

Rediscovering Europe in the Netherlands: Towards Strengthened Legitimacy of Dutch EU Policy

Ton van den Brink and Mendeltje van Keulen



Ton van den Brink, docteur en droit public, est chercheur au Conseil scientifique néerlandais pour la politique gouvernementale (WRR). Il est aussi professeur de droit international et européen à l'université d'Utrecht. En 2004, il a soutenu sa thèse : *Regelgeving in Nederlands ter implementatie van EU-recht - Setting legal norms in the Netherlands for the implementation of EU law* (Kluwer, 2004). Ses recherches actuelles portent notamment sur les relations entre l'Union européenne et les États membres, les institutions européennes et les conséquences de l'Union européenne pour les États membres. Il est membre du Groupe européen de droit public.



Mendeltje van Keulen est docteur en administration publique, chercheuse à l'Institut néerlandais Clingendael de relations internationales à La Haye et au Conseil scientifique pour la politique gouvernementale (WRR). Ses recherches actuelles portent sur la politique néerlandaise dans l'Union européenne, la présidence nationale ainsi que l'élargissement de l'Union européenne et les processus de coordination nationale pour les questions européennes. Elle est l'auteur de l'ouvrage *Going Europe or Going Dutch - How the Dutch government shapes EU policies* (Amsterdam University Press, 2006). Elle a également publié en collaboration avec Monika Sie Dhian Ho *Les Pays-Bas aux commandes : naviguer sur une mer agitée - La présidence néerlandaise de l'Union européenne* (Notre Europe, 2004).

Summary

This article discusses the presumed 'crisis of legitimacy' relating to the EU and its politics and policy in the Netherlands. Although the majority of Dutch citizens are still in favour of European integration, the rejection of the Constitutional Treaty in 2005 has shown that the exact direction and content is not always in line with their desires. Most notably, however, the particular political-administrative characteristics, which shape the dealing of EU matters in the Netherlands, are relevant in this respect. Creating a real politicised EU debate and adequate accountability mechanisms is the key challenge for Dutch politics for the coming years. National politicians, linking pins between the member states and the EU-level, should take the lead by offering diverging perspectives on the EU as a political system. Parliamentary scrutiny and co-ordination may offer tools for this, however, to genuinely involve citizens in future Dutch EU policies, initiatives should reach 'beyond the institutional'. Referenda are a powerful form to initiate public and political debate; whereas

constitutional safeguards may provide checks and balances. Whichever solutions are found, the dynamic of European integration and the social and political changes in the Netherlands demand continuous attention for European and national processes of democratic and constitutional legitimisation.

Key words

EU legitimacy – Netherlands – EU Constitution

légitimité européenne – Pays-Bas – Constitution européenne

The aim of this article is to place the Dutch ‘no’ in the broader perspective of the presumed ‘crisis of legitimacy’ relating to the EU and its politics and policy in the Netherlands. We start out by critically assessing the origins of the rejection of the EU’s proposed Constitutional Treaty by the majority of the Dutch electorate in June 2005, which according to many unveiled a broader problem of public support and acceptance of European integration and policies (first section). To understand the roots of this legitimacy crisis, it is important to have insight in those particular political-administrative characteristics, which for decades shaped the way EU matters were dealt with in Dutch politics and society (second section). The past few years have demonstrated a political unease regarding the topic of EU policies and reform and a striking inability, by government and parliament, to turn the EU integration project and its policies into a subject of political debate. The leap from long-standing traditions of ‘technocratic embedding’ towards a real politicised debate designed to fit the new, political European Union will be a key challenge for Dutch politics for the coming years. For this change to happen, any quest for solutions should reach ‘beyond the institutional’, in order to effectively close the gap between politics and public discourse (third section).

