

Working Group IV

Working document 11

Working group IV – "Role of National Parliaments"

Subject: – Paper by Mr Hans van Baalen, alternate member of the Convention
"On time is too late"

Members of Working Group IV will find hereafter a paper by Mr Hans van Baalen, representative of the Dutch Parliament, alternate member of the Convention.

"ON TIME IS TOO LATE"

Enforced democratic control and political influence on European decision making processes; options for the Dutch Members of Parliament

By Mr J.C. van Baalen, Member of the General Committee on European Affairs, Dutch House of Representatives

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I. Introduction

On 20 September 2001, the General Committee on European Affairs of the House of Representatives of the States General (the lower house of the Dutch parliament) decided to undertake a small-scale investigation of the means by which the Dutch parliament could influence decision-making in the European Union. The author of this document was appointed as rapporteur and charged with investigating the practical options. One option specifically emphasised was to open a parliamentary representation (an "EU liaison office") in Brussels to serve as an "antenna" for the House of Representatives or for the States General as a whole. Both houses of parliament could be involved in the project.

The rapporteur sent a questionnaire to all the parliaments of the European Union member states. After extensive communication, most of them were filled in and returned. The purpose was to determine what measures other parliaments had taken to exercise oversight and influence over EU decision-making. Interviews were also held with participants in EU decision-making: the European Commissioner from the Netherlands, his *chef de cabinet*, the Secretary General and Members of the European Parliament, the Permanent Representatives of the Parliaments of Finland and the United Kingdom to the EU in Brussels, the Registrar of the Dutch Senate and the members of the Senate's European Affairs Office (EBEK), the Dutch Permanent Representative in Brussels, the Director-General for European Cooperation at the Dutch Ministry of Foreign Affairs, the Representatives of the European Commission and the European Parliament in The Hague and the heads of the Permanent Committees on Agriculture, Nature Management and Fisheries (LNV), Transport, Public Works and Water Management (V&W) and Justice. Members of both houses of the Dutch parliament were also interviewed on what information they needed about European affairs. The rapporteur feels able, on the basis of the insight he gained through these activities, to issue well-grounded recommendations to the General Committee on European Affairs on strengthening parliamentary oversight and influence over European decision-making. He has also made use of knowledge and experience gained as a consultant and later as Director for Public & European Affairs at Deloitte & Touche (1988-1998), as the International Secretary of the Dutch Liberal party, VVD (1993-1998) and as a member of the Party Council of the European Liberal Democrats in the European Parliament (ELDR) (1993-present). He has deliberately taken a substantive rather than formalistic approach to the issue of parliamentary influence on decision-making in Brussels.

II. EU decision-making: Brussels, a modern-day Byzantium

Politicians and analysts are in broad agreement about the extent to which decision-making in the EU directly and indirectly affects the political process in the member states, including the Netherlands. Brussels exerts great influence in both the Community fields (the first pillar) and intergovernmental decision-making (the second and third pillars).

In the first pillar, which includes the internal market, the European Commission has the right to propose directives or regulations, or to make recommendations, at the request of the Council of Ministers (officially known as the Council of the European Union) or the European Council. The European Commission uses Green and White Papers and communications to develop policy proposals. The Council of Ministers adopts or rejects Community legislation, using a variety of complicated procedures (consultation, cooperation, co-decision and assent) in which the European Parliament plays a varying but always influential role. Even in policy areas in which the EP is formally excluded from decision-making (such as the Common Agricultural Policy, CAP), it can exert influence through its budgetary powers. Though it began as an indirectly appointed consultative body with no real clout, the

EP has moved to the heart of Community decision-making (as a result of the Treaties of Maastricht, Amsterdam and Nice).

In the second pillar (Common Foreign and Security Policy, CFSP) and the third (Justice and Home Affairs, JHA), decisions are made primarily by the Council of Ministers (meetings of national ministers) and the European Council (composed of heads of state and government). The national parliaments exercise democratic oversight of the national governments. This often inspires talk of a democratic deficit, because national parliaments have difficulty influencing the actions of ministers and heads of state in the Council of Ministers and the European Council and the European parliament has no formal role beyond the right to consultation. The proceedings of the European Council and Council of Ministers are not made public and their decision-making procedures are not transparent. Both ex ante and ex post oversight by national parliaments has a largely formalistic rather than substantive character. When was the last time a minister was sacked because the national parliament was unhappy with the results of EU decision-making?

