of a time-consuming legislative process to adopt more detailed provisions to execute a legislative act – also called 'basic law', it was decided to delegate powers to the Commission.⁵⁹ Since the Council wanted to be able to supervise the Commission when exercising those powers, a system of committees composed of civil servants from the Member States was established. These committees have been named 'comitology committees' and used to work with different procedures. This system has been constantly evolving from its inception. In 2006⁶⁰, the new 'regulatory procedure with scrutiny' was established to grant the European Parliament a scrutiny right equal to that of the Council regarding the EU acts adopted under the comitology system. As we will see in the following paragraphs, the delegated acts instituted by the Lisbon Treaty mainly cover the acts adopted under the former 'regulatory procedure with scrutiny'.

⁵⁹ Council Decision 1999/468/CE.

⁶⁰ Council Decision 2006/512/EC, amending the previous Council decision.



Source: PPT presentations by Edward Best, Unit Head at Eipa & own elaboration

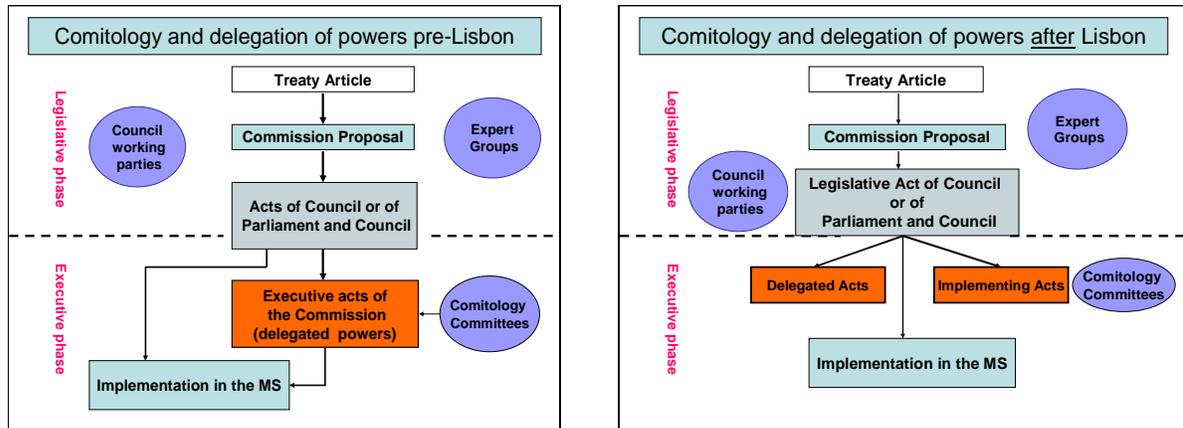
Before the Lisbon Treaty, the successive European treaties neither managed to clearly divide the legislative and executive functions within the EU decision-making system, nor provided any special procedure for cases when the executive branch exercises some of the legislative branch's competences - even though such one exists in most Member States.⁶¹ The executive acts were of one single type with no distinction whether this delegation was completing or modifying a legislative act / basic law or was purely executive.

The Lisbon Treaty introduces for the first time the distinction between a 'quasi-legislative' delegation and a 'purely executive' delegation by altering the original Article 202 TEC with the creation of new legal bases for two types of non-legislative acts: the 'delegated acts' (Article 290 TFEU) and the 'implementing acts' (Article 291 TFEU). In doing so, the Lisbon Treaty builds – as in most Member States – three different legal situations:

- a) The cases where the legislator acts within its regular field of competence by adopting laws: A legislative act in the EU system
- b) The cases where the executive branch acts within its regular field of competence by adopting ministerial decrees ('*Orden Ministerial*' in Spanish, '*Arrêtés Ministériels*' in French, or '*Ministerieel Besluiten*' in Dutch): A non legislative act, called implementing act, in the EU system
- c) The cases where the executive branch acts in the legislator's field of competence by adopting ministerial orders ('*Decreto Ley*' in Spanish, '*Decretti-legge*' in Italian, '*Ordonnance*' in French or '*Koninklijk Besluit*' in Dutch): A non legislative act, called delegated act in the EU system

Up until 2006 cases b) (execution of the basic law) and c) (modification of the non essential elements of the basic law) were assimilated, which impeded the European Parliament to exercise its control when a legislative act adopted under the co-decision procedure was modified. In 2006, the 1999 Comitology Decision was revised, introducing the 'regulatory procedure with scrutiny', giving to both the Council and the European Parliament the right of scrutiny over the Commission exercising quasi-legislative powers to modify non essential elements of a legislative act.

⁶¹ Workshop du Centre Robert Schuman des 11 et 12 février 2010 sur la mise en œuvre du Traité de Lisbonne.



When considering the two categories of EU non-legislative acts (the delegated acts and the implementing acts) established by the Lisbon Treaty, we have to bear in mind two important things:

- Protocols n°1 on the role of the national parliaments and n°2 on the subsidiarity and proportionality principles apply only to the EU legislative acts, but not to the EU non-legislative acts with all the implications it has for the European Institutions, the national, regional and local authorities (see previous chapter).
- This new typology of EU non-legislative acts entails changes in the comitology system. One of the most important ones concerns the former possibility for the Member States, under the previous European treaties, to keep control over all types of executive acts through the comitology committees. Such possibility of control is now reduced to the sole *implementing acts* aiming at executing an EU legislative act. The other type of executive acts, formerly falling under comitology, are the so-called *delegated acts* aiming at modifying the non essential elements of an EU legislative act, for which control is now exercised on an equal footing by both the Council of Ministers and the European Parliament. Thus Member States lose a part of the control they formerly exercised on this last type of acts. The European Commission has already manifested that it will continue to consult national experts for delegated acts, but the compulsory comitology procedures followed earlier have disappear. The real impact of such a loss is still uncertain, but it is clear that it needs to be followed very closely.

We will look now further in detail into these two distinct categories of non-legislative acts.

► The 'delegated acts' – New Article 290 TFEU

"1. A legislative act may delegate to the Commission the power to adopt non-legislative acts of general application to supplement or amend certain non-essential elements of the legislative act.

The objectives, content, scope and duration of the delegation of power shall be explicitly defined in the legislative acts. The essential elements of an area shall be reserved for the legislative act and accordingly shall not be the subject of a delegation of power.

2. Legislative acts shall explicitly lay down the conditions to which the delegation is subject; these conditions may be as follows:

(a) the European Parliament or the Council may decide to revoke the delegation;

(b) the delegated act may enter into force only if no objection has been expressed by the European Parliament or the Council within a period set by the legislative act.

For the purposes of (a) and (b), the European Parliament shall act by a majority of its component members, and the Council by a qualified majority.

3. The adjective 'delegated' shall be inserted in the title of delegated acts."

As mentioned before, the delegated acts cover the former acts adopted under the 'regulatory procedure with scrutiny' (RPS) established with the 2006 comitology reform, inspired from the 2004 Constitutional Treaty provisions. However, compared to the RPS, the European Parliament's scrutiny power is increased with its right of opposition and to revoke the EC delegation. This results in a perfect equal footing with the Council, as both are now EU co-legislators.

The introduction of delegated acts confers 'quasi-legislative' powers to the Commission and allows it to implement EU legislation without recourse to comitology procedures. As a consequence, it reduces the possibility for national administrations to be incorporated within the EU decision-making process. However, in its communication dated December 2009 on the implementation of Article 290 TFEU, the Commission emphasised the fact that it intends to systematically consult national experts as it does with expert groups before issuing a legislative proposal.⁶² However the Council wants a binding commitment for the Commission to systematically consult national experts during the preparatory phase. According to the European Parliament, consultation may not be limited to national experts, as consulting civil society, interest representatives, companies, social partners, academics, or even Members or organs of the European Parliament could also be envisaged.⁶³

Moreover, contrary to the implementing acts, no regulatory framework will be set up for the delegated acts, there will be instead a case-by-case approach.

► The 'implementing acts' – New Article 291 TFEU

- “1. Member States shall adopt all measures of national law necessary to implement legally binding Union acts.
2. Where uniform conditions for implementing legally binding Union acts are needed, those acts shall confer implementing powers on the Commission, or, in duly justified specific cases and in the cases provided for in Articles 24 and 26 of the Treaty on European Union, on the Council.
3. For the purposes of paragraph 2, the European Parliament and the Council, acting by means of regulations in accordance with the ordinary legislative procedure, shall lay down in advance the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers.
4. The word 'implementing' shall be inserted in the title of implementing acts.”

Article 291(1) TFEU underlines that the power to implement legislative acts should primarily be entrusted by the Member States. Nevertheless, with regard to Article 291(2) TFEU, these implementing powers shall be conferred to the Commission. Thus, when uniform conditions of implementation are necessary, it is the Commission that has - by principle - the executive competence, and no longer the Council as was the case with former Article 202 TEC. However, in this case, Member States are associated with the elaboration of the implementing acts through the comitology system, which is maintained with the Lisbon Treaty for this category of non-legislative acts.

As Article 291(3) TFEU provides, the Council and European Parliament will both reconsider the comitology procedure to control the Commission's exercise of its implementing powers. Adopting regulations regarding comitology under the ordinary legislative procedure will allow the European Parliament to have a major say in the future comitology procedures to a larger extent than has been possible so far. A transitory arrangement was negotiated between the Council, European Parliament and Commission, according to which a new 'framework regulation'⁶⁴ will have been adopted with a view to replace the 1999/468/EC Council Decision (that might come into effect in the course of 2010, but only for the basic legislative acts adopted after the Lisbon Treaty came into force). Meanwhile, the 1999 Comitology Decision will continue to apply, with the exception of the RPS introduced in 2006 as it is now covered by Article 290 TFEU on the delegated acts.

Given that Article 291(3) TFEU refers to the Member States' control of the Commission's exercise of implementing powers, no further referral to the Council will be necessary for the cases when the Commission does not obtain a favourable opinion of the comitology committee concerned.

ANALYSIS

⁶² COM(2009) 673 final, p.6.

⁶³ EP draft report on the power of legislative delegation (detailed references).

⁶⁴ See the proposal of the Commission: "Proposal for a regulation of the European Parliament and of the Council laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers", COM(2010) 83 final, 9.3.2010. The Commission suggests to have only two procedures instead of three : the advisory procedure (close to the existing advisory procedure) and a new 'examination procedure' which replaces the existing management and regulatory procedures.

With Articles 290 and 291 TFEU, the Lisbon Treaty seems to entail a loss of control by the Member States over the Commission's executive powers, which could lead to a reconsideration of the 'institutional balance' between the European Parliament, Council and Commission, as well as of the cooperation between the Commission and the Member States themselves.

Considering Articles 290 and 291 TFEU together, we notice that the scope of these two legal bases was not conceived in the same way. A 'delegated act' is defined in terms of its scope and consequences - as a general measure that supplements or amends non-essential elements - whereas an 'implementing act' is defined by its rationale, that is to say, the need for uniform implementation conditions.⁶⁵ The decision of which of these two legal bases to use might sometimes be difficult due to the lack of precision regarding the definition of the variety of non-legislative acts, and might therefore produce a grey area of cases where the legislative impact or the scope of the implementing measures could be debated.⁶⁶

On one hand, the Council may favour implementing acts, as this is where Member States – via the comitology committees – and the Commission can negotiate EU legislation implementation without much interference from the European Parliament. On the other hand, the European Parliament may encourage the use of delegated acts to keep control over the Commission's delegated power as co-legislator on an equal footing with the Council.⁶⁷

However, some questions are still open regarding the impact of these new provisions on comitology, such as the role granted to the European Parliament by the 1999/468/EC Council Decision as reformed in 2006 (right of scrutiny). If the European Parliament's right of scrutiny is maintained, the possibility to alert the Commission to the risk of abuse of power should also be given to the Council. Moreover, the question is still pending as to whether or not the suspensive effect of the scrutiny right contained in the 1999 Comitology Decision will be maintained.

POTENTIAL AND CHALLENGE FOR THE NETHERLANDS

Concerning the 'delegated acts': in certain areas covered by Article 290 TFEU, the representatives of the Dutch Government may no longer be able to participate directly in the EU decision-making process as they previously did through comitology committees. However, the Commission intends to consult national experts as it does for any legislative procedure. This could lead the Dutch Government to reflect on how to develop the national experts' expertise in the areas of utmost importance to the Netherlands, in order to maintain an active role and a say in the EU decision-making process applying to 'quasi-legislative acts'.

Concerning the 'implementing acts': the participation of Dutch representatives in the comitology committees should not change. However, some uncertainties remain prior to the adoption of the future framework regulation. Some scholars underlined the risk of limiting the comitology committees to a simple advisory role, and thus, undermining their potential influence.⁶⁸

There is a need for further debate on comitology between experts on the national level and the provincial and local authorities, as well as for more focused monitoring of the different committees, especially in fields - such as agriculture - where comitology has until now played a very important role.

⁶⁵ COM(2009) 673 final, p.3.

⁶⁶ Christiansen, et. al., 2008, p.15.

⁶⁷ The European Parliament has already specified that the delegated acts "should not be limited to those measures previously dealt with under the regulatory procedure with scrutiny but should cover all appropriate measures of general scope independently of the decision-making procedure or comitology procedure applicable to them prior to the entry into force of the Treaty of Lisbon".

⁶⁸ Metselaar, 2008, p.26, 29 and 42.

5.3. Restriction of comitology's scope and impact on the possible involvement of regional and local authorities

The changes made to the comitology system by the Lisbon Treaty may impact the potential influence that regional and local authorities (RLAs) could have on elaborating non-legislative EU acts. The Lisbon Treaty may reinforce, or also limit, the possibilities for RLAs to influence or to participate in the elaboration of this type of act, depending on whether delegated acts or implementing acts are considered.

Concerning the delegated acts, there is still the channel opened by the European Parliament through which RLAs can defend their own interests regarding certain EC proposals. This channel has been reinforced by the Lisbon Treaty; the European Parliament is now treated as the Council's equal as both have the same powers. However, the Lisbon Treaty abolished the comitology system for the elaboration of delegated acts. Consequently, it reduces the role of national administrations within the EU decision-making process for delegated acts and therefore, the influence that RLAs could have through this channel.

Nevertheless, because the European Commission is willing to consult national experts - as it does for legislative acts - contributions from national experts could be prepared in partnership with RLAs (or their representative associations) when matters with strong local and regional impact are at stake. Moreover, RLAs (or their representative associations) could also send their contributions directly to the Commission if the latter would consult more widely, complying in this way to the will expressed by the European Parliament. It could also be envisaged that, compared to EU legislative acts, more EU non-legislative acts will be adopted through quasi-legislative delegation (Art. 290 TFEU) or executive delegation (Art. 291 TFEU). Yet, the potential predominance for adopting more EU non-legislative acts may reduce the possibilities for intervention by RLAs. It will prevent them from having a say on how these acts conform to the subsidiarity principle as well as on the impact they may have in terms of finances or institutional organisation, as they can in the case of any EU draft legislative act.

