



# Bringing the Treaty Back Home: The Netherlands and the Lisbon Treaty

By Mendeltje van Keulen



*What does the EU's new Lisbon Treaty mean for the Netherlands? Discussion in The Hague on this issue has thus far focused on a comparison with the former draft Constitutional Treaty, which was rejected by a majority of Dutch voters in the June 2005 referendum. On this issue, opinions will probably continue to diverge. More relevant for this moment is to consider the importance and implications of the innovations offered by the new treaty. This essay kicks off this discussion along two lines. First: should the past episode of treaty change be considered as continuity, or rather as a change in national EU policy? Second: what potential offers the Lisbon treaty for the much-wanted politicisation of EU policy in the Netherlands?*

## Pragmatism with a new flavour

A closer look at the positioning of the Netherlands in the last round of treaty negotiations seems to indicate continuity, rather than change. The Dutch government's attitude towards the negotiations that have led to the new Reform or Treaty of Lisbon was essentially instrumental. The emphasis was put on the need to realise a new treaty that would differ from the rejected draft in terms of substance, size as well as naming, in order to avoid any constitutional aspirations. Due to intensive bilateral and EU-level diplomacy, this demand had been realised once the treaty talks reached summit level and political and media attention focused on the concerns raised by other national delegations. With this strategy of early appeasement, the Dutch delegation did not jeopardise its constructive relations with the EU partners, let alone become an awkward partner on the EU stage. This pragmatic approach towards the negotiations, keeping a close eye on the interests and concerns of other member states, is in line with the tradition of 'instrumental supranationalism', which has characterised Dutch EU policy for decades.<sup>1</sup> Clearly novel was the rather defensive approach of the Dutch delegation

towards a number of specific issues, which allegedly served to do justice to the concerns voiced by the electorate upon rejection of the Constitutional Treaty draft in June 2005. To that aim, the Dutch negotiating position focused specifically on the incorporation of a number of concrete checks and balances, safeguards and emergency breaks into the treaty text. Two key points included the Dutch demand for clarification of the existing division of competencies between member states and the Union, and the incorporation into the treaty text of a reference to the accession criteria for candidate member states. It was successfully made clear to the EU negotiating partners that conceding these particular demands would be instrumental for the Dutch delegation in bringing the treaty back home. The vulnerability of the Dutch position in terms of legitimacy was thereby effectively turned into a strength in the negotiations.

In the past two years, high-level Dutch EU policy has thus focused on bringing the treaty negotiations to an end, efforts which have resulted in the Lisbon Treaty draft. This text offers a number of innovations with potentially far-reaching implications for EU policy integration in the near future. The future will tell whether the dikes that have been thrown up against the alleged interference from Brussels will be

<sup>1</sup> See Keulen, M. van, *Going Europe or Going Dutch – how the Dutch government shapes European Union policy*, Amsterdam: Amsterdam University Press, 2006

sufficiently high to counter the dynamics of the integration process. An equally relevant question is whether the Netherlands will be in any position to influence the making of new EU policies under the new treaty rules. At first sight, the situation calls for concern. Quantitative analyses demonstrate that in particular the group of middle-size member states could lose influence through the new and intricate majority voting formula.<sup>2</sup> A new European Commission may be approved without a Dutch national in it. And - although the last-minute compromise did secure one extra Dutch M.E.P. - 27 on 750 MEP's with voting rights is not a very impressive count. But obviously, influence does not only derive from voting power and formal representation. Brussels offers many ways to express your views and opinions. The key will be to optimally use the experience and expertise that the Dutch traditionally bring into the EU arena, not in the least by forming coalitions with old and new partners. In fact, there is no time to rest, as the current implementation phase of the new treaty holds many risks for a member state which in the recent past has demonstrated considerable reluctance towards some of its innovations. Think of a European Council Presidency that exhibits too much presidential allure and a diplomatic service that may interfere with a dense national network of bilateral relations - issues which call for extra attention in the coming months.

### Bringing the treaty back home

All in all, the Dutch government may be credited for successfully playing the two-level game of EU politics. At the EU level, it has played out its position as 'demandeur' whilst avoiding being isolated or neglected by the EU partners by retaining a constructive attitude. In the meantime, at home, a second referendum, so threatening a prospect for many, could be dismissed with the help of intricate coalition politics. Now that the first discussions on the treaty have not caused political fireworks, the road towards parliamentary ratification of the Lisbon treaty in the Netherlands seems secure. However, the yawning divide between the political elites and the Dutch population when it comes to European integration has not been bridged. National

legitimacy, the maintenance of which was long overdue, does remain the Achilles' heel of Dutch EU policy. Neither the volatile relation between politics and citizens, nor the general state of public debate on the EU has much changed for the better in the past three years. And the focus of political and parliamentary discussions on the symbols and the form of the new treaty and the story on how the 'super state' was successfully fended off, have probably not helped either. On the contrary: Dutch citizens have been prepared for less, instead of more Europe, so that they will probably continue to regard the EU with a wary eye. The realisation that the new treaty abandons national veto's in the sensitive area of justice and home affairs and that it portrays large ambitions for the EU environmental and climate policy, may for some come as a surprise. To add insult to injury, the complexity of the new treaty offers many possibilities to continue the culture of 'blaming and shaming' Brussels by national politicians.