There is a current trend away from the Community method and towards "soft" integration using the intergovernmental method. "Peer pressure" is gradually winning ground from clear decision-making procedures. The EU is moving ever further towards the model of an interactive network, rather than a combination of a supranational system, in which the institutions (the Commission, the Parliament, the Council, the Court of Justice and the Court of Auditors) lead the way in Community areas, and an intergovernmental system, in which the national governments and parliaments take the initiative. Policy is developed in an arcane series of interactions among technical management committees made up of EU and national officials, representatives of interest groups using formal and informal channels, lobbyists, Coreper (the Committee of Permanent Representatives), the General Secretariat of the Council of the European Union, the High Representative for the CFSP, the meetings of the European Commissioners' *chefs de cabinet* and EP officials. This policy is then adopted or rejected as the result of an equally arcane process featuring heads of government, foreign ministers or specialist ministers in the Council of the European Union, lobbies in capital cities and party-political networks of national MPs and Members of the European Parliament (MEPs). National and EU officials are responsible for implementing it, in a kind of *cohabitation*.

A new form of interactive European network is exemplified by the Conventions for the Charter of Fundamental Rights and the reform of the EU's institutional structures ("the Future of Europe"). These are *ad hoc* bodies in which representatives of EU institutions, national governments and national parliaments work together to draw up a Charter or a set of proposals for far-reaching amendment of the Treaties. The following European Council (in the case of the Charter) or Intergovernmental Conference (IGC, in the case of amendment of the Treaties) then issues woolly conclusions, which are transformed into a Charter or Treaty in a pressure cooker procedure over which neither the European Parliament (which has no formal role) nor the national parliaments (which do) have any real influence. This rapporteur feels quite certain that Ireland's no to the Treaty of Nice will not lead to substantive amendments, but at most to an opt-out or to superficial concessions. Having writ, the hand of Brussels cannot easily be lured back to cancel even half a line of its tortuous compromises, the practical value of which is open to doubt. Brussels is becoming a modern-day Byzantium.

III. Influence

It is to be hoped that clearer and more democratic decision-making procedures result from the Convention on the Future of Europe, the IGC that follows and the Treaty that will probably be signed during the Dutch Presidency in 2004.

However, regardless of the results of this institutional exercise, national parliaments will have to put more energy into shrinking the democratic deficit in intergovernmental decision-making, in the context of the interactive European network and within the bounds of their formal competencies. As part of this effort, they should bring their influence to bear on Brussels from the start of the decision-making process, rather than waiting until the endgame in The Hague and the other capitals. To keep to the timetable of the formal process in The Hague is to be too late for the informal Brussels process and therefore to miss the window of opportunity to exert real influence.

In practice, the Dutch parliament makes its influence felt most strongly when a committee of the House of Representatives meets with members of government in advance to discuss the agenda and proposed Dutch position for a European Council, General Affairs Council or meeting of specialist ministers. The House could also adopt resolutions in plenary session expressing its views on the planned position of the Dutch government. These could be linked to the question of the parliament's confidence in the relevant ministers. As Dutch MPs know, this approach is not taken in practice, making it something of a blunt instrument. It would be even more problematic to summon the prime minister, on his return from a European Council, to a plenary debate on the results. The prime minister could simply claim that parliament's preferred outcome turned out to be impracticable. If he could have vetoed the decision, he could add that he was unprepared to sacrifice higher interests on the altar of whatever issue is at stake. The same applies to postmortems on General Affairs Councils and meetings of specialist Councils with the relevant ministers in parliamentary committees. Of course, the interaction between the House and the government gives rise to a common understanding of the Netherlands' interests within the European Union. However, the House often has to place a great deal of trust in the government. Trust is good, but oversight is better.