Understanding the Dutch ‘Nee’

The Dutch referendum on the EU’s draft Constitutional Treaty on 1 June 2005, the first nation-wide plebiscite since 1797, constituted in effect a political experiment, which was reflected both in the organisation and in the substance of the debates which it initiated¹. In the absence of constitutional arrangements, the referendum outcome could not be legally binding (formally it was thus consultative), but during the campaign, most political parties declared to respect the outcome (Crum 2007: 18). In the end, both the turn-out (63 %) and the outcome (61,5 % voted against ratification) of the popular vote were surprising to many, as the Netherlands is indeed a founding member of the European integration process. The outcome was all the more surprising in the light of the overwhelming parliamentary majority in favour of ratifying the Constitutional Treaty (85 % percent of the House of Representatives voted in favour). To explain the ‘no’, a lot of empirical research has been undertaken to uncover the motives of the public, especially those of the ‘no’-voters. Those motives remain, however, difficult to assess. When asked in general terms about the reason for their verdict, ‘no’-voters often replied that it ‘just seemed better’, that they had ‘considered all the pros and cons against each other’ or that they ‘just did not like it’ (Aarts and Van der Kolk 2005). Even when asked more specifically, decisive arguments to vote ‘no’ hardly surfaced. Instead, diffuse feelings on the EU, but also dissatisfaction with political elites in general, seem to have motivated the votes of many. It is therefore necessary to take account of the more general feelings of the Dutch public on European integration.

General public support for EU integration...

Having a small and relatively open economy the country has had much to benefit from the institutionalisation of European co-operation, which is reflected in public approval rates for EU membership. As figure 1 and figure 2 indicate, the vast majority of Dutch population is indeed still in favour of European integration and believes that the country benefits from EU-membership. Moreover, the Dutch population is on average more positive on European integration than the EU population as a whole. This is true not only for the period before, but also for the period after the start of the referendum campaign.

¹ In 1797, a concept for a Constitution for the newly established Batavian republic was put to popular vote.

Figure 1. Public support for European integration, expressed in percentages of the population that view European integration as a good thing 1973-2006

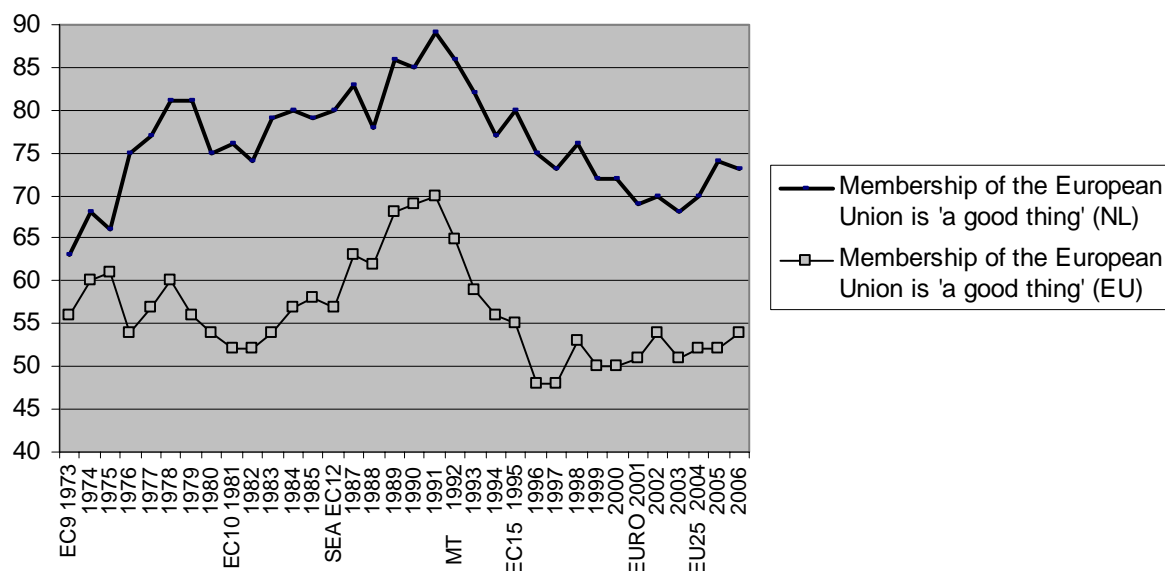
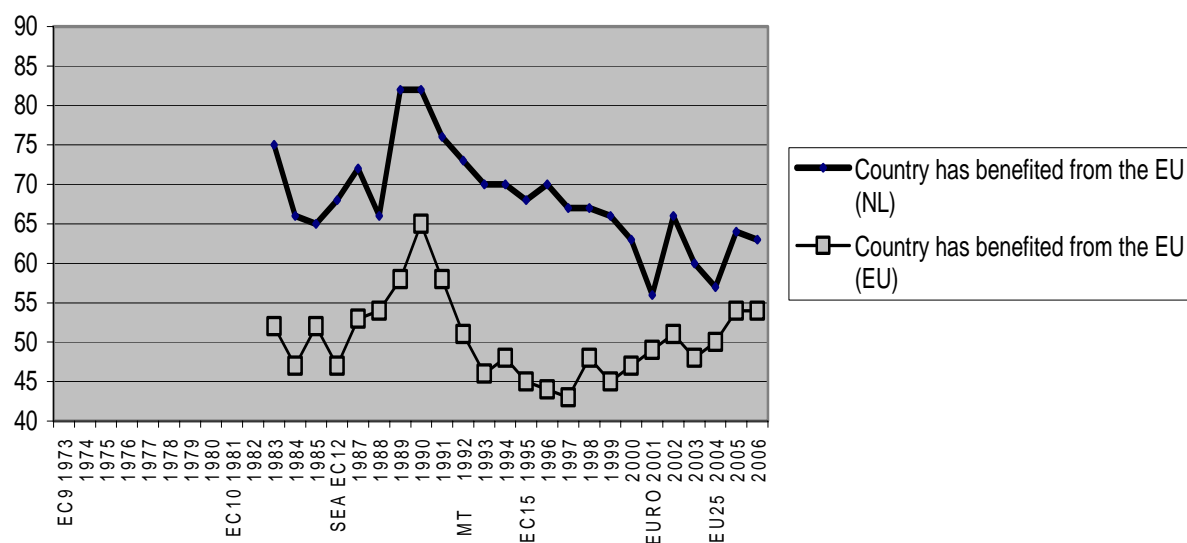