Concerning the implementing acts, with regard to Article 291 TFEU, the comitology system still applies but with a reduced scope. It may also see some important changes with the future regulation reconsidering the comitology procedures to be adopted in the coming months by the Council and the European Parliament. The possible involvement of RLAs in the elaboration of EU non-legislative acts depends partly on this future regulation.

RESULTS OF THE QUESTIONNAIRE AND INTERVIEWS

According to the answers given to our interviews and questionnaire, the role of the Dutch provinces and municipalities within the context of comitology committees has been rather modest in the past. There has been little exchange of information between national officials involved in comitology committees with their provincial and local counterparts. It was also mentioned that transparency could be improved by using vertical expert teams to share the latest developments in comitology committees. So far, there has been no common view on comitology reforms and on whether Dutch provinces and municipalities should be more involved in monitoring new delegated acts or in preparing implementing acts in comitology committees.

Moreover, there is a general criticism of the lack of insight into procedures and contents of comitology. **VNG** finds it *“important to distinguish and respect the various roles players in the field have. Comitology is and should remain the responsibility of national representatives who have the responsibility of ensuring the excitability of EU policy and its financial implications. In order to promote the interests of the decentralised government, a close cooperation between the national experts and VNG should be established. The coordination and information flows on comitology matters should be improved. Currently there seems to be limited overview at the national level on all activities within the various comitology committees. This complicates VNG's ability to ensure timely input from experts to national representatives in the committees. The issue of comitology and the input from IPO and VNG in the various committees (on transport and environment for example) are on VNG and IPO's agenda and will be discussed with the various departments responsible.”*

When asked for a good practice case for comitology coordination, only **VNG** answered: *“Within the field of cohesion policy, the Department of Economic Affairs has created an informal network called 'Friends of the Cohesion group'. All relevant information is shared between its members (including VNG and IPO and other stakeholders) and members are asked to provide input on various discussions. Meetings are organised as*

required. The 'Friends of the Cohesion group' could be seen as a vertical comitology team as it brings representatives from various levels of government together."

ANALYSIS

Introducing delegated acts conferring 'quasi-legislative' powers to the Commission allows it to implement EU legislation without recourse to comitology procedures. As a consequence, it reduces the opportunities for national and regional administrations to be incorporated in EU decision-making processes. However, in its communication dated of December 2009 on the implementation of Article 290 TFEU, the Commission emphasised the fact that it intends to consult national experts as it does with expert groups before issuing a legislative proposal.⁶⁹ However the Council wants a binding commitment from the Commission to systematically consult with national experts during the preparatory phase. According to the European Parliament, consultation may not be limited to national experts, as consultation of civil society, interest representatives, companies, social partners, academics, or even Members or organs of the European Parliament could also be envisaged.⁷⁰

As was the case with the former 'traditional comitology system', RLAs' involvement is still possible in the 'new comitology system' when dealing with preparing the national position. The Lisbon Treaty and the current reform of the comitology system may therefore lead Member States to reflect on how to further involve sub-national governments in comitology committees' works. Considering that the Lisbon Treaty largely reduces the scope of comitology, it is essential to find new mechanisms that allow RLAs to participate in the EU decision-making process for implementing acts, specifically to ensure better compliance with EU legislation. For instance, Member States could develop administrative tools to consult RLAs when they may be affected by a Commission's draft on implementing measures or, for such cases, their direct participation in the comitology committees could be also envisaged (e.g. the Spanish Government formalised the participation of representatives of the autonomous communities in such committees⁷¹).

POTENTIAL AND CHALLENGE FOR THE NETHERLANDS

Participation by Dutch provinces and municipalities, when their own interests are at stake, could be envisaged in the consultations that the Commission might launch for the 'delegated acts'. This would be in line with the European Parliament's position, which states that these consultations should not be limited to national experts.

Concerning the 'implementing acts', when matters with a strong interest for the Dutch provinces and municipalities are discussed within the comitology committees, the Dutch representatives participating in these committees might cooperate with them, or their representative associations, during the preparatory process of the national position. A reflection could also be launched on their possible direct participation in these committees, by accompanying the official Dutch representatives.

5.4. Infringement of EU Law / Non-legality of an EU act: what role for regional and local authorities?

The Lisbon Treaty added a new paragraph to Article 260 TFEU (formerly Article 228 TCE) on possible financial sanctions for not notifying the Commission of the measures transposing a directive adopted under a legislative procedure.

⁶⁹ COM(2009) 673 final, p.6.

⁷⁰ EP Report on the power of legislative delegation A7-0110/2010, (2010/2021(INI)), Committee on Legal Affairs, Rapporteur: Jozsef Szajer.

⁷¹ Since 2003, rules have been defined for the participation of the autonomous communities to the comitology committees. These rules especially stipulate the representatives' mandate (two communities in each committee for four years) and also the instruments to be developed to ensure coordination between the autonomous communities and the Spanish Government (such as the transmission of documents).

Article 260(3) TFEU states that:

“When the Commission brings a case before the Court pursuant to Article 258 on the grounds that the Member State concerned has failed to fulfil its obligation to notify measures transposing a directive adopted under a legislative procedure, it may, when it deems appropriate, specify the amount of the lump sum or penalty payment to be paid by the Member State concerned which it considers appropriate in the circumstances.

If the Court finds that there is an infringement it may impose a lump sum or penalty payment on the Member State concerned not exceeding the amount specified by the Commission. The payment obligation shall take effect on the date set by the Court in its judgment”.

Regarding the case of non-compliance with EU law, the Member State is recognised as the sole party responsible. However, the central government can turn to its local and regional authorities to ask them to contribute to any financial sanction to be paid for non-compliance with EU law if it results from their responsibility and competence.⁷²

On the other hand, the Lisbon Treaty changes some of the wording in the provisions regarding the possibility for a legal person to contest the legality of an EU act before the Court. Indeed, Article 263 (para. 4) TFEU states that “Any natural or legal person may, under the conditions laid down in the first and second paragraphs, institute proceedings against an act addressed to that person or which is of direct and individual concern to them, and against a regulatory act which is of direct concern to them and does not entail implementing measures”. Whereas former Article 230 TCE was limiting such possibility to “a decision addressed to that person or against a decision which, although in the form of a regulation or a decision addressed to another person, is of direct and individual concern to the former”.

Local and regional authorities, not being mentioned as such in the European treaties in the articles dealing with the possibility to bring a case before the European Courts, can only be considered as legal persons in the meaning of the Treaty text and not as privileged applicants as are the Member States mentioned in Article 263 (para. 2) TFEU. Thus, the new provisions of Article 263 TFEU could be interpreted as extending, within a certain limit still, the possibility for local and regional authorities to bring a case before the Court when an EU act, or a regulatory act that entails implementing measures, affects them and is of direct⁷³ and individual⁷⁴ concern for them, and is not merely a ‘decision’, a ‘decision in the form of a regulation’ or a ‘decision addressed to another person’. This change might be even more important for regions with legislative powers.⁷⁵

RESULTS OF THE QUESTIONNAIRE AND INTERVIEWS

It was mentioned in the questionnaire that in some policy fields (environment, spatial planning) coordination has been very much improved over the past few years, especially via dedicated vertical dossier teams. So, even before a legal act is finally adopted in Brussels, there exists a sort of understanding of the national transposition challenges. This is not so much the case in other policy fields (i.e. agriculture) where capacities at the regional or local level have only been recently established. The consequences of the new time pressure have been discussed between the Dutch provinces and municipalities and national ministries. It would certainly not be appropriate to limit their involvement in the national law-making process vis-à-vis a European deadline. According

⁷² See the ECJ's judgement of 4 July 2000, aff. C-424/97, Salomone Haim.

⁷³ The direct concern requirement could be illustrated here by the action initiated by the Netherlands Antilles against a regulation limiting imports into the Community of rice originating in the overseas countries and territories. The Court of first instance accepted that this regulation was of direct concern to the applicant (CFI, joined Cases T-32/98 and T-41/98 *Nederlandse Antillen v Commission* [2000] E.C.R. II- 201) The resulting restrictions on the issue of import licences were considered to sufficiently affect the situation of the applicant for it to be directly concerned. However, the judgment of the CFI was set aside by the ECJ¹⁷ on grounds of absence of individual concern, without the latter explicitly considering whether the requirement of direct concern had been met (ECJ, Case C-142/00 P *Commission v Nederlandse Antillen* [2003] E.C.R.I-3483).

⁷⁴ CFI, Case T-214/95 *Vlaams Gewest v Commission* [1998] E.C.R. II-717.

⁷⁵ See CFI, Joined Cases T-366/03 and T-235/04 *Land Oberösterreich and Austria v. Commission* [2005] E.C.R. II- 4005. ECJ, Joined Cases C-439/05 P and C-454/05 P *Land Oberösterreich*, nyr.

to several provincial experts, more stringent coordination in the national transposition phase could have been appropriate in earlier times.

ANALYSIS

The new provision under Article 260(3) TFEU introduced by the Lisbon Treaty aims to reinforce the procedure for financial penalties against Member States that infringe EU law. It also accelerates the mechanism for financial sanctions (lump sum or penalties). It gives the Commission the right to propose a financial sanction and gives the Court the option to impose financial penalties at the first judgement stage in cases where Member States fail to notify measures for transposing a directive. Formerly penalties were given at the second judgement stage.

This will probably increase the pressure on national governments to respect deadlines for transposing directives. This could imply that internal coordination of national transposition (preparation and adoption of national legislation) has to be improved to avoid missing deadlines. It might also have an effect on inter-ministerial coordination, as well as on the work done by national parliaments. Furthermore, the consultation process with RLAs (or in some Member States their formal input into the national transposition legislative process) has to be in line with the deadlines.

In a case of non-compliance with EU law, the Member State are still recognised as the sole party responsible; the Lisbon Treaty changed nothing on that score. Nevertheless, as seen above, Member States can turn internally to RLAs to make them contribute towards paying a financial sanction when the infringement of EU law resulted from their own competence and action.

Regarding Article 263 (para. 4) TFEU, the evolution of the European treaties, as well as that of case law, is quite slow to open direct access to the European Courts for individuals and legal persons. This is particularly true for regions with legislative powers, whereas regions are increasingly directly and individually concerned by EU acts, regarding aid measures for example, or when it impacts on a national measure in a field for which the region is internally competent. Being not privileged applicants under Art. 263 (para. 2) TFEU, three avenues of access may be open to RLAs: bringing an action as non-privileged applicant under Art. 263 (para. 4) TFEU, acting before the Court as a representative of their Member State, or defending their interests through the Committee of the Regions and its new right to bring a case before the Court.⁷⁶

POTENTIAL AND CHALLENGE FOR THE NETHERLANDS

Regarding the provision under Article 260(3) TFEU, the new situation due to the Lisbon Treaty is limited with regard to the question of in-time directive transposition. Thus, it does not directly refer to problems with enforcement of EU legislation at the regional or local level, but it refers to the obligation to notify the measures adopted for transposing the directive.. So far, it has not necessarily put more pressure on the actual enforcement practice at local and regional levels. Non-enforcement at the regional or local level (despite proper legal transposition) will be still dealt under Article 260, (1)(2) TFEU; meaning that the Commission needs an initial judgement before it can propose a penalty. However, the new situation represents also a challenge for the Dutch Government and Parliament, to notify the measures and to do it "in time" It means that the consultation process with external stakeholders, and of course with RLAs, has to be accelerated in the transposition phase of directives.

Regarding the case of non-compliance with EU law, the Dutch Government decided under the 'Balkenende II' administration that it was necessary to have a new law to ensure good compliance at the sub-State level with EU legislation. In case of non-compliance, it was argued that the State would bear the financial consequences. This supervisory policy ('*toezicht*') was based on a report by the ICER interdepartmental committee and consisted of three elements: information, prevention and repressive instruments. The announced law called TER (*Toezicht Europese regelgeving*) had to correct errors made at the sub-State administrative levels, including a special provisions ('*regresrecht*' or '*verhaalsrecht*') aimed at facilitating the State's claims for the repayment of unlawfully obtained funds. The proposal was revised as was its title; it became NERmo (*Wet naleving Europese regelgeving*

⁷⁶ See "Access of regions with legislative powers to the European Court of Justice", Prof. dr. Koen Lenaerts (K.U.Leuven), President of Chamber at the European Court of Justice, www.cor.europa.eu/cor_cms/ui/ViewDocument.aspx?contentid=2e30bc34-7ce2-427d-8d35-53f2c7b50a8a.

medeoverheden), and later on, NErpe (*Wet Naleving Europese regels publieke entiteiten*).⁷⁷ IPO and VNG protested against this new law proposal.⁷⁸

⁷⁷ By ‘*publieke entiteiten*’ not only Provinces and municipalities are meant, but also water boards and all other public entities with a national character.

⁷⁸ In September 2008, IPO and VNG sent their reactions on this law proposal to the Minister of the Interior. They underlined the need for prevention. Repression, however, needed to have the character of an *ultimum* remedium. Redress law could be acceptable, but raised the following issue: what would happen if the state does not complete the transposition phase for an EU Directive on time? They also stressed the fact that there are two types of subsidies: public and private, pointing out that when private subsidies are concerned, the sub-state level is directly responsible. According to IPO and VNG, existing laws (*Gemeentewet* and *Provinciewet*) have sufficient enforcement power. Moreover, the law proposal was not in accordance with the 2007 advice of the ‘Committee Oosting’ saying that in principle only the next level of administration should supervise the other (e.g. in the case of the municipalities: the provinces). On 28 January 2010, IPO and VNG sent a letter to the members of the Parliament in which they reiterated their protests. Even though their earlier protests led to a partly different text, they still did not see the necessity of such a law.

6. A strengthened recognition of the role of the regional and local authorities within the European integration process

Regional and local authorities across Europe will witness important progress with the Lisbon Treaty towards the recognition of multi-governance in the European Union. It preserves most of the key points of the defunct Treaty establishing a Constitution for Europe which strengthened the role of the regional and local levels in the European arena. A more inclusive Europe seems to be favoured: better involvement of regional and local expertise in the quest for a more cohesive Europe together with a reinforced principle of subsidiarity and an increasing role given to the national parliaments. Many concrete novelties ensure that EU governance will evolve into more advanced multi-level forms; the most general ones are of utmost interest to local and regional authorities as they could change the way of working and cooperating with the other levels of government participating in the European decision-making process.

6.1. The recognition of the regional and local dimensions of the subsidiarity principle

Article 5 TEU, as revised by the Lisbon Treaty, contains a more inclusive definition of the subsidiarity principle for local and regional authorities stating that "Under the principle of subsidiarity, in areas which do not fall within its exclusive competence, the Union shall act only if and insofar as the objectives of the proposed action cannot be sufficiently achieved by the Member States, either at central level or at regional and local level, but can rather, by reason of the scale or effects of the proposed action, be better achieved at Union level".

This provision goes in line with Article 10(3) TUE providing that representative democracy should ensure that "Decisions shall be taken as openly and as closely as possible to the citizen".

RESULTS OF THE QUESTIONNAIRE AND INTERVIEWS

The comments made in our interviews with representatives of **Limburg** indicate they are of the opinion that the subsidiarity principle under the new Treaty implies strong cooperation among levels of government: not only to avoid interference or undermining competences of the regional or local levels vis-à-vis Europe, but also to avoid negative cross-border consequences, in the sense of a level playing field for people, goods and services.