The House can of course exercise oversight by placing on the agenda the "fiches" that it receives from the government on diverse aspects of European legislation. The government keeps the House informed from the start about the European Commission's Green and White Papers, communications, draft Directives etc. The staff of the General Committee on European Affairs reviews the fiches and advises the Committee. The Committee decides which fiches should go to which specialist committees, issues recommendations on what should be done with them and deals with some of them itself. However, the House lacks all of the following: insight into the informal background to decisions (what policy is in development before a fiche is written?), a clear notion of Dutch interests (what is essential to us, what is less important, and what is unimportant?), firm priorities (what should we set aside and what should we take up with the government?), a sense of timing (when do we call the government to account?) and willingness to make the government face the consequences of its decisions (what will happen if the government does not or cannot adhere to the House's wishes, i.e. if the House is displeased with the results?). The poor quality of parliamentary oversight of EU decision-making cannot be blamed on individual MPs or the government. They are aware of the "Brussels factor" and work hard, but are often unsystematic and fail to focus on concrete results. This is because the EU is a low-prestige policy field in most political parties and their parliamentary groups. It offers few opportunities for sound bites, unless there is a difference of opinion in the Netherlands. The hot issues of the day almost always prevail over the long-term national interest. Ministers would also have tremendous difficulty explaining why they passed up an opportunity to host a European agency in return for a vague opportunity to influence the reform of the CAP in the long run, to give a fictional example. Those who want influence in Brussels follow the advice of American president Teddy Roosevelt: "speak softly and carry a big stick".

The Byzantine process of exercising influence in Brussels is difficult to reconcile with the Dutch model, famously expounded by Johan Rudolf Thorbecke, in which the government governs and parliament merely scrutinises, waiting to exercise oversight until approached by the government.

Parliament must now take a pro-active approach, setting priorities (less is more) and concentrating on the background to and progress of decision-making procedures in Brussels, where they can exert the most influence at early stages. The Dutch parliament should stake its claims on an issue and agree on a strategy with the government before it becomes a hot topic. The rapporteur is aware that this is a lot to ask of himself and his colleagues, but we do not have to be perfect, as long as we exercise an appropriate level of oversight and influence.

IV. Ways of strengthening parliamentary influence

First of all, it is crucial not to look for new institutional solutions at national level. That is a long road with no guarantee of success.

Secondly, parliament should exercise more influence by working together with kindred spirits in the European Parliament. This partisan approach circumvents the problem of national political rivalries, which are clearly a factor in The Hague. Participation by MEPs in national parliamentary debates would be odd and ineffective, whether those debates are plenary (e.g. the debate on the government's annual State of the European Union report on its EU-related plans and activities, or debates on European Councils) or take place in committee (e.g. debates with members of government on European Councils, General Affairs Councils, and meetings of specialist Councils). It would be odd because of the implications for constitutional law (if MEPs can speak in the national parliament, why can't national MPs speak in the European Parliament, or in provincial councils?). It would be ineffective in practice because even if MEPs could have their say, they would not be allowed to participate fully in the debate or to take part in voting, so from a publicity angle, participation by MEPs would only be of interest if they disagreed with national spokespersons of the same political stripe. Although the rapporteur has no wish to tread on the toes of the parliamentary parties, he would point out that they could coordinate parliamentary oversight and influence more effectively by setting up a permanent official liaison with their EP political group. It is also a good idea for MEPs to attend meetings of national parliamentary parties, but this is only effective if a familiar face is physically present on a day-to-day basis at the meeting. MEPs could also attend meetings of parliamentary party committees where EU-related topics are on the agenda. Furthermore, meetings of the political groups in the European Parliament should be attended not just by national spokespersons on European affairs, but spokespersons on any policy area in which the EU looms large. Not only the national parliamentary party's European affairs coordinator (who is not the same as the spokesperson) but also staff specialists could benefit from having a liaison for their EP political group in the same building for regular consultation. The rapporteur is well aware that various parliamentary parties are hard at work in this area, but felt it was important to re-emphasise the importance of this partisan approach.

Thirdly, there are a number of possible ways to strengthen parliamentary influence and *ex ante* oversight of EU decision-making by expanding the staff of the General Committee on European Affairs of the House of Representatives. For example, the two houses of the Dutch parliament could set up a joint Expertise Centre for European Affairs (ECE). This would require the following integrated package of measures.