Figure 2. Public support for European integration, expressed in percentages of the population that believe that EU membership is beneficial

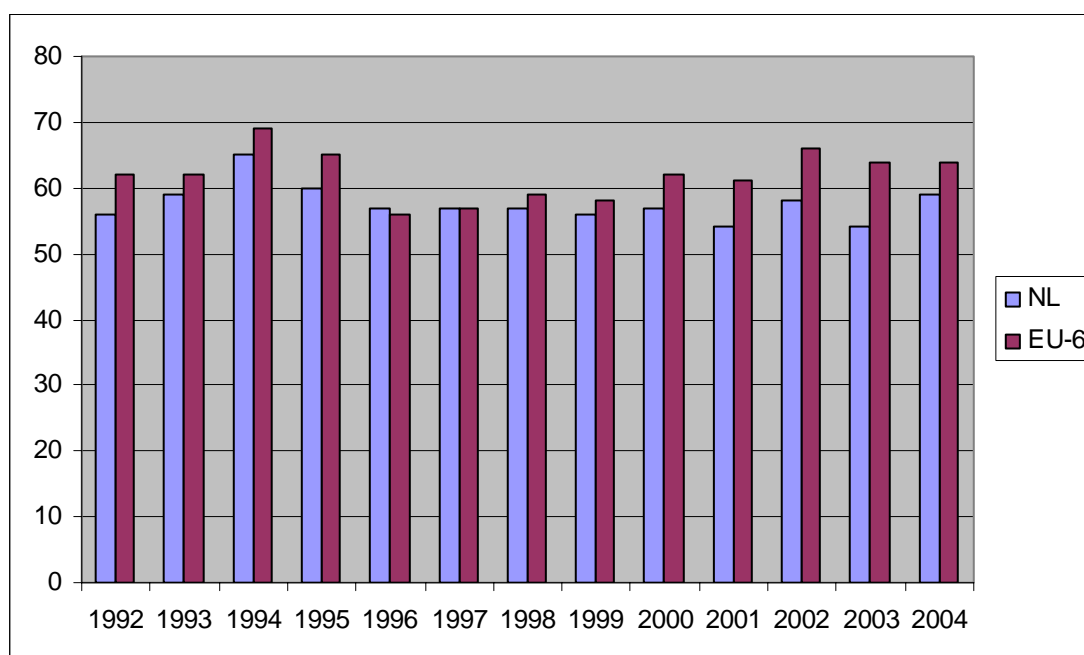


Source: Eurobarometer

...but not a strong sense of European citizenship or identity...

Although the general public support for European integration has always been high in the Netherlands, paradoxically the opposite is true for the feelings of citizenship or European identity among the Dutch public. Indeed, the percentage of Dutch citizens considering themselves as European citizen (in addition to being a Dutch citizen) is well below those of the other founding members (including France). This would suggest that Dutch citizens' feelings concerning European integration are relatively pragmatic in nature and inspired by the concrete benefits of European integration, rather than by profound feelings of European identity.

Figure 3. Percentage of the population that thinks of itself as European citizens, Netherlands *versus* other founding member states



Source: Thomassen 2007

...and specific concerns on several issues

Not only general feelings on European integration are relevant, however. More and more, specific issues related to European integration influence public opinion. Many perceive the way in and the speed at which European integration is currently shaped nowadays as threatening (Eurobarometer 65, 2005). Not only do many fear that national social security arrangements will be put under increasing pressure, but they are also concerned by the possible loss of national identity and sovereignty which is associated with European co-operation. As much as 39% of the electorate believe that the Dutch national and cultural identity will slowly but gradually disappear as a result of more and deeper European integration.

Such fears were relevant for the people in determining their vote on the Constitutional Treaty, although strictly speaking the Treaty did not concern issues such as social security arrangements for example. Conversely, voters demonstrated little interest in the actual contents of the text, most notably in the institutional issues that featured so prominently in the Treaty text.

Concrete EU policy issues provided 'no'-voters with additional arguments to vote against the ratification of the Constitutional Treaty. Especially the introduction of the euro, which was contested in the Netherlands, was a relevant factor. The voters also, although to a lesser extent, took into account concerns over the negative consequences of the EU's 2004 eastbound enlargement and the Turkish candidacy for membership when casting their vote (Aarts and Van der Kolk *ibid.*).

Whereas the Dutch population was on average less enthusiastic about recent enlargements (2004 and 2007), the support for membership of Turkey is (with around 40%) even lower than support for membership of Macedonia and Bosnia and Herzegovina. Indeed, as much as 52% of respondents to a survey conducted by the Dutch government, said to oppose Turkish membership even if Turkey would comply with the Copenhagen criteria (Den Hollander 2007: 26).

The introduction of the euro was a source of discontent for the Dutch population as well. It was striking that in the years since 2002 the Dutch were highly critical about the effects of the euro. In

2005 (the year of the referendum) only 38% of the population (EU average 51%) thought that the introduction of the euro was overall advantageous, thus ranking last among all EU member states (Engelen 2007: 20).

The (draft) Services Directive was a third element that accounted for some of the discontent of the Dutch population. In Spring 2005 public attention for the Services directive increased considerably (Van Kessel and Pelkmans 2007: 35). Politicians voice concerns with regard to the possible effects of the directive in terms of transfers of jobs to lower-wage member states and lowering of labour standards which are readily picked up by the news media.