ANALYSIS

The principle of subsidiarity refers to the choice of the most suitable and efficient level for taking action. The European Union connects this concept with "the process of creating an ever closer union among the peoples of Europe", and defines subsidiarity as a way of taking decisions "as closely as possible to the citizen". An explicit reference has been made for the first time to the regional and local levels in the provision concerning the subsidiarity principle in the body text of the EU Treaty. This represents a step towards the political recognition of multi-level governance within the EU.

The recognition of the role of the RLAs in the European integration process through the new (*de jure* but not *de facto*) definition of the subsidiarity principle could also be linked to the taking into account of the local and regional dimensions with regard to new policy fields, these being climate change (Art. 191 and 192 TFEU), energy (Art. 194 TFEU) and civil protection (Art. 196 TFEU). This could be seen as the result of an adaptation of the path of the European integration process to the evolution of the world context with its worldwide challenge (e.g. climate change) and the new motto arising "Think global, act local".

POTENTIAL AND CHALLENGE FOR THE NETHERLANDS

Such a reference to the regional and local levels in the definition of the subsidiarity principle (at the European level), implies strong cooperation between the Dutch central Government and the provinces and municipalities in controlling the subsidiarity principle of any EU proposal or action, in a way that it does not interfere or undermine competences of the Dutch provinces, municipalities or water board districts.

6.2. Respect for regional and local self-government & cultural and linguistic diversity

Article 4 (2) TEU states that “The Union shall respect the equality of Member States before the Treaties as well as their national identities, inherent in their fundamental structures, political and constitutional, inclusive of regional and local self-government.”

Another important new provision is provided by Article 3(3)(sub-para. 4) TEU ensuring respect for cultural and linguistic diversity: “[The Union] shall respect its rich cultural and linguistic diversity, and shall ensure that Europe’s cultural heritage is safeguarded and enhanced”. This is also ensured by Article 22 of the Charter of Fundamental Rights, which has been legally binding since the Lisbon Treaty entered into force.

Another reference to respecting both local and regional self-government and cultural and linguistic diversity is included in the Preamble to the Charter of Fundamental Rights: “The Union contributes to the preservation and to the development of these common values while respecting the diversity of the cultures and traditions of the peoples of Europe as well as the national identities of the Member States and the organisation of their public authorities at national, regional and local levels.”

ANALYSIS

This is the first time that the EU treaties explicitly recognise the local and regional self-government principle, moreover it does so in the first articles of the EU Treaty giving it significant importance.

Local autonomy was defined in the Charter of Local Self-Government⁷⁹ of the Council of Europe, which entered into force on 1 September 1988. The EU did not ratify it, but respects its philosophy as many - but not all - Member States did ratify it. The Council of Europe also adopted in 1992 the European Charter for Regional and Minority Languages⁸⁰, which entered into force on 1 March 1998. Some members of the Council of Europe still did not ratify it.

Negotiations for a Charter for Regional Self-Government were initiated by the Council of Europe's Congress of Local and Regional Authorities in Europe (CLRAE) in 1997. After numerous revisions and debates, a draft European Charter of Regional Democracy (the name has been changed) was adopted by the Congress of Local and Regional Authorities on 28 May 2008⁸¹, but without any approval yet from the Council of Ministers.

In Point 10 of its recommendation on the draft Charter, the Congress underlines “*it is still firmly convinced that, in spite of major legal and institutional differences on the subject, it is still desirable and feasible to provide a common general framework for regional democracy and to co-ordinate current or future processes relating to it.*”⁸²

Some articles of the draft Charter merit some attention, such as Article 3 stipulating that “*The recognition and exercise of regional self-government is one of the elements of democratic governance*”, Article 11.1.: “*The principles of regional self-government and the existence of regional authorities shall be established by the Constitution, by law or by international treaty*”, Article 19 on the right to be consulted: “*Regional authorities shall be involved in all decision-making that affects their competences and essential interests*”, or Article 16.5. providing that “*Any transfer of competence to regional authorities shall be accompanied by a transfer of corresponding financial resources*”.

⁷⁹ <http://conventions.coe.int/treaty/en/treaties/html/122.htm>.

⁸⁰ <http://conventions.coe.int/treaty/en/Treaties/Html/148.htm>.

⁸¹ The Congress of Local and Regional Authorities, Recommendation 240 (2008), Draft European charter of regional democracy, debated and adopted on 28 May 2008, 2nd sitting.

⁸² See the Congress of Local and Regional Authorities, Recommendation 240 (2008), Draft European charter of regional democracy.

The Assembly of European Regions (AER) “*supports this initiative and wishes to see a binding regional charter to enter into force as soon as possible*”.⁸³

So far it was the sole reflection conducted at a political level on self-regional government in Europe, until the proposal of the CoR in its White paper on multi-level governance “*to initiate a consultation process with a view to drawing up a European Union Charter on multilevel governance, which would establish the principles and methods for developing a common and shared understanding of European governance, based on respect for the principle of subsidiarity, which would support local and regional governance and the process of decentralisation in the Member States, candidate countries and neighbouring states, and which would stand as a guarantee of the political will to respect the independence of local and regional authorities and their involvement in the European decision-making process*”.⁸⁴ The CoR also “*invites the Member States to, through the Council of Europe, continue to work towards the proposed Charter for Regional Democracy*”.⁸⁵

POTENTIAL AND CHALLENGE FOR THE NETHERLANDS

Being a member of the Council of Europe, the Netherlands signed the European Charter of Local Self-Government in 1988, ratified it in 1991 and it entered into force on 1 July 1991.

The Netherlands ratified the European Charter for Regional or Minority Languages in 1996 and it entered into force in 1998. The Netherlands is applying the provisions of Part II of the Charter to the following regional or minority languages spoken within its territory: Frisian, Low Saxon languages, Yiddish and the languages of the Romany. Nevertheless, according to the Dutch Treaty Series 1998⁸⁶, as far as the constituent parts of the Kingdom of the Netherlands are concerned, the Charter will apply only to the Netherlands in Europe.⁸⁷

6.3. Insertion of ‘territorial cohesion’ in the EU objectives

The Lisbon Treaty provides a new mention in the EU Treaties of ‘territorial cohesion’ amongst the objectives of the Union (Art. 3 TEU, Art. 174 and 326 TFEU and Protocol n°28 on economic, social and territorial cohesion).

Should be particularly read in light of the territorial cohesion objective, the new paragraph 3 of Article 174 TFEU on the recognition of the specificity of certain areas and regions, providing that: “Among the regions concerned, particular attention shall be paid to rural areas, areas affected by industrial transition, and regions which suffer from severe and permanent natural or demographic handicaps such as the northernmost regions with very low population density and island, cross-border and mountain regions”.

Other new provisions of the Lisbon Treaty regarding regional and local authorities should also be read in light of the provisions on territorial cohesion. Indeed, as states Article 36 of the Charter of Fundamental Rights of the European Union (which is now legally binding like the EU Treaties) on the access to services of general economic interest: “The Union recognises and respects access to services of general economic interest as provided for in national laws and practices, in accordance with the Treaties, in order to promote the social and territorial cohesion of the Union.” It is the same for Protocol n°26 on services of general interest taking greater account of the role of local and regional authorities with regard to Services of General Interest: “In the European tradition, public services are widely seen as promoters of social stability and territorial cohesion.[...] Apart from that, it is clearly up

⁸³ <http://www.aer.eu/main-issues/regional-democracy/european-charter-for-regional-democracy.html>. See also AER Position on the Council of Europe's Draft European Charter on Regional Democracy, AER Bureau meeting and General Assembly, Udine, 7-9 November 2007.

⁸⁴ CdR 89/2009 fin, p.8.

⁸⁵ CdR 89/2009 fin, p.28.

⁸⁶ Dutch Treaty Series 1998, 20.

⁸⁷ State Party Report [MIN-LANG/PR (99) 2], see:

http://languagecharter.eokik.hu/docs/byLanguage/Romanes_in_the_Netherlands.doc.

to the public authorities and governments at national, regional and local level to define which public services should be delivered and how.”⁸⁸

ANALYSIS

The concept of “territorial cohesion” has still to be clarified and developed. We may think in fact that territorial cohesion is nothing new, but its potential purpose may be to redefine the concept of cohesion (namely, economic and social) by insisting on its territorial dimension. We can emphasise the broadness of the concept around which a number of territorial aspects of public policy and European programs may aggregate - leading to a common rationale. It is with the 2008 EC Green Paper on Territorial Cohesion⁸⁹, responding to the Leipzig agenda set up in 1997, that a discussion on this issue started at the European level. The Green paper addressed the following issues in further detail: cooperation between territories to strengthen European integration, territorial programming in the framework of cohesion policy, the affirmation of the need for more policy coordination to reach higher level of coherence, and the promotion of an evidence-based policy-making.

Moreover, territorial cohesion could be also considered in the light of the subsidiarity principle, as EC President Barroso mentioned in his letter addressed to the CoR commenting on its White Paper on multi-level governance⁹⁰, “*The territorial cohesion concept will also give new aspects to European subsidiarity highlighting the role of the regional and local actors*”.

In the same line, during the meeting held on 29 June 2010, gathering the Commission President Barroso, the CoR President Bresso and the Presidents of European associations of regional and local authorities, the regional and local leaders underlined that “*their support of future European Commission proposals will depend on the European executive's readiness to put the territorial approach of EU proposals centre stage. The Europe 2020 strategy or the EU budget reform can only be successful if developed and implemented via a multi-level governance approach where all government levels share ownership and responsibility. Regions and local authorities call for a coherent implementation of the principle of territorial cohesion, enshrined in the Treaty, which requires better coordination among all levels of government. Territorial cohesion is not only a goal, it has to become the guiding principle for implementing all EU policies*”.⁹¹

POTENTIAL AND CHALLENGE FOR THE NETHERLANDS

In the Netherlands, the matters linked to ‘territorial cohesion’ fall under the competence of the Ministry of Housing, Spatial Planning and Environment (VROM)⁹². The EC Green Paper was discussed in interdepartmental workgroups, which came to the conclusion that a good definition of ‘territorial cohesion’ is still lacking.⁹³ The Dutch Government took also a formal position on the issue underlying the necessity of a united but pluri-form and

⁸⁸ Speech by Joaquín Almunia, Vice President of the European Commission Responsible For Competition Policy, European State Aid Law Institute, Brussels, 10 June 2010, State Aid Rules Can Help Europe Exit Crisis – Almunia, <http://www.eurasiareview.com/201006102976/state-aid-rules-can-help-europe-exit-crisis-almunia.html>, 10.06.2010

⁸⁹ Communication from the Commission to the Council, the European parliament, the Committee of the regions and the European economic and social Committee, Green Paper on Territorial Cohesion - Turning territorial diversity into strength, COM(2008) 616 final.

⁹⁰ Own-initiative opinion of the Committee of the regions on the Committee of the regions’ White paper on multilevel governance, Cdr 89/2009 fin.

⁹¹ See CoR Press release, “Commission President Barroso meets CoR President Bresso and regional and local leaders”, 29.06.2010, <http://europa.eu/rapid/pressReleasesAction.do?reference=COR/10/53&format=HTML&aged=0&language=EN&quiLanguage=en>.

⁹² <http://international.vrom.nl/>.

⁹³ A summary can be found here:

http://www.eerstekamer.nl/eu/edossier/e080115_groenboek_over.

decentralised Europe.⁹⁴ On 9 January 2009, a conference was held in Arnhem to discuss the proposals with EU representatives.⁹⁵ The Netherlands welcomed 'territorial cohesion' as an EU objective as it strengthens the role of the sub-state administrations, however the one-size-fits-all approach should be changed for a more custom-made approach. More specifically, cross-border cooperation could be considered as one of the tools to help achieve the EU 'territorial cohesion' objective this ensure horizontal coordination with a given sectoral policy. Regarding transnational cooperation, the macro-regional approach may put the Netherlands at the centre of certain EU policies. The Netherlands, given its geographical situation at the crossroads of Western Europe – as well as the fact that it is a major maritime gateway – can be central to this approach⁹⁶.

Thus EGTC might be seen as one of the central instruments to implement and ensure territorial cohesion within the EU, and therefore a promising tool of multi-level governance as well. In addition, the 'Local Development Methodology' within the framework of territorial programming of cohesion policy cannot yet be evaluated with any certainty due to its relative recentness. However, as it is an approach that insists in particular on urban-rural links, global challenges (e.g. environmental) and local partnership, it is worth monitoring its evolution in the light of the 'territorial cohesion' objective included in the EU Treaty. Close cooperation and coordination with Dutch provinces and municipalities may be needed to develop and implement the EU territorial cohesion concept.⁹⁷

6.4. Improvements regarding the EU outermost regions' status

Article 349 (1) TFEU states that "Taking account of the structural social and economic situation of Guadeloupe, French Guiana, Martinique, Réunion, Saint-Barthélemy, Saint-Martin, the Azores, Madeira and the Canary Islands, which is compounded by their remoteness, insularity, small size, difficult topography and climate, economic dependence on a few products, the permanence and combination of which severely restrain their development, the Council, on a proposal from the Commission and after consulting the European Parliament, shall adopt specific measures aimed, in particular, at laying down the conditions of application of the Treaties to those regions, including common policies. Where the specific measures in question are adopted by the Council in accordance with a special legislative procedure, it shall also act on a proposal from the Commission and after consulting the European Parliament."

ANALYSIS

French overseas departments, the Azores, Madeira and the Canary Islands are the only outermost regions explicitly quoted in the European treaties as being part of the EU territory since the Amsterdam Treaty and the introduction of Article 299(2) TCE (substituting former Article 227(2) TCE). The request of these regions to consolidate their status is partly satisfied with the Lisbon Treaty entering into force, especially with Article 349 TFEU specifically dedicated to them. Article 349 TFEU is based on previous Article 299(2) al. 2,3 & 4 TEC. The rest of Article 299 TEC, dealing with the territorial scope of the European treaties, can be found in Article 355 TFEU. However, contrary to the defunct Treaty establishing a Constitution for Europe, the Lisbon Treaty does not include the specific article in Part 3 titled "Policies and internal actions of the Union", but kept Article 349 TFEU in Part 7 titled "General and final provisions". The other overseas countries and territories (listed in Annex II) are covered by the special arrangements for association set out in Part 4 of the Lisbon Treaty (Art. 355(2) TFEU). Nevertheless, Article 355(6) TFEU provides a new provision that states: "The European Council may, on the initiative of the Member State concerned, adopt a decision amending the status, with regard to the Union, of a

⁹⁴ Brief van de Minister van VROM aan de Tweede Kamer, inzake nieuwe commissievoorstellen en initiatieven van de lidstaten van de Europese Unie, 5 februari 2009, TK 22 112, nr. 792.

http://www.eerstekamer.nl/eu/behandeling/20090205/territoriale_cohesie/f=vi2gbwxmn9ig.doc.

⁹⁵ Speakers: Lewis Dijkstra, DG Regional Policy EC, Co Verdaas, deputy province Gelderland, Lambert van Nistelrooy, MP Europarliament CDA.