- 1) Separating the everyday activities of the General Committee on European Affairs (preparation for meetings with members of government, organisation of missions) from substantive long-term monitoring of policymaking in Brussels, which could be delegated to the ECE. It would be worth investigating whether the ECE could be set up as a joint project of the two houses of parliament. In that case, it could perhaps incorporate the substantive work done by the Senate's European Affairs Office (EBEK).

Under this arrangement, the General Committee on European Affairs (EuZa) of the House of Representatives and the Senate's European Cooperation Committee (ESO) would bear political responsibility for the recommendations issued by the ECE. The way that EuZa now handles fiches could serve as a model for the ECE, which would report to the two European affairs committees rather than individual members. Each of the two committees would bear political responsibility for guiding the rest of the process within its own house of parliament.

There are a number of possible ways to anchor the ECE firmly in the organisational structure of the two houses: (a) the entire staff could fall under the Registrar of one of the two houses; (b) the staff could be divided up between the two Registrars according to a fixed formula, with the director of the ECE in charge of day-to-day management and accountable to both Registrars for the Expertise Centre's activities; (c) the ECE could be organisationally independent of both houses of parliament (cf. the Registrar for Interparliamentary Relations or the Stenographic Service).

With regard to the location, keeping the entire ECE in one place would be advisable. Multiple locations would inevitably lead to fragmentation and parochialism. Since activities of the House of Representatives are more ongoing than those of the Senate, which meets only one day a week, and since the specialist committees in the lower house have larger staffs, a location in the House, near the offices of the General Committee on European Affairs, would be ideal.

- 2) The ECE should become a central point for EU documentation. Modern communication technologies like the Internet offer access to vast quantities of information. This information will have to be processed with the Dutch parliament's priorities in mind.
- 3) The two European affairs committees in the House and the Senate should set clear priorities, working from a four-year plan drawn up after the elections for the House of Representatives and updated each year. This plan should indicate which areas relate directly to the national interest and should be monitored on a long-term basis, e.g. biotechnology, food safety and JHA issues. The two committees could then indicate a division of labour (possibly informal) between the two houses of parliament.
- 4) Forging cooperative links, both ad hoc and structural, between staff at the ECE and policy specialists on the staff of the specialist committees (for agriculture, economic affairs, justice, transport etc.).
- 5) Regular consultation, of an apolitical, technical character, between the ECE staff, policy experts on specialist committees, officials at the foreign ministry, the specialist ministries and the representations of the European Commission and the European Parliament in The Hague. The staff of the parliamentary parties in the House of Representatives and the groups of Dutch MEPs could also be involved. This consultation should have an informal, issue-specific character.
- 6) Posting of an ECE staff member as a liaison to the European Parliament in Brussels. The EP would cover the overheads: office space and furnishings. The salary of the liaison and support staff, as well as office expenses, would be covered by the Dutch parliament. The liaison would have access to the secretariats of the EP's committees and to EP staff. He would also be welcome in the EP political groups and could consult with the representatives of the British, Finnish, Danish and French parliaments, as well as the Belgian parliament, with its bicameral Committee on European Affairs. In addition, he could maintain lines of communication with the other EU institutions in Brussels. This would certainly include the Dutch Permanent Representative, the European Commissioner from the Netherlands and his *cabinet* and lobbying organisations for Dutch municipalities and provinces, but also the representatives of European employers and labour etc. The parliamentary representatives from the United Kingdom (the House of Commons, also serving the House of Lords) and Finland are located

in the EP. The representative of the Danish parliament is based at the headquarters of the Danish Permanent Representative. The French Senate representative also works from the offices of the French Permanent Representative. Belgium's parliament (comprising the Senate and the Chamber of Representatives, which have a joint committee on European affairs) is in Brussels.