All these specific EU policy decisions were not so much related to the content of the Constitutional Treaty, but happened to manifest themselves in the same period the referendum was held. A factor more closely related to the issue at stake was that many voters indicated that they felt they had been poorly informed on the Constitutional Treaty (Crum 2007: 22). Of the four member states in which referenda were held on the draft Constitutional Treaty, the Dutch electorate was the most dissatisfied with the referendum campaign, which was widely evaluated as 'too little, too late'. Especially the 'yes'-camp could not hide its reluctance to invest limited personal and campaign resources on the referendum campaign (Crum 2007: 19). After the 'no', politicians were quick to promise 'broad public debates' on the EU as a response to the negative outcome, but mutual differences of opinion on the scope and aim of these discussions broke off any initiatives before they could develop. The resulting 'deafening' political silence on the EU lasted throughout the parliamentary elections in November 2006, culminating in at least some parliamentary discussion, in Spring 2007, amongst a small number of well-informed party specialists on the Dutch government position for the negotiations on a new Treaty text.

All in all, the referendum outcome not only uncovered a gap between Dutch politicians and their electorate on the issue of European integration, as well as broad dissatisfaction among large segments of the electorate on the specific direction of the integration process and individual EU policy decisions. It also demonstrated a striking inability of national politicians to position themselves and to adequately deal with public debate on Europe. This should not only be contributed to the lack of experience with the instrument of a referendum as such, but be seen in the context of broader problems of political discontent that seem to trouble contemporary democracies. In the Netherlands, the 2002 'Fortuyn revolt' (named after politician Pim Fortuyn, murdered in May 2002) was an example in its own right of a general discontent of the electorate regarding the 'self-complacent' political elites. And indeed, distrust of politicians, political parties and political elites is widespread in many established democracies (Mair 2006: 6; Bovens 2006; see also European Values Studies: Atlas of European Values 2005). A thorough analysis of European debate (or rather: the lack thereof) in the Netherlands should reach beyond the European and take into account the generally troubled relationship between political elites and their constituency.

EU in Dutch politics and society

To understand the current state of play, we should reflect on the traditional nature of the European integration process and the particular characteristics of Dutch EU policy making. Since the early 1990s, the traditional method whereby EU policy was largely legitimated by its positive results (*output legitimacy*) has come under increasing pressure. As the EU, facilitated by successive Treaty modifications, reached out into more controversial and contested domains (police and judicial co-operation, social policy, enlargement, introduction of the Euro) and risked to affect national employment situations and welfare systems, it became slowly but gradually more often politicised and subject of debate at the EU and national level.

For the Netherlands, to deal with this new situation turns out to be a particular challenge. 'Pillarisation' - the pragmatic division of society and politics along clear religious, ideological and political lines - and the relatively fragmented Dutch constitutional, administrative and political system reinforce the tendency to deal with EU policy 'at home' as a mere technical matter which can be left to legal and sectoral experts. While these specialists achieved results by playing the European game according to the rules of diplomacy and international law, Dutch politicians generally steered well

clear of 'Brussels', in the comfortable knowledge of a broad 'permissive consensus' of the large majority of EU citizens (Van Keulen 2006).

This tendency, accompanied by a relatively weak 'communicative discourse' about Europe, can also be observed in other member states with relatively decentralised and fragmented political systems, such as Italy, Germany and Belgium. What *is* specifically Dutch, however, is that the shortcomings of traditional output legitimacy were only publicly exposed and politically acknowledged at a relatively late stage. Whereas, in other member states (notably those where previous referenda on EU topics were held), governments, political leaders and parties had gradually become more responsive to the preferences of the public, the Dutch government discovered the smouldering legitimacy crisis only after fifty years of active participation in the construction of Europe - at the occasion of the 'no' vote in the referendum in June 2005.