⁹⁶ Co Verdaas: 'Territoriale Cohesie zorgt voor revolutie', In: de Europese Gemeente, jaargang 44 (2009), nr. 1.

⁹⁷ VNG-IPO Position paper: The future of European Cohesion Policy beyond 2013, January 2008.

Danish, French or Netherlands country or territory referred to in paragraphs 1 and 2. The European Council shall act unanimously after consulting the Commission”.

POTENTIAL AND CHALLENGE FOR THE NETHERLANDS

The Kingdom of the Netherlands consists of the Netherlands itself and six islands in the Caribbean: Aruba (having a special legal status), and the five islands being part of the Netherlands Antilles, being Curacao, Bonaire, Saint Eustatius, Saba and Saint Marten. There is currently a project of constitutional change to dissolve the Netherlands Antilles as a political entity, to be adopted in the course of end 2010⁹⁸, providing a special status to Bonaire, Saint Eustatius and Saba, equivalent to that of municipalities. Curacao and Saint Marten should become respectively separate countries with an autonomous status such as that of Aruba.

According to the Oxford Economic Country Briefings of 9 March 2010 on the Netherlands Antilles, “*The long-term prospect is for islands that do not opt for greater autonomy to become more integrated into the Dutch polity, voting for political representatives in The Hague and enforcing EU laws*”.⁹⁹

With the Lisbon Treaty, the conditions permit a change of the status of the Dutch associated overseas territories¹⁰⁰ as provided in Part 4 TFEU to the outermost regions status referred to in Article 349 TFEU, and so being part of the EU territory, if the Kingdom of the Netherlands so wishes. Moreover, the newly inserted Declaration n° 60 by the Kingdom of the Netherlands on Article 355 of the Treaty on the Functioning of the European Union states that “The Kingdom of the Netherlands declares that an initiative for a decision, as referred to in Article 355(6) aimed at amending the status of the Netherlands Antilles and/or Aruba with regard to the Union, will be submitted only on the basis of a decision taken in conformity with the Charter for the Kingdom of the Netherlands.”

⁹⁸ The complete dissolution of the Netherlands Antilles was originally planned on 15 December 2008, but is now due to be completed on 10 October 2010. See "Agreement on division of Netherlands Antilles", News on the Portal of 'Government.nl', 13.02.2007: http://www.government.nl/News/Press_releases_and_news_items/2007/February/Agreement_on_division_of_Netherlands_Antilles.

⁹⁹ http://findarticles.com/p/articles/mi_qa5299/is_20100309/ai_n52481791/.

¹⁰⁰ As listed in Annex II of the treaties: Aruba and The Netherlands Antilles : Bonaire, Curacao, Saba, Saint Eustatius, Saint Marten.

7. Conclusions and Recommendations

All these improvements brought about by the Lisbon Treaty concerning regional and local authorities provoked high expectations among some of them, especially regarding their possible influence in the EU decision-making process.

Several articles of the Lisbon Treaty have a voluntary nature. Others are more precise and binding. All in all the Lisbon Treaty does not bring any revolutionary change to the existing multi-level coordination procedures of governance in the Netherlands, but it does – or should – open the eyes and ears of the Dutch institutions at all levels of government to the new stronger role for the EU both inside and outside the borders of any given nation.

The research team concluded that the potentials offered by the Lisbon Treaty are numerous but its degree of impact on the Dutch provinces and municipalities will very much depend on the approach the actors involved take in its implementation; these actors at this initial stage are mainly: the European Commission, the European Parliament, the Committee of the regions, the central Government, the provincial and local entities and their representative associations.

The Netherlands will be affected on two different fronts:

- On one hand, *externally* vis-à-vis its counterparts in Europe with the new double majority voting, the increased use of the qualified majority voting (implying further need for coalitions), the new role of the Commission with its reinforced consultation obligations, its growing impact assessment exercise, and its 'support' competences, the need for horizontal cooperation among national parliaments for an efficient use of the subsidiarity check mechanisms. Furthermore, the Netherlands faces the new challenge of efficiently using its potentials for good territorial positioning in Europe, as a result of the principle of territorial cohesion.
- And on the other hand, *internally* vis-à-vis the multi-layered actors working for a good governance of the Netherlands by making an efficient use of the Lisbon Treaty novelties favouring a stronger multi-level coordination and a reinforced participatory role for the sub-State players within the EU policy-making.

7.1. Conclusions

The main conclusions resulting from this research study regarding multi-level governance in the Netherlands are as follows:

1. Low awareness of the Lisbon Treaty novelties and its potential among the Dutch territorial entities.

Awareness of the Lisbon Treaty novelties is low at both central and regional/local levels as well as its possible impacts and potentials on the crucial steps to be taken to try to influence the EU policy-making. In parallel we have detected that there is still not sufficient knowledge of the EU decision-making procedures in general and of the actors involved in each phase. A better understanding of the whole system would allow a more transparent process and permit the Dutch provinces and municipalities to be heard in a more efficient way when their interests are at stake.

2. The Lisbon Treaty presents potentials for better multi-level governance in the Netherlands.

Most of the Lisbon Treaty novelties concerning regional and local authorities are of a voluntary nature, setting the pre-conditions for a better involvement of the sub-State level in the EU decision-making process. Thus, any progress regarding multi-level governance in the Netherlands will depend a lot on the willingness of all stakeholders to make use of the Lisbon Treaty potential.

3. The multi-level governance culture is not enough mainstreamed in the Netherlands' administration.

The multi-level governance culture is not mainstreamed throughout all the different ministries at the central level in the Netherlands. Further multi-level coordination is needed in certain policy fields being of interest for the Dutch

territorial entities. There is also signs of lack of capacity/ human resources/ knowledge existing at the sub-State level. Moreover, weak horizontal cooperation can be sometimes observed at the central level, the provincial and local levels, being caused by both lack of capacity and/or lack of political willingness towards a stronger involvement.

4. Need to improve formal and informal multi-level coordination in the Netherlands.

There are already existing procedures, means and channels for Dutch provincial and local authorities to participate and influence, via a multi-level form, the EU decision-making process. Nevertheless, the use of the latter (both by the ministries as well as by the sub-State level) and the capacity to work with them in an efficient and constructive way need some improvements, both in relation to the existing practice, as well as in view of the novelties provided by the Lisbon Treaty.

5. An important advisory and expert role for the Dutch territorial entities.

The provincial and municipal levels play above all an advisory and expert role towards the central level in the Netherlands. Whether they have more or less influence on the final decisions taken by the central level regarding EU policy depends on their expertise, timely inputs and the preparedness of the central Government to take their views into account. Indeed, the coordination of EU affairs among the different levels of governance in the Netherlands is not in the first place based on any constitutional provisions (for example, even if the Senate is elected by the provinces, it does not formally represent them and their interests in the national law-making process). Their relations rely on an administrative code or agreements between the central Government, IPO and VNG, which has been revised and improved in the last years.

6. Lack of transparency regarding the final national position adopted by the Dutch Government.

During the legislative phase of the adoption of an EU legislative act, that could affect Dutch provinces and/or municipalities, the latter are not always aware about the final position that is taken by the Government in the working groups/COREPER/Council of Ministers, even on issues for which they are sometimes consulted. Since the nature of Dutch provinces' and municipalities' participation is of an advisory role, it is very important for the national experts involved to have proper transparency with respect to their opinion and how or whether it did, or did not influence the final national position. Thus there is a need for a proper follow-up or feedback, especially if an input has been provided by the Dutch territorial entities. Moreover, it has been noticed that there is in particular a lack of openness for the work done in comitology committees towards the Dutch provinces and municipalities.

7. A reinforced role for the Committee of the Regions at an early stage of the EU legislative process.

With the Lisbon Treaty, obligatory consultation of the Committee of the regions by the Council of Ministers and the European Commission, and now the European Parliament, has been extended to three policy fields: sport, climate change and energy. Thus this extended consultative function, as well as the new five years mandate of its members - aligned on the one of the EP or Commission members - will contribute to make of the CoR an important advisory body within the European institutional arena, in order to detect concerns for regional and local authorities regarding any new EU legislative proposal that may have an impact on them. Moreover, its new important right to bring a case before the CJEU for the annulment of an EU act infringing its own prerogatives or in breach of the subsidiarity principle, will reinforce its role at an early stage of the legislative process, firstly by ensuring that it is consulted by the European institutions when the EU treaties provide it, secondly, by scrutinising EU legislative proposals and their compliance with the subsidiarity principle.

7.2. Recommendations

The new Lisbon Treaty raises potentials for multi-level governance improvements and might thus represent the right momentum to rethink the coordination mechanisms and participation tools in a multi-level setting in the Netherlands, for a better involvement and participation of the Dutch provinces and municipalities in EU decision-making, and doing so, the European integration process.

**Tools to improve participatory/coordination mechanisms for
the Dutch State, Provinces and Municipalities in
the different phases of the EU decision-making process**

Pre-legislative phase: Legislative acts		Legislative phase: Legislative acts		Executive phase: Non-legislative acts adopted by the Commission	Transposition and implementation phases	
EC Consultation - Taking into account regional and local impacts (Lisbon Treaty)	Already existing instruments <i>(IPO/VNG analysis of the EC work programme, priority list)</i> , BUT need to reinforce capacity & presence of provinces and municipali- ties to properly contribute	Participation in the BNC-Fiche analysis	Better use of the provincial and local expertise	Delegated acts	System of earlier sanctions: Earlier involvement of all levels in the transposition phase + Cooperation to be better developed with the central Government for both phases	
EC Impact Assessment – Delivering good statistics and figures in time is essential		Subsidiarity check – The 8-week time period could be enlarged by early awareness	Cooperation to be developed with the national Parliament + with other European RLAs + CoR Subsidiarity Network	Comitology – Implementing acts		Monitoring delegated acts & giving inputs to comitology implementing acts
		EP as co- legislator: Early awareness on the new areas falling under the Ordinary Legislative Procedure	Cooperation to be developed with MEPs			

EXPANSION OF DOSSIER TEAMS – PROVINCIAL / LOCAL EXPERTS MONITORING THE NATIONAL POSITION

For the central level

1. The Lisbon Treaty as a push for applying governance instruments to more EU policy fields.

There are some changes brought about by the Lisbon Treaty (subsidiarity check, ordinary legislative procedure applying to more policy fields, new comitology system) reinforcing the need for the national and provincial/local levels to increase capacities for cooperation. It could also be an excellent starting point to apply the practices of frontrunner policy fields to other policy fields. This concerns both the openness of national ministries and the capacities established and instruments used by the Dutch provinces and municipalities.

2. Pre-conditions for successful multi-level governance in the Netherlands.

There are three pre-conditions to be fulfilled before considering any change or improvement regarding multi-level governance in the Netherlands: firstly, the political willingness (at all levels) for better cooperation and coordination; secondly, more transparency and openness in the work performed at the ministerial level; and thirdly, an effective capacity-building (including monitoring) in view of this reinforced participation for the Dutch provinces and municipalities. Furthermore, it is essential to ensure real knowledge and awareness by public officials at all levels on the phases of the EU policy-process and for all stakeholders to be prepared on time.

3. Expansion of the ‘dossier teams’ best practice to other EU policy fields.

Coordination regarding the EU environmental dossiers is described by officials from all levels as a best practice. In the Environment policy field, a couple of instruments have been established in order to improve vertical cooperation through the different EU policy phases. A very strong network has been established, such as the IPO sub-group called the ‘KEM’. This group, composed of provincial environmental experts, produces a matrix with updated dossiers, describing the state of affairs and the responsible provincial and national experts. Thus, there is a strong coordination among provinces. The VROM Ministry (Dutch Ministry of the Environment) is described as an open ministry that supports vertical coordination on EU dossiers, especially as it has developed the concept of the vertical dossier teams. It has also published a handbook on when and how vertical (*Interbestuurlijke*) dossier teams are established. Such practices, due to its success in terms of the satisfaction of the Dutch provinces and municipalities, could be extended to other policy fields of great importance to the latter. Such a governance tool structures the relations between the different levels of government, creates transparency with respect to the evolution of the national position in the Council of Ministers and forces provincial and local authorities to provide respective capacities. Since the policy fields differ very much according to the importance of EU dossiers for territorial entities, there is not a single approach with the same instruments and cooperation procedures. This means that a full dossier team approach is certainly not the answer for all EU policy fields. However, the Lisbon

Treaty has increased the number of policies where the national ministries and provincial and local authorities need to have a different approach (i.e. agriculture). In these fields, it seems appropriate to analyse which instruments from the existing toolbox could be used in the future.

4. Establishment of more 'sustainable' dossier teams.

Vertical cooperation through the dossier teams should not stop with the adoption of an EU legislative act (or for Directives, the deadline for transposition into the national Law), but should rather continue until the end of the legislative process. This is even more important with regard to the new challenges presented by the Lisbon Treaty:

- It could already stimulate an internal debate on subsidiarity questions vis-à-vis the initial EC proposal. This could improve the quality of the formal subsidiarity check done by the Eerste and Tweede Kamers and thus, ensure a structured input from Dutch provinces and municipalities;
- It could improve the input from Dutch provinces and municipalities in policy fields where they so far had less influence, such as agriculture, and improve accordingly the preparation of the national position in the Council of Ministers;
- It could improve the input from Dutch provinces and municipalities in the transposition phase of EU legislation (Directives) and ensure its proper enforceability.

5. More transparency and inclusiveness in the preparation of the national position.

For doing so, some consideration could be given to the following suggestions:

- In some cases, Dutch provinces and municipalities do not know who is the national 'attaché' or person of reference dealing with the policy fields of interest for them. This kind of information would be the very start for them to provide input and expertise for preparing the national position;
- More transparency and inclusiveness in the preparation of the national position for the Council of Ministers or the comitology committees would be an asset. The establishment of the new comitology system could be a good starting point to involve provinces and municipalities when the implementing acts negotiated on the table will have to be implemented by them;
- This should also go in hand with a proper follow-up of the comitology committees' meetings by keeping the Dutch territorial entities informed of the latest developments regarding implementing acts that are of utmost importance for them;
- The Government may also establish a way to monitor the adoption of the delegated acts, for which national experts might be consulted, and for which there could be cooperation with provinces and municipalities when appropriate.

6. Better cooperation between the central Government and the national Parliament & between the central Government and MEPs.

Cooperation between the States-General and the central Government regarding European affairs could be done in a more regular way and not only on an ad hoc basis, while respecting the competences of each one. This is especially important for the exchange of information. The BNC-fiche is a very important tool if it is sent to both Chambers for all EU legislative proposals. Furthermore, in view of the new areas falling under the ordinary legislative procedure, alerts have to be done on the new role of the European Parliament in those policy fields.

7. Developing ex-post evaluation for better compliance with EU Law.

It could be also of interest for the central Government to develop ex-post evaluation of the implementation of EU legislation, in order to find out the consequences and shortcomings of the involvement of the Dutch provinces and municipalities in the whole European legislative process in view of the final outcome, especially regarding compliance with EU law at the provincial and local levels.