### Opportunities for a new élan

The above sounds very much like business as usual. Which are the novelties that the Lisbon treaty brings? It can be argued that the text in effect does offer opportunities for a new élan in Dutch EU policy, in two ways: politicisation and substance. To begin with: the political treatment of EU issues in the Netherlands, which is traditionally somewhat uncomfortable.<sup>3</sup> It will probably be long before the Binnenhof will be filled with masses protesting against new EU legislation. This image was sketched by the former State Secretary of EU affairs Atzo Nicolai, in an article celebrating the innovations of the former Constitutional Treaty draft.<sup>4</sup> It is no less relevant today, as these innovations are almost all copied in the Lisbon Treaty: EU ministers discussing legislation in public; more majority voting and co-decision of the Parliament; the introduction of the new positions of foreign representative and Council Presidency. These innovations in the Lisbon Treaty may provide the counterweight against the well-known technical, a-political

<sup>2</sup> See the joint study by CESP, EGMONT, EPC: *The Treaty of Lisbon, implementing its institutional innovations*, Brussels: November 2007

<sup>3</sup> Scientific Council for Government Policy, *Rediscovering Europe in the Netherlands*, The Hague: SDU, June 2007

<sup>4</sup> Nicolai, A., Een nieuwe weg naar Europa, in: *Internationale Spectator*, October 2005 - 59(10), p.499-502

character of EU policy and thereby give room and scope for the 'voice' and 'face' the Union so badly needs. The new procedures for parliamentary involvement offer potential in this respect, too. If a majority of national parliaments may object to new European Commission proposals, this draft has to be reconsidered, a provision that could work positively on the European involvement and network of national MP's. Experiences with the national 'subsidiarity test' have thus far led to a welcome investment in the EU capacity of the political factions and specialised committees in both Houses of Parliament.

The new procedure does give rise to a number of questions, however. The EU network of national parliamentarians is currently organised in biannual meetings of the Cosac – significantly referred to as 'Kozak' in recent official parliamentary documents. This relatively obscure institution will have to gain more name and clout, in order to facilitate effective coalition building amongst the EU's national parliaments. Domestically, the fate of the current parliamentary consent procedure for draft legislation in the field of Justice and Home Affairs (JHA) is open for discussion. This procedure was introduced in a time when the new and politically very sensitive field of JHA was not yet governed by co-decision rules. Now that this will be the case once the Lisbon treaty enters into force, some involved argue that this particular procedure is no longer relevant, whilst others have recently made the case for a stronger, mandating procedure for all new EU policy proposals.

### Focus on substance

Apart from these loose ends, it seems safe to assume that the formal parliamentary involvement in EU affairs introduced by the Lisbon treaty will provide the necessary impetus for more and more regular discussion on the positions that national government takes in EU level negotiations. Ideally, this debate will stretch beyond the issue of subsidiarity, which is currently very prominent in parliamentary EU

discussions. There is potential here, too, as the new treaty offers countless opportunities for political choice on the substance. Ambitions are clear, but the 'how' and 'when' are open for discussion, e.g. in the fields of climate policy, security policy and foreign affairs of the EU. The position of the Dutch industry as front runner can be very valuable, for example in the Dutch investments in the emission trading system; the elaboration of the The Hague Programme initiated by the 2004 Dutch EU Council Presidency; internal market review with a focus on better regulation; adapting the EU's internal *acquis* to that of global multilateral organisations. However, here again, choices will have to be made. As a medium-size member state, there is limited capacity and political clout which requires prioritising EU policy. Where are Dutch interests at stake and how to realise these with the help of EU partners? Obviously, this exercise is politically volatile, as making choices implies winners and losers. There will be policy areas upon which Dutch input will have to be limited or cut back – which is not easy in the Dutch 'polder model' tradition of consensus and compromise.

### To conclude

Now that the volatile exercise of negotiating a new EU treaty is ready and done with and the prospect of parliamentary ratification seems safe, it is time for the Dutch government to shift attention back home - and to the substance. A critical electorate will continue to hold national politicians accountable on the basis of concrete and visible achievements of their actions at the EU level. The new treaty does offer potential for increased politicisation of the EU at the domestic level, as well as for the EU to realise its policy ambitions in many fields. This calls upon politicians to suppress national reflexes and to focus on bringing the Lisbon treaty home.

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