As outlined in the previous section, the 'no' thus was merely the tip of an iceberg of public discontent with the speed at which the EU has developed without public participation or representation at the national level. Ideally, Dutch policy input and positions as regards EU policy issues would be channelled via formal mechanisms of representation and accountability. However, partly because of the political-administrative context sketched in the above, there are serious obstacles which disconnect citizens to national and European politicians when the EU is at stake. National politicians have the tendency to claim the benefits of European cooperation as their own achievements and to blame 'Brussels' for any disadvantages or problems, or simply not to render account for them. This provides a 'perverse incentive', which makes it difficult for many institutional or procedural measures to effectively increase EU awareness and debate. For example, the noble aim of increasing parliamentary control over the development of government positions depends on the embedding of Europe in party democracy. However, the promising party manifestoes on Europe which many Dutch political parties produced following the negative outcome of the referendum did not lead to more attention for the issue in the election campaign itself. Europe played no role in the national election battle - at least, this was the experience during the Dutch general elections on 22 November 2006. All at once, the vacuum in the substantive debate on Europe in the Netherlands became painfully manifest. The lack of this debate can be explained by the pragmatic political culture in the Netherlands, in which ideological and constitutional debates are generally somewhat mistrusted. As the EU reached controversial, sensitive and constitutional domains, it turned out however that Dutch politics had not built up any tradition with substantive political debate over issues such as the vices and virtues of EU membership and Dutch interest in specific areas of EU involvement. This explains how, whenever EU policies are discussed, positions are generally to be found on either one of two opposing poles: the traditional 'positive-sum' approach of integration ('the European interest equals the Dutch interest') *versus* an equally unsubtle 'zero-sum' approach, by which more EU involvement is considered a loss for national sovereignty *per se*. In the past decade, scarce political debates on the EU have focused on the Dutch contribution to the EU's finances, alleged mismanagement of funds and implementation failures.

This lack of EU coverage in the political domain is not compensated by a lively societal or public debate on the EU. As is the case in political parties and parliament, 'Europe' for civil society organisations is often regarded as an internal specialism of a small group of professional lobbyists or 'the EU-department', rather than an integral dimension of regular activities. This is reflected in media coverage on the EU, which is at a much lower level in the Netherlands than in other member states (De Vreese 2007). This gives rise to a vicious circle: the lack of public and political debate means the media will be less inclined to report on a given topic, while the absence of reporting in the media makes it less likely that a public debate will arise. All this reinforces the impression of the public that the EU and European policies are largely 'imposed' on national politicians and citizens. Despite the relatively high level of diffuse public support for membership, Dutch EU policy is in danger of a serious and permanent legitimacy crisis.

From present to future

Not only the EU's policy outcomes, but also the parameters of policies and even the policy objectives themselves have become increasingly controversial and thereby no longer limited to technical solutions which benefit all citizens to an equal degree. Dutch EU policy should therefore reflect

different societal interests, and be subject to adequate accountability mechanisms. However, due to a number of particular political-administrative characteristics, the challenge to strengthen the EU legitimacy in the Netherlands is thus considerable. The political reality which the EU has become in the past two decades is as of yet not reflected in current Dutch politics towards 'Brussels'. For decades, the focus of successive Dutch governments has been on strengthening EU institutions as a remedy for the much-lamented 'democratic deficit'. But the multi-level construction of the EU requires that national political arenas must offer parallel legitimising channels for EU politics and policies.

To solve this crisis, national politicians, as linking pin between the public and the EU-level, will have to take the lead. They may not absolve themselves of their responsibilities by hiding behind the views of the Dutch public. After all, citizens' views on EU policy cannot be inferred directly from opinion polls or focus groups. As was demonstrated by the referendum on the EU's draft Constitutional Treaty, such views are often superficial and vague, and cannot, above all, be one-on-one translated into concrete policy programmes. This holds even more when it comes to complex issues of EU policy, which are often distanced from the daily lives and experiences of citizens. Although citizens might desire a 'better' Europe, not resembling anything like a 'superstate', how this co-operation needs to be shaped is up to politicians. Removing all symbolic elements of the Constitutional Treaty (including the 'constitutional' terminology), a move advocated by the Dutch government in the Treaty renegotiations, is not sufficient in this respect. Substantive policy choices are, however, becoming more and more important. In a letter to the House of Representatives, the Dutch government cites a number of themes on which more European cooperation would be needed, including energy policy, cross-border environmental problems, climate change, asylum and immigration policy, the competitiveness of European economies, combating terrorism and cross-border crime, and foreign policy². For a substantive debate on the EU, this is a valuable start. Nevertheless, the question *which objectives* the government wishes to achieve in these areas, which choices it has to make to that end and which concessions will be necessary for making European co-operation work in these fields, involves *political* choices.