8. Reinforcing the role of the 'High Level Group on Governance'.

The Dutch Government could take advantage of this momentum to make suggestions to their European counterparts to improve the use of the High Level Group on Governance created under the Dutch EU-Presidency in 2004, and especially to settle new instruments permitting a more efficient and useful input of RLAs in the post-Lisbon Europe. Horizontal networking among the national authorities in charge of the multi-level coordination mechanisms in the EU would ensure mutual learning through the exchange of best practices.

9. Prioritising for better targeted actions and results.

First of all, listing the priority dossiers in the different policy fields of interest to the Dutch territorial entities is a first important step. This list should also include the outcome/result to be achieved for each of them. Then, a strategy dossier could be set up with the institutions to be targeted in each different phase of the EU decision-making process to make their voice heard - on time - in order to achieve the result planned. To this end, proper awareness and knowledge of the existing and new possibilities provided by the Lisbon Treaty for participation and consultation should be ensured through adequate training campaigns.

10. Reinforcing cooperation with MEPs.

Cooperation with MEPs, and especially the Dutch ones, could be developed in a more systematic way, and not on an ad hoc basis as it has apparently been the case so far. This would imply: establishing contacts with MEPs, organising meetings with the EP rapporteurs, inviting them to meetings/seminars, etc.

11. Reinforcing cooperation with CoR members.

Cooperation with the CoR members, and especially the Dutch ones, could also be reinforced when an opinion is being drafted on an issue of interest to the Dutch provinces and municipalities, by establishing contacts with the CoR rapporteurs (who also in general have contacts with the EP rapporteurs), inviting them to meetings/seminars, etc.

12. Public meetings in the Council of Ministers: an opportunity to obtain information.

The publicity of the meetings of the Council of Ministers for the discussion and the adoption of EU legislative acts, could lead to a reflection among the representatives of the Dutch provinces and municipalities on how to organise themselves in order to attend or follow those meetings and relay the information among them. This would help them to be fully aware of the EU legislative process, the nature of the discussions, as well as knowing the position that was taken by the central Government.

13. Better coordination and communication for a better input and visibility.

With the entry into force of the Lisbon Treaty and its potentials for the Dutch territorial entities, it might be worth rethinking communication and coordination at a horizontal level among themselves, and with other regions/provinces of other Member States: for example, by joining resources, via the associations and/or the Brussels offices, to be able to monitor and relay information about the work being done in Brussels. A database could also be set-up with a contact point for EU affairs in each province or municipality. Moreover, communication does not only mean obtaining information, it also gives visibility to work/projects achieved at the provincial or local levels to show best practices. The Lisbon Treaty may also be a good impetus to launch a kind of 'political campaign' to assure the national and European institutions of the Dutch provinces and municipalities' willingness to participate, cooperate and be involved - as partners - in the European integration process. This could be done in cooperation with other European regional and local authorities and/or their representative European associations.

Annexes

ANNEX 1: Table on the main changes brought by the Lisbon Treaty into the European Treaties

CURRENT ARTICLES (Lisbon Treaty Articles)	CHANGES
TREATY ON THE EUROPEAN UNION	
Article 4 (3a)	Draws on former Articles 6(3), 11(2) and 33 TEU and Article 10 TEC. Expands on existing obligation to respect national identities by requiring the EU to respect the equality of Member States, their governmental structures and essential State functions, such as law and order, and recognising that each Member State has sole responsibility for its national security.
Article 5 (3b)	Draws on former Article 5 TEC and adds: - explicit statement that Member States confer competences on the EU and that competences not conferred remain with the Member States; - new procedures for involving national parliaments in ensuring compliance with the subsidiarity principle.
Article 10 (8 A)	Draws on former Articles 1, 4 and 6(1) TEU and Articles 189, 190(1), 191 and 203 TEC. Sets out principle of representative democracy at EU level.
Article 11 (8 B)	New. Enhances transparency of EU institutions and includes provision for a new 'citizens' initiative' procedure.
Article 12 (8 C)	New. Builds on the Protocol on the Role of national parliaments in the EU, strengthening their rights, particularly with regard to subsidiarity scrutiny, aspects of justice and home affairs co-operation, and treaty revision procedures.
Article 48 (48)	Draws on former Article 48 TEU. Sets out procedures for amendment of the Treaties: an "ordinary revision procedure", and a "simplified revision procedure" ('bridging clauses') for specified types of amendment. The latter concern: (a) amendments to certain internal EU policies, provided they do not increase EU competences; (b) moves from unanimity to QMV (except for military and defence issues); (c) moves to co-decision. Unanimity in the European Council and EP consent is required in each case; national ratification is also required for (a), and any national parliament may veto a proposed decision under (b) or (c).
TREATY ON THE FUNCTIONING OF THE EUROPEAN UNION	
Article 2 (2 A)	New. Sets out the different categories of EU competence, and describes the legislative and implementing roles of the EU and the Member States in each.
Article 3 (2 B)	New. Lists the areas and circumstances in which the EU has exclusive competence.
Article 4 (2 C)	New. Describes the circumstances and principal areas in which competence is shared between the EU and Member States, and makes explicit those areas in which the exercise of the EU competence does not prevent Member States from exercising their own powers.
Article 6	New. Sets out areas in which the EU has competence to support, coordinate or

(2 E)	supplement actions of the Member States at European level.
Article 10 (5b)	New. The EU is to aim to combat discrimination based on specified grounds when defining and implementing its policies and actions.
Article 14 (16)	Draws on former Article 16 TEC. Introduces a new legal basis for legislation, adopted under the ordinary legislative procedure, to establish the principles and conditions to provide, commission and fund services of general economic interest.
Article 17 (16 C)	New. EU respect for churches, religious associations or communities, and philosophical and non-confessional organisations.
Article 21 (18)	Paragraphs 1 and 2 are in substance the same as former Article 18(1)(2) TEC. Paragraph 3 provides a new power to establish by unanimity social security and social protection measures.
Article 23 (20)	The first paragraph is in substance the same as former Article 20 TEC. The second paragraph provides a new power to adopt by QMV coordination and cooperation measures.
Article 26 (22a)	In substance the same as former Article 14 TEC. New reference to the aim of ensuring the functioning of the internal market.
Article 33 (27a)	Draws on former Article 135 TEC. The provision, excluding customs cooperation measures from measures concerning national criminal law or national administration of justice, is deleted.
AGRICULTURE AND FISHERIES	
Article 38 (32)	Draws on former Article 32 TEC but adds references to the functioning of the internal market and clarifies the term 'agricultural' and also refers to 'fisheries'.
Article 42 (36)	Draws on former Article 36 TEC and gives a role to EP and Commission in the legislative process.
Article 43 (37)	Draws on and updates former Article 37 TEC, removing the first paragraph and amending legislative processes. QMV already applied, decision-making moves to the ordinary legislative procedure for CAP and CFP, although the EP's legislative role is excluded for some specific issues.
PERSONS, CAPITALS, SERVICES	
Article 48 (42)	Draws on former Article 42 TEC. Adds clarification regarding application to both employed and self-employed, moves decision-making to QMV, and introduces an emergency brake procedure.
RIGHT OF ESTABLISHMENT	
Article 51 (45)	Draws on former Article 45 TEC. QMV already applied, decision-making moves to the ordinary legislative procedure.
Article 53 (47)	Draws on former Article 47 TEC. Certain elements are moved to QMV.
SERVICES	
Article 59 (52)	Draws on former Article 52 TEC. QMV already applied, decision-making moves to the ordinary legislative procedure.
CAPITAL AND PAYMENT	
Article 64 (57)	Draws on former Article 57 TEC. Paragraph 2: QMV already applied, decision-making moves to the ordinary legislative procedure, but paragraph 3 makes clear that the EP will only be consulted on specified measures that require unanimity in the Council.

Article 65 (58)	Paragraphs 1 - 3 unchanged from former Article 58 TEC. Addition of paragraph 4 stating that in the absence of measures pursuant to Article 64(3), the Commission or, in the absence of a Commission decision within three months from the request of the Member State concerned, the Council, may adopt a decision stating that restrictive tax measures adopted by a Member State concerning one or more third countries are to be considered compatible with the treaties in so far as they are justified by one of the objectives of the Union and compatible with the proper functioning of the internal market. The Council shall act unanimously on application by a Member State.
FREEDOM, SECURITY, JUSTICE	
Article 67 (61)	Draws on former Articles 2, 6(2) and 29 TEU and Article 61 TEC. Brings together the police and criminal judicial co-operation provisions of the TEU and asylum, immigration and civil judicial co-operation provisions of the TEC.
Article 68 (61 A) *	New. European Council to define strategic guidelines.
Article 69 (61 B)	New. Establishes a particular role for national parliaments in applying the principle of subsidiarity.
Article 70 (61 C)	New. Enables the Council to establish, by QMV, a mechanism for evaluation of implementation of EU policies in the area of freedom, security and justice.
Article 71 (61 D)	New. New standing committee to strengthen operational co-operation on internal security. EP and national parliaments to be kept informed of its proceedings.
Article 73 (61 F)	New. Member States may organise cooperation on national security.
Article 75 (61 H)	Draws on former Articles 60 and 301 TEC. Power to impose anti-terrorist financial sanctions, with any necessary legal safeguards. QMV already applied, legislative ordinary procedure for framework, Council to adopt implementing measures.
Article 76 (61 I)	Draws on former Article 34(2) TEU. Initiatives in the fields of police and criminal judicial cooperation and administrative co-operation can be made by a quarter of the Member States.
BORDERS, ASYLUM, IMMIGRATION	
Article 77 (62)	Draws on former Articles 62 and 18 TEC. New provision for the gradual introduction, via the ordinary legislative procedure, of an integrated management system for external borders. The ordinary legislative procedure applies for several types of measure. New legal basis to adopt, by unanimity, measures concerning passports, identity cards, residence permits and other such documents. New reference to Member States' competence for the geographical demarcation of their borders.
Article 78 (63)	Draws on former Articles 63(1) and (2) and 64(2) TEC, with changes reflecting the new objective of developing a common asylum policy rather than minimum standards.
Article 79 (63a)	Draws on former Article 63(3) and (4) TEC, with changes reflecting the new objective of developing a common immigration policy. Measures on legal migration move to the ordinary legislative procedure.
Article 80 (63b)	Draws on former Article 63(2) b) TEC, but extends the principles of burden sharing and solidarity between Member States to all EU measures based on Chapter 2.
ECONOMIC POLICY	
Article 119 (97b)	In substance the same as former Article 4 TEC, which it updates.
Article 120	In substance the same as former Article 98 TEC.

(98)	
Article 121 (99)	Draws on former Article 99 TEC. New power for Commission to issue a warning to Member States, and the Member State concerned is excluded from voting. Paragraph 6 QMV already applied, decision-making moves to the ordinary legislative procedure..
Article 122 (100)	Draws on former Article 100 TEC. The references to solidarity and energy are new.
Article 123 (101)	In substance the same as former Article 101 TEC, but now includes a reference to agencies.
Article 124 (102)	In substance the same as former Article 102 TEC, but now includes a reference to agencies. Outdated paragraph 2 is deleted.
Article 125 (103)	Draws on former Article 103 TEC. Paragraph 2 replaces the cooperation procedure with consultation with the EP.
Article 126 (104)	Draws on former Article 104 TEC. Main new elements in the excessive deficit procedure: the Commission opinion is to be issued to the Member State concerned and the Council is to be informed. Paragraph 13 change to majority required for decision-making.
PUBLIC HEALTH	
Article 168 (152)	Draws on former Article 152 TEC. Extends the scope and focus of EU activities, but includes a stronger reference to Member States' responsibility for definition of their health policies and management of health services.
ECONOMIC, SOCIAL AND TERRITORIAL COHESION	
Article 174 (158)	Draws on former Article 158 TEC. First paragraph includes a new reference to 'territorial' cohesion. Third paragraph extends the range of least favoured regions.
Article 175 (159)	In substance the same as Article 159 TEC, except that the second paragraph includes a reference to "territorial" cohesion.
Article 176 (160)	Unchanged from former Article 160 TEC.
Article 177 (161)	Draws on former Article 161 TEC. QMV already applied, measures to be adopted under the ordinary legislative procedure.
Article 178 (162)	In substance the same as former Article 162 TEC.
ENERGY	
Article 194 (176 A)	New. Establishes a specific legal basis for energy policy. Paragraph 2 makes explicit that this will not affect a Member State's rights in specified areas. Measures to be adopted via the ordinary legislative procedure, but measures primarily of a fiscal nature are subject to unanimity and consultation with the EP.
TOURISM	
Article 195 (176 B)	New. Establishes a specific legal basis for tourism measures, complementing action by the Member States. Harmonisation of legislation is excluded. Measures to be adopted under the ordinary legislative procedure..
ADMINISTRATIVE COOPERATION	
Article 197 (176 D)	New. Establishes a specific legal basis for measures to support Member States in implementing EU law. Member States are not obliged to avail themselves of this support. Harmonisation of legislation is excluded. Measures to be adopted under the ordinary legislative procedure..

EU LEGAL ACTS OF THE UNION	
Article 288 (249)	In substance the same as former Article 249 TEC.
Article 289 (249 A)	New. Defines the “ordinary legislative procedure” (i.e. previously co-decision), “special legislative procedure” (i.e. other legislative procedures) and which kinds of acts constitute legislative acts.
Article 290 (249 B)	New. Provides for possibility of delegating to the Commission power to supplement or amend non-essential elements of legislative acts.
Article 291 (249 C)	Draws on former Articles 202 and 10 TEC. Voting requirement on rules and general principles for (non-CFSP) ‘comitology’ provisions moves to co-decision. Implementing powers in the CFSP field are reserved to the Council.
Article 292 (249 D)	New. Makes explicit the powers of the Council, Commission and ECB to adopt recommendations.
PROCEDURES FOR THE ADOPTION OF EU ACTS AND OTHER PROVISIONS	
Article 293 (250)	Draws on former Article 250 TEC. Excludes application to certain budgetary provisions.
Article 294 (251)	Draws on former Article 251 TEC. Sets out the ‘ordinary legislative procedure’. New ‘special provisions’ relate to proposals for legislative acts submitted by a group of Member States, the ECB or the Court of Justice.
Article 295 (252a)	Draws on former Article 218(1) TEC. Adds the EP and a specific reference to inter-institutional agreements.
Article 296 (253)	Draws on former Article 253 TEC. Strengthens rules for selection of the type of act.
Article 297 (254)	Draws on former Article 254 TEC. Reflects the new distinction between legislative and non-legislative acts.
Article 298 (254a)	New. Makes provision for regulations on European administration, to be adopted by co-decision.
Article 299 (256)	Draws on former Article 256 TEC. Extends to all acts and to the ECB.
ADVISORY BODIES	
Article 300 (256a)	Draws on former Articles 7(2), 257, 258 and 263 TEC. New requirement for the Council, by QMV, to review regularly the composition of the Economic and Social Committee (ESC) and the Committee of the Regions.
EUROPEAN ECONOMIC AND SOCIAL COMMITTEE	
Article 301 (258)	Draws on former Article 258 TEC. New procedure to determine, by unanimity, the EESC’s composition.
Article 302 (259)	Draws on former Article 259 TEC. Extends term of office of EESC members to five years.
Article 303 (260)	Draws on former Article 260 TEC. Extends term of office of the chair and officers to two and a half years.
Article 304 (262)	Draws on former Article 262 TEC. The EP (like the Council and Commission) is required to consult the EESC where the treaties provide so.