The parliaments that have a representative in Brussels are pleased with the results. The advantage is that Brussels insiders hear a great deal of news that others do not, learn to read between the lines and can provide office space for colleagues visiting Brussels to check or supplement desk research. To function properly, a liaison office in Brussels needs strong ties to "home", seniority and flexibility. Most parliaments that are not yet represented in Brussels are seriously considering setting up shop there. It should be noted, however, that most foreign ministries and their Permanent Representatives are sceptical about the notion of a parliamentary representative or EU liaison. They see them as isolated outposts in Brussels, cut off from their national roots. Companies with liaisons at national parliaments or in Brussels express similar misgivings. Still, in both cases, an outpost with strong ties to the parent organisation can offer enormous added value. The representative, however, must divide his attention evenly between home and Brussels.

The Dutch EU liaison could meet regularly with the other parliamentary representatives in Brussels, in an analogue of Coreper, the assembly of Permanent Representatives of the national governments. The parliamentary Coreper could become a driving force behind professional cooperation between the members of the far-flung national parliaments and the EP.

The ECE would be a supplier of information and advice. The committees of the two houses of parliament would be the users of its products and services. The ECE and its outpost in Brussels should concentrate on the procedures leading up to the decisions that matter to the Netherlands, in other words, on the policy ideas that have not yet made it into policy documents.

The Expertise Centre should be headed by a Director and staffed by one expert on each relevant policy area (e.g. the internal market, the CAP, the CFSP or JHA), one representative in Brussels and support personnel. This adds up to a total of about 10 FTEs. The costs of the representation in Brussels would be about €250,000 annually (the representative's salary, a secretary and the costs of travel and accommodation).

Fourthly, an investigation should be carried out of how parliament could take part in European conferences and consult with the European institutions more effectively. The EP regularly holds thematic conferences and hearings, to which national parliaments are invited. The European Commission consults regularly with representatives of member states, and national MPs may participate. The Dutch parliament is often a no-show, or else individual members make *ad hoc* decisions about whether or not to attend. One step forward in this regard would be to eliminate the rule that trips to Belgium (and thus to Brussels) are considered domestic trips for the purpose of reimbursing expenses. Belgium has been a foreign country since 1839. It is high time the Dutch parliament revised its working procedures accordingly.

Fifthly, it might be worthwhile to evaluate the performance of the COSAC, the regular conference of European Affairs Committees of the national parliaments.

Sixthly, the General Committee on European Affairs of the House of Representatives and the Senate's European Cooperation Committee, in cooperation with the specialist committees, could hold regular hearings on EU policy dossiers, inviting the Dutch European Commissioner, the Permanent Representative to the EU, MEPs, interest groups, experts etc. An annual schedule of hearings could be developed that would be compatible with the priorities of both houses of parliament.

V. Conclusions and recommendations

Both the Senate and the House of Representatives acknowledge the importance of gaining more influence over decision-making in the EU. This is evidenced by the professional way in which files are handled at the House of Representatives, by the establishment of the European Affairs Office by the Senate and by this rapporteur's assignment. Furthermore, all potential users of the Expertise Centre that were interviewed, i.e. all the committees of the two houses of parliament that are coordinated by the general European Affairs committees, felt a need to stay better informed about EU decision-making in specific areas. They acknowledged that a structural solution to this problem was required, and that this would inevitably bring changes in the working procedures of the committees and of the two houses of parliament. Those who produce or shape European policy expressed their willingness to work with the States General and make their knowledge and experience available. This includes officials at the European Commission, the European Parliament, the Council Secretariat, the Dutch foreign ministry and the Netherlands' Permanent Representation in Brussels, as well as lobbyists and interest groups.

The beginning of the new parliamentary term (2002-2006) is a suitable time to revise parliament's working procedures in line with these proposals and to create a clearer support structure. This could be closely linked to ongoing processes in both houses. Efficiency dictates that we pool our experience, manpower and funds. The parliaments of the United Kingdom and Belgium have already paved the way. A representative of the States General in Brussels would be a good idea, as long as he remains firmly tied to a well-oiled organisation in the Netherlands and as long as he understands what his priorities should be.

Given the options available at the European Parliament and the important division between the executive and legislative powers, the representative should be based at the European Parliament. The rapporteur recommends setting up a joint Expertise Centre for European Affairs serving both houses of parliament and backing up the parliamentary liaison in Brussels. Given the importance of the Dutch interests at stake in EU decision-making, it would be a mistake not to make this small but crucial investment.