The essentially political consideration as to whether national ratification of the new Treaty text in the Netherlands should (again) be subject to a referendum has thus far been avoided by referring the matter to the Dutch Council of State, which is expected to issue its advice mid-September. Whatever the defects highlighted by the referendum of 2005, undoubtedly, a referendum is the most powerful instrument for making the legitimisation of EU policy a public matter. A plebiscite in which citizens have more options than simply to vote 'yes' or 'no' (a '*preferendum*') may circumvent some of the disadvantages of referenda. As such, it may be still be a drastic instrument but the use of it may be justified in order to overcome the persistent problems haunting Dutch EU policy. Thus, *preferenda* may contribute to the legitimacy of Dutch EU policy. A positive effect of *preferenda* is their potential to mobilise political actors, news media and civil society organisations which may contribute to a strengthening of the link between citizens and EU policy. Politicians and political parties are forced to position themselves, but at the same time, direct and effective mechanisms of accountability are commanded. As a result, the possibility of a *preferendum* may remove three obstacles to an informative and in-depth political debate on Europe, namely the political invisibility of EU policy, the one-sided framing in terms of 'more' *versus* 'less' Europe and the fear of being engulfed by an unstoppable tide of European rules and policy.

However, it follows from the above that the challenge of addressing EU issues in the national political arena features high on the political agenda, whether or not a referendum on the new EU Treaty will be held. The Dutch Scientific Council of Government Policy has formulated a number of alternative proposals which offer a portfolio of options for mobilising and reinforcing the legitimising role of national politicians and policy makers, in order to ensure that the Netherlands can continue to contribute to vital EU policy results in the future³.

A welcome initiative in this respect is the evolving practice of regular parliamentary debates on the subsidiarity check. This new experience requires new strategies, especially of the pro-Europe oriented parties, as they have never before been forced to articulate and argue their views. But it

² Letter to Parliament on EU Treaty amendment, from the Minister and State Secretary for Foreign Affairs, Parliamentary papers (Kamerstukken) II, session 2007, 21 501-20, nr. 344.

³ The Hague, WRR 2007. An English translation of the report can be downloaded from www.wrr.nl.

follows from the above that a vital political debate on Europe in the Netherlands should be enriched far beyond questions of subsidiarity, which remain stuck in the dichotomy between 'more' or 'less' Europe. A governmental EU vision or strategy in the broad sense should encompass aspects of concrete policies, linked to political views on the EU as a political system. For the Dutch, the challenge is to have this EU policy driven much less by the internal 'logic' of policy domains but by a stronger prioritisation of European themes, including a robust and pro-active political control system with a clear allocation of responsibilities. A strengthening of parliamentary activities relating to EU policy proposals by a scrutiny system akin to the British model may contribute to this reality check.

In order to genuinely involve citizens in future Dutch EU policies, however, there is a pressing need for initiatives that reach 'beyond the institutional'. An innovative proposal in this respect may be the introduction of constitutional safeguards with regard to EU-membership. By proposing to lay down in the Constitution the basic principles of the Dutch view on EU membership, a fundamental political and public debate on the EU and the pros and cons of membership could be initiated. Once put in place, secondly, constitutional safeguards may constitute a new form of checks and balances at the national level, in parallel to existing safeguards at the EU level, which the Netherlands has traditionally advocated. Thirdly, constitutional provisions could help to reduce the uncertainties and insecurities felt by citizens, by offering them anchor points and thereby enabling them to identify to a certain degree with Europe as a political community.

Whatever solutions are explored, the complex diagnosis in the above of general European ills and problems specifically related to the nature of the Dutch political system and EU policy, cannot be cured with simple remedies or quick fixes. Without additional sources of legitimacy, the Dutch government will be permanently confronted with major legitimacy problems with regard to the EU policy. The dynamic of European integration and the social and political changes in the Netherlands demand continuous attention for European and national processes of democratic and constitutional legitimisation.

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