COMMITTEE OF THE REGIONS	
Article 305 (263)	Draws on former Article 263 TEC. New procedure to determine, by unanimity, the Committee's composition. The term of office of Committee members is extended to five years.
Article 306 (264)	Draws on former Article 264 TEC. Extends term of office of the chair and officers to two and a half years.
Article 307 (265)	Draws on former Article 265 TEC. The EP (like the Council and Commission) is required to consult the Committee where the treaties provide so.
COOPERATION	
Article 326 (280 A)	In substance the same as former Article 43 b), e) and f) TEU.
Article 327 (280 B)	In substance the same as former Article 43 h) and Article 44(2), third sentence, TEU.
Article 328 (280 C)	Paragraph 1 in substance the same as former Article 43 b) TEU. Paragraph 2 draws on Article 27 d) TEU, extending it to require that the Council and the EP be kept informed of enhanced cooperation in any area.
Article 329 (280 D)	Draws on former Article 11(1) and (2) TEC and Article 43 d) TEU. The EP must give its consent for enhanced co-operation under the TFEU. Enhanced co-operation within CFSP draws on former Article 27 c) TEU but moves from QMV to unanimity and introduces a role for the High Representative.
Article 330 (280 E)	Draws on former Article 44 TEU. Reflects the new QMV thresholds.
Article 331 (280 F)	Draws on former Article 11 a) TEC and Article 27 e) TEU. Provides new procedure for reviewing cases in which a Member State wishes to participate in enhanced cooperation but has not fulfilled the conditions of participation. In enhanced cooperation in CFSP, the High Representative plays a role and Council decisions move from QMV to unanimity.
Article 332 (280 G)	Unchanged from former Article 44 a) TEU.
Article 333 (280 H)	New. Two 'bridging clauses' allow Member States engaged in enhanced cooperation to decide by unanimity to move decision-making (i) from unanimity to QMV or (ii) from a special legislative procedure to the ordinary legislative procedure, except in the case of decisions having military or defence implications.
Article 334 (280 I)	In substance the same as former Article 45 TEU.

ANNEX 2: The division of competences in the Netherlands

The Netherlands is a constitutional monarchy with a parliamentary democracy. It is often described as a consociational State, that is to say, the way to take decision is mainly done via consensus. This approach characterises Dutch governance and both horizontal and vertical cooperation regarding Dutch policy, as well as EU policy.

THE CENTRAL LEVEL

At the central level, the legislative power is in the hands of the Parliament and the executive power in those of the Government.

The monarch is the Head of State, at present this is Queen Beatrix. The Monarch holds constitutionally limited powers. However, he/she can have some influence during the formation of a new cabinet, as he/she serves as neutral arbiter between the political parties. Additionally, the monarch has the right to be informed and consulted.

The Dutch Government (also called the “Crown”) is composed of the Queen and the Council of Ministers (Ministerraad). The Council of Ministers is a deliberative body and holds the executive power. It is composed of all the ministers and initiates laws and policy. It takes collegial decisions by trying to reach a consensus most of the time, if not it has recourse to vote. It has to be distinguished from the Cabinet gathering both the Ministers and the States Secretaries. The Prime Minister is the head of the Dutch Government. However, he is only *primus inter pares* and does not have more powers than the other Ministers.

Since 1848, the Netherlands has been a full bicameral parliamentary democracy. The Parliament also called States-General (Staten-Generaal) is composed of the Senate (Eerste kamer), the Senate, indirectly elected by the provinces’ assemblies (States-Provincial - Provinciale Staten), and the House of Representatives (Tweede Kamer), the lower house, directly elected by the people. The ministers are individually and collectively responsible to the States-General.

Responsibilities exercised by the State:

In every policy areas, legislative power rests exclusively with the central level. This power is exercised via the States-General. By contrast, executive power rests with the central Government, *as long as it is not exercised by the provincial and municipal authorities*, which thus complement the work of national level.

THE PROVINCIAL LEVEL

The Netherlands are divided into 12 administrative provinces (provincies) placed under the authority of the Commissioner of the Queen (Commissaris van de Koningin) also called Governor, who is appointed every 6 years by the Dutch Crown and is responsible to the Minister of the Interior and Kingdom Relations. The Commissioner of the Queen is the chairman of both the States-Provincial and the States-Deputed (but can only vote in the latter). He is the official representative of the central Government in the provinces.

Until 2003, the States-Provincial (Provinciale Staten) was the sole body at the provincial level representing both the legislative and executive branches. Since 2003, the States-Deputed (Gedeputeerde Staten) exercises the executive power under the control of the States-Provincial, which is the provincial legislative assembly. The States Deputed is elected every four years among the members of the States-Provincial. With the Commissioner of the Queen, they form the Council of the province (College van Commissaris van de Koningin en Gedeputeerde Staten), which initiates policy and regulations regarding sub-national and provincial matters and execute them once they are adopted by the States-Provincial. The States-Deputed functions as a collegial body and most its decisions are taken by consensus. The members of the States-Provincial are directly elected by the people in

each province every four years. The members of the States-Provincial elect as well the members of the Senate of the States-General.

Responsibilities exercised by the Dutch Provinces:¹⁰¹

- Spatial planning and urban development: the provincial assemblies draw up guideline plans for spatial development; the provincial councils are responsible for endorsing municipal land-use plans
- Housing: responsible for allocating quotas with regard to social housing and decide on the grants awarded to the municipalities
- Public order and safety: the Commissioner of the Queen is responsible for district coordination between police forces
- Culture and recreation: responsible for the promotion of tourism and culture
- Transport: responsible for the development and maintenance of provincial roads
- Environment management: draw up and implement environmental protection plans
- Economy: stimulate the regional economic development
- Employment: establish investment boards and are responsible for cooperation between the public authorities and business
- Youth care: establish offices offering support to children and young people in (potential) crisis situations, and are responsible for the planning of institutions and programmes providing such support.
- Public order and safety: the Commissioner of the Queen has a coordinating role in case of disasters
- Social work
- Energy
- Sport

The provinces may issue provincial regulations as long as they are in compliance with the national Law. Moreover, provinces have the autonomy to develop policies as long as they are not in conflict with national legislations. Provinces hold the right to take initiative in conducting their own affairs. They have also another important function: to oversee policies and finances of the municipalities and the water-boards.

The provinces fund these activities from the central Government funding they receive and from provincial tax revenue (e.g. surcharge on road tax).

THE MUNICIPAL LEVEL

The Dutch Provinces are divided into 430 municipalities¹⁰² (gemeenten). The Commissioner of the Queen plays also an important role in the municipalities, especially regarding the appointment the mayor at the head of the municipal council¹⁰³. He also pays regular official visits to the municipalities in his province.

The Mayor (burgemeester) and the members of the executive board (wethouders) form the College van burgemeester en wethouders, representing the municipal government (the executive branch). The Mayor, appointed by the central Government for a renewable six year mandate, is the chairman of the executive board and has a representative role as the head of the municipal government. The members of the executive board are elected by the members of the municipal council, generally among them¹⁰⁴, and are responsible to them, thus a wethouder can be removed from its functions by means of a non-confidence motion. The wethouders, and the

¹⁰¹ List based on the CoR Study on the Division of Powers between the European Union, the Member States, and Regional and Local Authorities, European University Institute (Florence), 2008, see p. 226.

¹⁰² Figure September 2009, Ministry of Interior and Kingdom Relations.

¹⁰³ The Commissioner of the Queen consults the municipal council on its proposal(s) for a candidate and then recommends a candidate to the Minister of the Interior. However the designation procedure has been sometimes contested as being non-democratic. Proposals were made for the people to directly elect the mayor or the municipal council to appoint him. Yet, a constitutional change to allow this failed to get through the Senate in May 2005.

¹⁰⁴ According to the Municipality Act (Gemeentewet), the number of wethouders cannot exceed 20% of the number of members of the municipal council, but there must be at least 2%.

Mayor himself, are assigned portfolios and initiate policy and regulations to be voted by the municipal council. The College van burgemeester en wethouders decides by consensus.

The municipal council (gemeenteraad) is the legislative assembly of the municipality exercising control over the Mayor and the members of the executive board. It is elected every four years by the citizens (foreigners living in the municipality for at least four years can also take part to the election). The municipal council is supported by its own civil service headed by the raadsgriffier. The Mayor chairs the meetings of the municipal council, but does not have the right to vote.

Responsibilities exercised by the Dutch municipalities:¹⁰⁵

- Spatial planning and urban development: draw up land-use plans for land within the municipalities and give planning permission
- Housing: build and manage social housing and manage land belonging to the community
- Tourism and recreation: take part in the promotion of tourism and manage sports grounds
- Public works, transport: development and maintenance of municipal streets and roads, traffic and parking regulations, provision of public transport and school buses
- Public health: each municipality has a public health and hygiene department and the municipalities are also responsible for the vaccination of children
- Culture: the municipalities take part in the promotion of culture
- Employment and economy: shared responsibility for the labour market and for the maintenance and development of local economy and employment
- Education: management of public primary schools and subsidise all the expenses of private primary schools in their areas
- Welfare and social services: responsible for social welfare and measures to help the unemployed, people with disabilities and the elderly
- Environmental policy: responsible for the implementation of national and European environmental policy
- Safety policy and public order: responsible for the implementation of safety policy and for public order and local police
- Youth care: responsible for the implementation of youth care policy.
- Sport
- Water supply

Politically, socially and in terms of executive functions, the Dutch municipalities are the most important unit of 'home administration'. As a form of integrated local government, municipalities perform a broad range of functions, from social affairs to spatial planning, and from education to public health and public housing. The municipalities fund these activities from the central Government funding they receive and from local tax revenue (property tax, waste disposal tax, sewage charges, duties on building permits, etc.).

There is a trend towards local government enlargement as an effort to accrue economies of scale. This decentralising movement started in the 1970s, but has been particularly strong since the mid-1980s. Mostly scale enlargement is reached by inter-local cooperation. In 2005, there were 1,862 instances of such co-operation: 697 had public nature under the framework of the Law on Joint Provisions and the other 1,165 private, with foundations, associations and corporations, in the form of contracts, policy agreements or covenants.

Mergers and amalgamations have dramatically decreased the number of municipalities over the years, from 1209 in 1850 to 430 in 2010¹⁰⁶. In the last two decades new interactive forms of intergovernmental cooperation, such as covenants and policy agreements, have become increasingly important. They provide a way of reducing uncertainty and of coping, already at the pre-judicial stages of decision-making, with the administrative and intergovernmental interdependencies of the Dutch government system. An example of differentiation is the explicit

¹⁰⁵ List based on the CoR Study on the Division of Powers between the European Union, the Member States, and Regional and Local Authorities, European University Institute (Florence), 2008, see p. 227.

¹⁰⁶ Reference: http://nl.wikipedia.org/wiki/Lijst_van_Nederlandse_gemeenten.

policy towards the big cities (*'grote stedenbeleid'*), established by the central government at the initiative of the four big cities, Amsterdam, Rotterdam, Den Haag and Utrecht. The separate status, which the big cities have traditionally claimed, has been made official through this policy. The 36 largest cities in the Netherlands now have a distinct relationship with the central Government as to their financing and steering, and they also receive funding through the European urban policy programme.

THE WATER DISTRICTS

The Netherlands is also subdivided in 27 water districts governed by a water board (waterschap) having authority in matters dealing with water management. The water board is one of the oldest democratic institutions in the Netherlands¹⁰⁷ (and in the world) still in existence due to the specificity of the country with about 27 percent of its area and 60 percent of its population below the sea level.¹⁰⁸

The territory under the authority of a water board generally covers several municipalities and may even include areas in two or more provinces (hoogheemraadschap – a regional waterschap). These government bodies are elected in non-partisan elections and have the power to tax their residents. Their responsibilities are laid down in the Water Control Board Act (Waterschapswet) as well as in the Statute on water control boards.

Responsibilities exercised by the Dutch Water-districts:¹⁰⁹

- Management and maintenance of water barriers: dunes, dikes, quays and levees;
- Management and maintenance of waterways;
- Maintenance of a proper water level in polders and waterways;
- Maintenance of surface water quality through wastewater treatment.

The Dutch water boards are responsible for everything that has to do with water such as the maintenance of dikes and land drainage and ensuring the water quality. Due to the low-lying position of the Netherlands, the water boards also inspect whether ditches are deep enough to help drain off the land. They play an important role in the environmental management of the country. However, the water boards are not responsible for the supply of public water.

The central Government contributes to finance these activities by paying for the cost of constructing and maintaining the water barriers and the main waterways. The costs of water treatment are financed by a water pollution levy, which is based on the 'polluter pays principle'. Each water board has the authority to impose taxes, such as the water tax for households (all residents receive a utility bill from their local, or regional, water board specifying what they have to pay for water purification), the water tax for building owners or the water tax for land owners.

¹⁰⁷ The creation of water boards actually pre-dates that of the nation itself, the first appeared in 1196.

¹⁰⁸

http://www.minbuza.nl/en/You_and_the_Netherlands/About_the_Netherlands/General_information/The_country_and_its_people

¹⁰⁹ Information found on Wikipedia: [http://en.wikipedia.org/wiki/Water_board_\(Netherlands\)](http://en.wikipedia.org/wiki/Water_board_(Netherlands)).

ANNEX 3: EU policy in the Netherlands: involving provinces and municipalities

Since the 1990s the successive governments paid more and more attention to the EU affairs, which had a positive impact on the reflection about a greater involvement of provinces and municipalities in the EU decision-making process.

In 1998, the Council for Public Administration (Raad openbaar Bestuur - Rob) was asked for advice by the Kok Government on the consequences of EU policy in general for the national government. The Rob concluded that implementation of EU legislation had to be improved, local and provincial governments to be more involved and the role of the parliament to be enlarged. BZK did not fully agree on more responsibility for local and provincial governments, but meetings with IPO and VNG had to be formalised.

In 2000, the State Secretary De Vries of the Ministry of Interior affairs BZK informed the Parliament on recent developments in the field of cross-border cooperation and EU legislation in general. In an extensive paper¹¹⁰, were underlined the following points and projects to be realised:

- Cross-border cooperation is legally based on the Anholt Agreement (NL-GER) and the Benelux Agreement (NL-BEL); these Treaties are only partly functional;
- In the Netherlands, seven INTERREG Euregios were established: Eems Dollard Regio (EDR), EUREGIO, Euregio Rijn-Waal, Euregio Rijn-Maas-Noord, Euregio Maas-Rijn, Benelux Middengebied en Euregio Scheldemond; next to these Euregios there were several other smaller cooperation agreements. Provinces either participated in INTERREG programs as a full partner (Limburg, Brabant, Zeeland) or they were committed only on an administrative level;
- In 2001, a Kenniscentrum was planned to be opened to facilitate information of local governments. Once a year, a forum would be organized on cross-border cooperation, the so-called 'Arnhem Overleg'. Its functioning would be evaluated in 2002;
- The Maastricht Treaty implied subsidiarity-checks, done in the Netherlands by the 'Beoordelingscommissie Nieuw Commissiebeleid' (BNC);
- Local governments did not always comply with EU-regulations;
- Regular meetings took place between the central and provincial and municipal governments (Europa-overleg rijk-IPO-VNG);
- In March 2000, the Dutch House of the Provinces (Nederlandse Huis der Provincies) was opened in Brussels, a place where Dutch regional lobbyist worked on behalf of four regions: Randstad, North, East and South Netherlands¹¹¹.