The rapporteur sees the 2002-2006 parliamentary term as the trial period needed in order to judge the added value of these proposals for the Dutch parliament. It is important to recall that the Dutch Presidency of the EU will fall in the middle of this period, in 2004, so that this trial period will cover both the run-up to and the ratification of the new EU Treaty. A shorter period would be inadequate. Before the general election in 2006, a thorough evaluation of the results should be carried out. That evaluation should serve as the basis for the final decision as to whether and how the Expertise Centre for European Affairs of the States General should continue to operate in the form currently envisaged, including the liaison office in Brussels.

The rapporteur recommends that the staff of the General Committee for European Affairs of the House of Representatives and the Senate's European Affairs Office draw up a concrete plan of action based on this report and under the joint responsibility of the two committees. After the general election of 15 May 2002, the new House of Representatives should debate this plan.

If after 15 May 2002, the two houses of parliament cannot agree to set up the ECE, the rapporteur would advise the House of Representatives to set up its own Expertise Centre with a representative in Brussels, along the lines laid out in this report. In that case, close cooperation between the ECE at the House of Representatives and the EBEK at the Senate should be promoted. However, the rapporteur

assumes that the two houses will be able to agree to a joint ECE. He has observed that the will to do so is present among both the members of the two houses and their officials.

It is now the task of the General Committee on European Affairs to form an opinion on the present report and, if it so chooses, to present a revised version to the Presidium of the House of Representatives.

Appendices:

1. List of interviewees
2. List of parliaments surveyed

Interviewees

1. Mr C.L. Baljé – Secretary General, Dutch House of Representatives
2. Mr H. Beereboom – Director, Representation of the European Commission in the Netherlands
3. Mr P.J. Biesheuvel – MP, Christian Democrats (CDA), and Chairman of the Permanent Committee on Economic Affairs, Dutch House of Representatives
4. Mr F. Bolkestein – European Commissioner, Internal Market
5. Dr B.R. Bot – Permanent Representative to the European Union
6. Mr T.J.A.M. de Bruijn – Director-General for European Cooperation, Dutch Ministry of Foreign Affairs
7. Ms W.A.J.M. van Dooren – European Affairs Office, Dutch Senate
8. Dr W.F. van Eekelen – Member of the Dutch Senate for the Liberal Party (VVD), and Alternate Representative of the States General to the European Convention
9. Ms D.J.S.E. Fawcett-Hoogendam – Ministry of Economic Affairs
10. Mr E.C.M Jurgens - Member Labour Party (PvdA) Dutch House of Representatives
11. Ms S. Kaukaoja – Permanent Representative of the Finnish Parliament to the EU
12. Ms L.W.S.A.L.B. van der Laan – Dutch Member of the European Parliament for the Liberal Democrats (D' 66)
13. Ms C.A.M.E. Mattijssen – Clerk, General Committee on European Affairs, Dutch House of Representatives
14. F.H. Mittendorf – Ministry of Economic Affairs Dutch House of Representatives
15. Mr G.J.W. van Oven – MP, Labour Party (PvdA), and Chairman of the Permanent Committee on Agriculture, Nature Management and Fisheries, Dutch House of Representatives
16. Mr H.S. Post – *Chef de cabinet*, European Commissioner Frits Bolkestein
17. Mr J.G. Priestley – Secretary General, European Parliament
18. W. Procter – Permanent Representative of the United Kingdom to the EU
19. Mr F. Timmermans – MP, Labour Party (PvdA), Dutch House of Representatives
20. Mr P.K ter Veer - MP, Liberal Democrats (D'66)
21. Mr J.E. Verlaan – Deputy Director, office of the European Parliament in the Netherlands
22. Mr J.W.G. Wiebenga – former Vice-President of the European Parliament

Parliaments surveyed

1. Belgium
 2. Denmark
 3. Finland
 4. France
 5. Ireland
 6. Italy
 7. Spain
 8. United Kingdom
 9. Sweden
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