The Parliament would be informed again on the same issues in 2002.

On 3 April 2002, so one year later as initially planned, the Kenniscentrum Europa Decentraal was inaugurated. In 2004, its functioning was evaluated and it was decided that this new body (financially supported by the central Government, IPO, VNG and UvW) proved to be of sufficient value for local governments.

However in July 2002, with the new coalition made with a new political party (the Lijst Pim Fortuyn-LPF), the political agenda regarding EU policy changed and more attention was paid to national problems. The earlier proposals and projects announced by the Kok Government were left unachieved.

The Government changed again in May 2003 and the Balkenende II Cabinet took office. Under this government, with Mr Remkes as Minister of the Interior affairs (BZK), more attention was paid to the implementation and enforcement of EU legislation at the sub-national level. Already in 1999 advice were given on this issue by the

¹¹⁰ Voortgangsrapportage inzake kabinetsstandpunt grensoverschrijdende projecten, 30 juni 2000, TK 1999-2000, TK 27242, nr.1.

¹¹¹ See: <http://www.nl-prov.be/>. The work plan of the HNP for 2009: [http://www.nl-prov.be/nl-prov/hnpewcm.nsf/0/A126E8F227DFC016C12575A7004C77B0/\\$file/HNPwerkplan%202009.pdf](http://www.nl-prov.be/nl-prov/hnpewcm.nsf/0/A126E8F227DFC016C12575A7004C77B0/$file/HNPwerkplan%202009.pdf).

Interdepartementale Commissie voor Constitutionele aangelegenheden en Wetgevingsbeleid (ICCW), as well as in 2000 by the Interdepartementale Commissie Europees Recht (ICER). Under this government, other advice were given by the latter in 2003. Due to the complexity of the questions - and probably the sensitivity with regard to the intergovernmental relations involved, the central Government did not react with an official point of view until July 2004.¹¹² According to Minister Remkes, local governments were sufficiently involved in the EU law-making process. Moreover the Kenniscentrum Europa Decentraal was founded to prevent problems due to a lack of sufficient knowledge of EU legislation from the provincial and municipal authorities. To avoid unnecessary legal (and financial) consequences for the central Government due to non-compliance with EU Law at the local level, a new top-down approach regarding EU policy had to be designed. This approach was discussed in various platforms by Prof. dr. Bart Hessel (University of Utrecht), specialist in administrative Law, who argued that Dutch local governments should also have the right to enforce due action of the national government. Until today, no new controlling law has been adopted. IPO and VNG are still fighting against the actual text of the concept law (Nerpe).

Within this context, on 9 November 2004, an agreement was reached between the State, IPO and VNG in order to achieve together the objective of a more transparent administration. Guidelines for cooperation were written down in the Code on intergovernmental relations (Code Interbestuurlijke Verhoudingen) published in 2005. One of the main principles laying in the Code is the subsidiarity principle, according to which, action has to be taken at the level of government where it can be done in the most efficient way. First municipal governments (as front-office) have to act. Yet, if something cannot be properly done at the municipal level, the provincial governments or the central Government have to take their respective responsibilities. More generally, the Code promoted less rules and more clarity. In October 2006, the Council of State (Raad van State) analyzed the Code and concluded that there was lots of tension between the different levels of government within the Dutch administration. Regarding EU policy, the Council argued that too little attention was paid to local and regional administrations in this Code and should be more involved. In 2007, the use of the Code was scrutinized by the Minister of Interior affairs (BZK), which underlined in its conclusions that only 36% of the professionals in public administration knew the Code and 46% of the interviewed thought that the central Government was too 'bossy'.

In 2005, the Committee for EU affairs (Gemengde Commissie 'Sturing EU-aangelegenheden), chaired by Mr. B.J. Baron van Voorst tot Voorst, gave advice on the effectiveness and efficiency of coordination of EU policy within the Dutch administration. In June 2005, its report was sent to the central Government. The Committee concluded that a clear EU political agenda was missing. In addition, more levels of administration (like the provincial and municipal ones through IPO and VNG) had to be involved in the EU law-making and implementation processes, implying more coordination. In his letter to the Parliament, Mr B.R. Bot, Minister for Foreign Affairs, agreed with these conclusions, underlying that most of the practical recommendations suggested could be implemented in a short term.

In February 2007, a new coalition was installed and marked the beginning of the Balkenende IV Cabinet with Ms. Ter Horst as Minister of Interior Affairs. Most of the EU related topics fell under her responsibility, some others were dealt in close coordination with Mr. Frans Timmermans, the new State Secretary for European Affairs (PvdA). Under this new government, the Dutch EU policy was intensified. In September 2007, Ms. Ter Horst presented to the Parliament her policy vision on the share of the administrative power in the Netherlands within the European context, putting forward the following points:

- Europe is becoming more and more important;
- Subsidiarity is important as well (decentralization when possible);
- More cooperation is needed;
- Impact assessment of EU legislation should be improved;
- Financial burdens for the local level have to be proportional;
- More 'dossier teams' should be set up;
- Quality of coordination and information on state aid programs could be improved;
- Kenniscentrum Europa decentraal needs to be subsidized in a more structured way;
- Non-compliance at the local level with EU legislation should be dealt with a new national law;

¹¹² TK 29 698, nr. 1.

- Cross-border cooperation is important and should be improved;
- Basis for the evaluation of Dutch policy is the European Charter of Local Self-Government.¹¹³

The Ministry of Interior affairs (BZK) planned to go further with an action plan to improve the inter-governmental relations with the sub-national levels with regard to EU affairs, and supported the Governance Network to exchange information and knowledge on the consequences/impacts of EU legislation.

Furthermore, as a follow-up of the Code on intergovernmental relations (Code Interbestuurlijke Verhoudingen), the relationship between the central Government and local governments was improved by three administrative agreements (bestuursakkoorden):

- An agreement with the association representing the Dutch municipalities (VNG) in 2007;
- An agreement with the association representing the Dutch provinces (IPO) in 2008;
- And a special agreement (Actieplan) on the coordination of European affairs with both associations VNG and IPO in 2008.

In June 2009, the Council of State (Raad van State) concluded in its report entitled 'Decentraal moet, tenzij het alleen centraal kan'¹¹⁴ that the relationship between the different levels of administration in the Netherlands has been improved. However, it pointed out that the attitude and plans of the central Government towards decentralization had still too little follow-up with concrete activities. The Council of State was all in all positive on the cooperation between the different levels of government regarding European affairs.

At the European level, at the same time, a reflection on the need to involve more local and regional authorities in the EU decision-making process was re-launched with the CoR 'White paper on multi-level governance'¹¹⁵. The same tendency was observable with the Council of Europe conference of European Ministers responsible for Local and Regional Government held in Utrecht on 16-17 November 2009, chaired by Ms. Ter Horst, during which was discussed the theme on 'Good local and regional governance in turbulent times: the challenge of change'.

¹¹³ The European Charter of Local Self-Government was signed in 1988 by the Netherlands, ratified in 1991 and entered into force on 1 July 1991.

¹¹⁴ Decentraal moet, tenzij het alleen centraal kan, Tweede periodieke beschouwing over interbestuurlijke verhoudingen, Raad van State, juni 2009.

¹¹⁵ Own-initiative opinion on 'The Committee of the Regions' White Paper on Multilevel governance' adopted on 17 June 2009, CdR 89/2009 fin, 2009.

ANNEX 4: Subsidiarity check in the Netherlands

In November 2003 (under Cabinet Balkenende II), the Dutch Parliament (States-General) established a joint committee composed of members of both Chambers (the Senate - Eerste Kamer and the House of Representatives - Tweede Kamer) to check EU legislation on subsidiarity aspects. This Committee, named Gemengde Commissie Toepassing Subsidiariteit (GCTS - *Joint Committee Application Subsidiarity*) based its activities on the two following protocols:

- Protocol on the role of the national Parliaments in the EU;
- Protocol on the application of the principles of subsidiarity and proportionality.

The Committee was a reflection of an equal representation of members of the Senate (100 in total) and the House of Representatives (150)(4+4 members, chairman: Mr. J.J. van Dijk).

The main task of the Committee was to study the possibilities of the functioning of regular subsidiarity-checks with regard to the constitutional differences between both Chambers. Pilot procedures had to give insight to the practical consequences.

Preliminary findings were presented in the XXXII COSAC-meeting in The Hague on 21-23 November 2004. An official evaluation report (EK 30389 A) was sent in December 2005 to the States-General concluding that the Dutch constitutional relations would not be affected by a (joint) subsidiarity check, and that specialized parliamentary committees would not have to be replaced.

On 28 March 2006, a Tijdelijke Commissie Subsidiariteitstoets (TCS - *Temporary Committee Subsidiarity Check*) replaced the former joint committee. Right on time, while in October 2005 the COSAC had made procedural agreements on the implementation of subsidiarity checks, starting on 1st January 2006. Contrary to the GCTS, this new Committee was not as much meant to study the possibilities and consequences of subsidiarity (and proportionality) checks, but more to perform the checks themselves on an ongoing basis. Like the GCTS, the TCS was composed of members of the two Chambers (6+6 members, Chairman: Mr. J.J. van Dijk).

Initially the TCS was planned to exercise for one year only, after which an evaluation report had to be presented. However, the Senate insisted on a continuation of its work as long as the evaluation process would not have been completely finished. In April 2007, an evaluation report was presented to the Parliament advising the continuation of the TCS work on a more permanent basis. The own political responsibility of both Chambers was not put into question. More specifically:

- Based on preference lists of special EU committees of both Chambers (ESO and EUZA), 11 EU proposals from the EC working plan¹¹⁶ were chosen. On top of these, the TCS chose 3 more proposals to be reviewed. Finally, 12 proposals were completely reviewed;
- These proposals were first presented to specialized committees of both Chambers. Then an advice was sent to both Chambers to be ratified with a copy to the central Government. This whole procedure had to be followed within a 6-weeks term.

TCS procedures helped alerting the Government on EU proposals and improving the dealing with the so-called BNC-files. In 4 out of 12 cases, both Chambers deemed it necessary to send a joint letter to the EC to express their doubts on matters of competence, subsidiarity and/or proportionality. In three of these, both Chambers did agree, in one case a so-called conciliation meeting took place before agreement was reached. The EC sent return letters in every case. These letters – only with an explanatory character but without presenting changes on foreseen legislation - were presented to specialized Chamber-committees. Since the results in terms of changes to initial proposals were minimal, the TCS proposed collaboration with other national parliaments. Information-

¹¹⁶ For 2010, see: http://www.eerstekamer.nl/eu/europeesvoorstel/com_2010_135_commission_work/document.

exchange had to be improved, short working lines; fast translation into English and French. Since these improvements would cost time, an extension of the 6-weeks term to an 8-weeks term was proposed.

On the composition of the Committee and special responsibilities of both Chambers (in national procedures the House of Representatives is leading; the Senate only controls afterwards), the TCS concluded that the cooperation between the two Chambers did not have constitutional consequences. The TCS observed too little participation of the members of the House of Representatives. Other problem was the composition changes due to elections. In terms of transparency and public control, the joint website of both Chambers¹¹⁷ had to be improved and extended. More staff had to be employed, more external advisers had to be consulted. With a growing number of EU proposals, a growing politicization was expected, as well as more conciliation meetings.

One month after the reception of the report, it was accepted without any difficulty by the House of Representatives (TK 22-5-2007). The proposal for continuation was approved. The Senate, however, needed more time.

In October 2007, a first preliminary reaction from the Senate was sent to the chairman of the TCS. A difference was made between input-legitimacy and output-legitimacy. In terms of input-legitimacy (more cooperation on EU affairs between both Chambers, more awareness of – and participation in EU affairs etc.), the Senate fully agreed with the report's conclusions. However, in terms of output-legitimacy, questions were raised: What were the practical results of the TCS work? In 2006 only four letters were sent to the EC, and they did not bring any change. It was neither clear if the official governments policy in some cases had been changed due to TCS procedures. The Senate observed similar reactions in other countries. Parliaments that checked all EU proposals (United Kingdom, Denmark and Finland) hardly had any comments. Some parliaments seemed to prefer to make use of their national governments instead of directing themselves to the EC. The Senate needed more time to come to a final conclusion, as not only the TCS was involved, but also – maybe even more – the independent role of the Senate. Even if the TCS concluded that so far in EU procedures both Chambers could have an equal role, did it mean duplication of work or complementary work? And what was the added value? Moreover, should the contribution of the Senate to be *ex-ante* or *ex-post*? More reflection had to be done to answer those questions. A final conclusion was foreseen in 2009.

In April 2009, the Senate sent another letter to the TCS including its final conclusion. A continuation of the TCS in its actual form was denied on the basis of the following arguments:

- The procedure used did not lead to substantial added-value in the work of the Senate and entailed too much duplication of work;
- If both Chambers would have made their own priority lists, more EU proposals could be dealt with;
- If necessary, cooperation could take place with specialized committees of each other Chamber, but such procedures had to be established.

The choice for a permanent joint committee would have forced the Senate to conduct a limited check (competence, subsidiarity, proportionality), whereas per individual file a more integral check could be preferable. However, the importance of the subsidiarity check should not be overvalued:

- It is very difficult to change the initial EC proposals (with the threshold of 27 votes);
- EC proposals are the result of years of preparatory work (including consultations of national interests and other stakeholders);
- Reaching the 27 votes threshold entails concerted action - but no procedure existed for such an action;
- The key for successful action is in the hands of EC and/or the European Parliament and the Council of Ministers.

In addition, the Senate noticed that the conciliation procedure (combining different opinions of both Chambers) did not work well. The procedure lead to depolitization and – instead of taking a firm stand – only raised questions.

¹¹⁷ www.europapoort.nl.

On 15 June 2009, the Senate informed the House of Representatives (30953 G) that it withdrew its members from the TCS in order to start a new procedure at the beginning of the new parliamentary year (September 2009). From then on, the EU proposals were in the hands of the Senate's specialized Committee on EU affairs, without interfering of the Senate's general Committee on EU affairs (ESO).

The Senate's stand was the outcome after having considered three scenarios:

- The European Treaties were leading: All legal proposals had to be reviewed, and thus, the work of the Senate would not be complementary but duplicating.
- National constitutional relations would be leading: The Senate would control the work of the House of Representatives, but there was not time enough with the 8-weeks term.¹¹⁸ And, also here, there would be no complementary of work.
- The third way: Listing the own Senate's priorities based on the EC Working Plan, to be reviewed like the national law proposals in specialized committees.¹¹⁹

The last scenario was the preferred one. The Senate proposed the House of Representatives a specific procedural action according to which, both Chambers would use their own priority lists and specialized committees of both Chambers would inform each other of procedures and – preliminary – conclusions. If any disagreement appears, an attempt would be made to come to a common stand, if not possible, both Chambers would go their own way.¹²⁰

The relevant committees on EU affairs (ESO, EUZA, JBZ-Raad) proposed both Chambers on 22 September 2009 to ratify the Senates' proposal. Yet, no official point of view from the House of Representatives has been expressed so far on this matter. Nevertheless, since the Senate decided unilaterally to leave the TCS, the House of Representatives cannot act really differently and has *de facto* to follow the Senates' proposal.

¹¹⁸ According to new EU protocol the subsidiarity check can be done in 8 weeks.

¹¹⁹ For first reaction of these committees on EC Work Plan 2010, see: http://www.eerstekamer.nl/eu/edossier/e100012_wetgevings_en.

¹²⁰ This happened at least once, according to Ludolf van Hasselt (2009), Subsidiarity as a weapon against Euroscepticism.

ANNEX 5: The new qualified majority voting in the Council of Ministers

The Lisbon Treaty brings changes to the qualified majority voting system to facilitate decision-taking within the Council of Ministers.

The new qualified majority voting described as follow will enter into force starting from 1st November 2014. According to Articles 16(4)TEU and 238(2)TFEU, when an EU act is based on an EC proposal, the qualified majority must gather at least 55 percent of Member States (including at least 15 of the current 27 EU countries) representing at least 65 percent of the EU population. Moreover, a blocking minority must comprise at least 4 Member States; otherwise the qualified majority will be deemed to have been reached even if the population criterion is not met.

When an EU act is not based on an EC proposal or on a proposal from the High Representative of the Union for Foreign Affairs and Security Policy (new provision), a qualified majority is defined as at least 72 percent of the Council's members, and representing Member States comprising at least 65 percent of the Union's population.

In cases where not all the Council's members vote, a qualified majority is defined as at least 55 percent of the Council's members representing the participating Member States, comprising at least 65 percent of the population of these States. In such a situation, a blocking minority must include the minimum number of the Council's members representing more than 35 percent of the population of the participating Member States, plus one member, otherwise qualified majority will be deemed to have been reached.

In cases where not all the Council's members vote, where the Council does not act on a proposal from the Commission or from the High Representative, a qualified majority is defined as at least 72 percent of the members of the Council representing the participating Member States, comprising at least 65 percent of the population of these States.

Meanwhile, until 31 October 2014, according to Article 3(3)(4) of the Protocol (no 36) on transitional provisions, for the acts of the Council requiring a qualified majority, the weighting system of votes defined by former Article 205 TCE - as modified by the 2003 Accession Act regarding Bulgaria and Romania¹²¹ - still applies. That is to say EU acts based on an EC proposal are adopted if there are at least 255 votes in favour – 255 votes representing a majority of the Council's members.

If the EU acts are not based on an EC proposal, the acts are adopted if there are at least 255 votes in favour representing at least 2/3 of the Council's members. Moreover, a member of the Council may request a check to ensure the Member States comprising the qualified majority represent at least 62 percent of the total EU population. If not, the act is not adopted.¹²²

In cases where not all the Council's members participate in voting, the qualified majority is defined as the same proportion of the weighted votes and the same proportion of the number of the Council's members and, if appropriate, the same percentage of the population of the Member States concerned as described for the precedent cases.

Furthermore, Article 3(2) of the Protocol (no 36) on transitional provisions specifies that between 1st November 2014 and 31 March 2017, when an EU act is to be adopted by a qualified majority, a member of the Council may request to adopt it in accordance with the qualified majority voting system which currently applies as described above.

The Lisbon Treaty also rehabilitates the 'Ioannina compromise' as Declaration (n°7) on Article 16(4) TEU and Article 238(2) TFEU states that if there is a significant number of Member States opposing an EU act proposal, but it is still insufficient to block a decision, Member States will have to search for a 'solution', 'within a reasonable time and without prejudicing obligatory time limits laid down by Union law', all whilst keeping the option to vote at

¹²¹ See the appendix attached to the Treaty establishing the European Community entitled 'Amendments to primary legislation further to the accession of the Republic of Bulgaria and Romania to the European Union', Official Journal of the European Union, 29.12.2006, C 321 E, p. 327.

¹²² This applies also to the acts to be adopted by qualified majority by the European Council which has been fully recognised as an European institution by the Lisbon Treaty.

any time open. Before the Council examines any draft that would modify or abrogate the 'Ioannina compromise', the European Council will hold a 'preliminary deliberation' on said draft and will act by consensus.¹²³

The new qualified majority voting in the Council of Ministers

Until 31 October 2014			
	Member States	EU Population	Blocking minority
QM when an EU act is based on an EC proposal	At least 255 votes in favour representing a majority of the Council's members.	If requested by a Council member, check to be done if: MS of the QMV = at least 62 %	No conditions foreseen by the Lisbon Treaty
QM when an EU act is not based on an EC proposal or on a proposal from the High Representative	At least 255 votes in favour representing at least two thirds of the Council's members	If requested by a Council member, check to be done if: MS of the QMV = at least 62%	No conditions foreseen by the Lisbon Treaty
QM in cases where not all the Council's members participate in voting	At least 255 votes in favour representing a majority of the Council's members.	If requested by a Council member, check to be done if: MS of the QMV = at least 62 %	No conditions foreseen by the Lisbon Treaty
Between 1st November 2014 and 31 March 2017			
During this period, when an EU act is to be adopted by qualified majority, a Council member may request to adopt it in accordance with the abovementioned qualified majority voting system applying until 31 October 2014.			
Moreover, if members of the Council representing at least three quarters of the population, or at least three quarters of the number of Member States needed to constitute a blocking minority indicate their opposition to the Council adopting an act by a qualified majority, the Council shall discuss the issue (Ioannina compromise).			
Starting from 1st November 2014			
	Member States	EU Population	Blocking minority
QM when an EU act is based on an EC proposal	At least 55 % (15 out of 27 MS)	At least 65 %	At least 4 MS
QM when an EU act is not based on an EC proposal or on a proposal from the High Representative	At least 72 %	At least 65 %	No conditions foreseen by the Lisbon Treaty
QM in cases where not all the Council's members participate in voting	At least 55 %	At least 65 %	The minimum number of the Council's members representing more than 35 % of the population of the participating MS + 1
QM in cases where not all the Council's members participate in voting and when an EU act is not based on an EC proposal or on a proposal from the High Representative	At least 72 %	At least 65 %	No conditions foreseen by the Lisbon Treaty
Starting from 1st April 2017			
If members of the Council, representing at least 55 % of the population , or at least 55 % of the number of			

¹²³ See Protocol (no 9) on the decision of the Council relating to the implementation of article 16(4) of the Treaty on European Union and Article 238(2) of the Treaty on the Functioning of the European Union between 1 November 2014 and 31 March 2017 on the one hand, and as from 1 April 2017 on the other.

Member States needed to constitute a blocking minority indicate their opposition to the Council adopting an act by a qualified majority, the Council shall discuss the issue (Ioannina compromise).

ANNEX 6: EIPA questionnaire sent in April 2010

THE INSTITUTIONAL IMPACTS OF THE LISBON TREATY ON MULTI-LEVEL GOVERNANCE IN THE NETHERLANDS

QUESTIONNAIRE

The present research project aims to explore the institutional impacts of the Lisbon Treaty in the Netherlands, especially for its provinces and municipalities. The coming into effect of the new Treaty provisions will affect the Dutch regional/local levels, its legal settings, as well as its management and coordination mechanisms of public services.

Decision-making today

Today, the Dutch public administration is experiencing an increased influence of EU legislation in its every day work. It has to comply with EU requirements and a big part of this responsibility is in the hands of the Dutch Provinces and municipalities.

1. How would you consider vertical and horizontal administrative cooperation in the Netherlands today?

- very satisfying
- quite satisfying
- satisfying
- not satisfying

Justify your answer:

2. Identify 2 or 3 policy areas (environment, agriculture, transport, internal market etc.) where, in your opinion, good cooperation exists between the local and regional authorities (RLAs) and the central level. What instruments are important for successful cooperation?

3. Identify 2 or 3 policy areas for which, in your opinion, better cooperation is needed.

4. Provinces and municipalities participate in the Werkgroep Beoordeling Nieuwe Commissievoorstellen (BNC). Is this mechanism satisfactory for the adequate participation of the provincial and local levels, especially for preparing the Dutch position within the EU Council? Could it be improved? If so how?

5. Do you consider the flow of information between the different levels of administration – at all stages of the decision-making process – to be satisfactory? If not, how could it be improved?

6. Is the participation of local and regional administrations sufficiently guaranteed through the Representative office of the Provinces and municipalities in Brussels?

7. How do you value the role of Kenniscentrum Europa decentraal? Could it be improved? How?

8. Do you think the Provinces and municipalities have enough human resources to properly monitor and participate in the European process? If not, what are the perceived needs?

9. The European Union encourages Member States to participate in an early impact assessment of new legislation. Do you consider that your level of administration is sufficiently involved and consulted in a given ex ante impact assessment regarding new European laws? Please illustrate with examples.

10. How do you assess in particular the coordination work of IPO vis-à-vis certain European Dossiers? Do you think the formal role of IPO is satisfactory as well as its instruments of intervention?

Decision-making tomorrow

11. The Lisbon Treaty enhances the need to involve more RLAs in the EU decision-making process. Which mechanisms are in your view the most appropriate to achieve this? (You can select more than one of the following answers)

- Better and timely information of RLAs
- More and timely consultation of RLAs and follow up of their contributions
- Increase the presence of RLAs in Brussels
- A constant participation of RLAs during the decision-making procedures
- Supporting and reinforcing the role of IPO and VNG and the European associations of RLAs
- Others

Please justify your answer:

12. Do you think that the role of the (Dutch and European) associations representing local and regional levels should be reinforced? If so, what do you expect from them in the near future?

Transposition and implementation

Once an EU directive is approved in Brussels, Member States have a period of time to transpose it into national law.

13. Do you consider the existing mechanism of consultation and coordination adequate to ensure that the national transposing law sufficiently considers the specific regional and local impacts? Could you illustrate your answer with examples?

14. For the transposition of several EU directives the Netherlands has made use of the so called 'dossier teams' (as a pilot in environmental issues). How do you value this system, and how could it be improved?

15. Once the European law is transposed, are there enough control mechanisms for adequate enforcement of the rules?

16. Are you satisfied with the way uniform implementation of the rules is supported in the Netherlands, by training, information campaigns, establishment of organisations to provide support and information on new European legislation etc.? Could it be improved? Please illustrate.

17. Whenever an ex-post analysis is made on the functioning of a specific European legislative act, is your level of administration well consulted and taken into account? If possible, please illustrate with examples.

Subsidiarity check by the Parliament

The Lisbon Treaty foresees a stronger role for the national parliaments with the 'early warning system' to ensure the respect of the principle of subsidiarity when legislating in the European Union. For several years, the Dutch Government has given importance to the idea of 'local or regional if possible, central if necessary'.

18. What is your opinion on the new task given to the national Parliament and especially on the role of the Eerste Kamer as a body of representatives of the Provinces?

19. Is the actual subsidiarity check performed by the Dutch parliament transparent enough for the Dutch public? Why (not)?

20. Does the Dutch parliament have enough administrative support (in terms of staff, knowledge and equipment) to fulfil its legal task? If not, how could it be improved?

21. Due to a recent policy change of the Senate, both Chambers can send diverging opinions to the European Commission. Does this have any consequences (+/-) for the European subsidiarity principle?

22. What has been so far the provincial/municipal input into the parliamentary subsidiarity checks?

23. Do you see a need for closer cooperation between the RLAs and the Dutch Parliament? Why?
And a need for closer cooperation between the Dutch Parliament and other European Parliaments? Please present suggestions and/or examples.

Committee of the Regions

24. How would you consider the role of the Dutch representatives in the Committee of the Regions (CoR)?

- very important
- quite important
- important
- not important

Justify your answer:

25. Do you think their role should be reinforced? What do you expect from them in the near future?

26. What are the experiences of the Dutch provinces and municipalities regarding the CoR and its Dutch representatives? Could you quote some best practices?

27. In your opinion, is there a need to have a stronger coordination between the Dutch provincial/municipal levels in order to be stronger represented in the CoR and better informed regarding its work?

The reformed comitology system

Implementation of EU legislation is quite often done through the comitology system. The latter will be reformed with the Lisbon Treaty, yet it will still exist through the adoption of the "implementing acts" as provided by Article 291 TFEU.

28. Dutch provinces and municipalities hardly participate in the current comitology system with their own experts. Do you consider the coordination of comitology and the involvement of provincial/municipal experts to be satisfactory? How could it be improved?

29. Which sectors will have important comitology committees in the future? Is this question discussed within IPO/VNG?

30. Do you know a good practice case for the coordination of comitology? Please explain.
Are there also vertical comitology teams and how do they function?

ANNEX 7: Persons to whom the EIPA questionnaire was sent in April 2010

Prime Minister Office

Mr. Edwin Scherbijn

Ministry of the Interior

Mr. Robert-Jan van Lotringen, Legal expert procurement and state aid
Mr. Peter Rem, BNC coordinator Ministry of the interior

Ministry of Foreign Affairs

Ms. Christianne Bleijenber, Senior policy advisor European Integration
Ms. Joanneke Balffoort, Manager European Integration

VNG/municipalities

Ms. Annemiek Wissink, Director Directie Europe/Internationaal VNG
Ms. Elisabeth Roussel, Policy advisor Directie Europe/Internationaal VNG
Mr. Henk Kool, Representative G4/alderman The Hague

IPO/provinces

Ms. Kitty Roozemon, Director IPO
Ms. Cécile Riphagen, Advisor Europe
Mr. Viek Verdult, Director Province Zeeland
Mr. Co Verdaas, Deputy for the Province of Gelderland
Mr. Jos Hessels, Deputy for the Province of Limburg

House of Dutch provinces in Brussels

Mr. Rob van Eijkeren, Coordinator

Permanent representation Brussels

Mr. Dirk Jan Bonnet, Delegation ministry of the interior in Brussels
Mr. Martijn de Grave, Coordinator Justice & Interior Affairs
Mr. Raoul Boucke, Milieuattaché

Committee of the Regions

Mr. Bas Verkerk, Chairman Dutch delegation CoR/Mayor of Delft
Ms. Karla Peijs, Chairwoman HNP/CdK Zeeland

Parliament

House of Representatives

Mr. Harm-Evert Waalkens, Chairman EUZA
Mr. Harry van Bommel, Vice-chairman EUZA

Senate

Ms. Tineke Strik, Chairwomen ESO
Ms. Ankie Broekers-Knol, Vice-chairwoman ESO
Mr. P.R.H.M. van der Linden, Chairman Senate

European Parliament

Mr. Bas Eickhout, Lid Milieucommissie

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