



WRR

SCIENTIFIC COUNCIL FOR GOVERNMENT POLICY

# *Rediscovering Europe in the Netherlands*

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# Rediscovering Europe in the Netherlands

The Netherlands Scientific Council for Government Policy (WRR) was established on a provisional basis in 1972. It was given a formal legal basis under the Act of Establishment of June 30, 1976. The present term of office runs up to December 31 2007.

According to the Act of Establishment, it is the Council's task to supply, in behalf of government policy, scientifically sound information on developments which may affect society in the long term, and to draw timely attention to likely anomalies and obstacles, to define major policy problems and to indicate policy alternatives.

The Council draws up its own programme of work, after consultation with the Prime Minister, who also takes cognisance of the cabinet's view on the proposed programme.

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# WRR

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## *Rediscovering Europe in the Netherlands*

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## SUMMARY

According to many observers, the rejection of the European Constitutional Treaty by the Dutch electorate in the referendum in June 2005 was an expression of a deeper discontent among the Dutch with European integration and of a wide gap between Dutch citizens and the EU policy pursued by the political and bureaucratic elites. In light of the referendum outcome, the government requested that the WRR advise on ways to strengthen the political and social embedding of EU policy in the Netherlands. To this end, the WRR addressed the following two questions in this report:

1. *Is there a problem of dwindling legitimacy of EU policy in the Netherlands?*
2. *If so, how can the political and social legitimisation processes for EU policy in the Netherlands be improved?*

The WRR has first and foremost sought to diagnose the problems associated with EU policy in the Netherlands, and has explored the question of whether an even more serious issue regarding the legitimacy or acceptability of EU policy may emerge in the longer term. This analysis was based on four sources or dimensions of legitimacy which the WRR identified on the basis of both theoretical and empirical exploratory studies. The four sources are the *output (results)* of EU policy, *input (representation)*, *accountability* and *identification*. The *output* dimension is concerned with whether EU policy objectives in the Netherlands are clear, acceptable and indeed sufficiently realised. Whether the Dutch public's desires and views are reflected in the decision-making process is relevant for *input* legitimacy, whereas *accountability* concerns the availability of sufficient information, debate and sanctions on those responsible for policy. And lastly, the *identification* dimension focuses on the connection of Dutch citizens to the European political system of which they are part.

These four sources of legitimacy were also used to develop and evaluate solutions. Indeed, these four dimensions of legitimacy both individually and in their mutual interrelationship may contribute to the improvement of the legitimisation of EU policy in the Netherlands.

The WRR, in line with the government's request, focussed on how *domestic actors* can help connect Dutch citizens with EU policy. These links were not only sought out among political actors and officials (such as the government, Parliament, the political parties and various political and administrative elites), but also among actors operating in civil society and the news media.

European integration has long been the preserve of experts from the political, administrative and functional elites in Brussels and in the member states. They tend to focus more on the ‘technocratic’ than ‘political’ aspects. Important results have been achieved, in areas such as the internal market, the guarantees of permanent macroeconomic stability within this large internal market and the benefits of more than fifty years of internal peace and stability. These achievements, combined with the fairly limited direct impact of European integration on the day-to-day lives of European citizens, at best produced a ‘permissive consensus’ but more generally, led to indifference among the citizenry. The elites did not have to burden themselves with the legitimisation of European policy via the European and national political processes of representation and accountability.

However, since the early 1990s, this method of legitimisation has come under increasing pressure. Rapid internationalisation, the processes involved in the continual broadening, deepening and enlargement of the EU, as well as the emergence of constitutional debates have all contributed to an increased politicisation of European issues. Not only has joint EU decision making become more controversial as a result, but it has also begun attracting the attention of more – and often more assertive – citizens and social groups with a variety of views and opinions. These citizens are concerned with issues such as the future of the welfare state, employment, the implications of the introduction of the euro, the democratic deficit and national identity in a rapidly changing Europe. These are all issues which are increasingly difficult to translate into the traditional, predominantly technocratic European repertoire of policymakers.

The shortcomings of the traditional method of legitimisation via policy results (output) have been particularly sharply felt in the Netherlands. Firstly, these shortcomings were revealed relatively late in the Netherlands – certainly compared to some other EU member states, which had already held referenda and conducted major debates on the issue of Europe – and have had a greater impact as a result. This has only been exacerbated by the after-effects of the ‘Fortuyn revolt’ (named after the populist and later murdered politician Pim Fortuyn). Secondly, politicians and policymakers in the Netherlands are – often more than in other countries – ‘trapped’ in technocratic mechanisms of embedding and co-ordination, as a result of which the news media are often not encouraged to participate. Ideological and constitutional debates on the nature and direction of European cooperation or on political differences of opinion on specific policy issues are virtually absent in the Netherlands. As a result, the internal and official co-ordination of European policy receives more attention than the processes of trying to reach and involve citizens in politically defined policy choices.

In this vacuum there is neither a need nor an incentive for politicians and policymakers to actively contribute to the political legitimisation of EU policy. Quite the reverse, in fact: if anything, a system of 'perverse incentives' is at work, whereby politicians are readily tempted to claim European political successes as purely their own achievements, while blaming 'Brussels' for any and all political ills. Thirdly, Dutch politicians and policymakers have to date seen the legitimisation of EU policy first and foremost as a *European* task. A strong European Commission, a full-fledged role for the European Parliament and transparent decision making within the Council of Ministers are key elements in this vision. Whilst the WRR certainly does not wish to detract from the importance of these elements it would nonetheless argue that the resulting one-sided focus on the European level implies that the role that *national* actors play in the legitimisation of the EU policy is all too often ignored.

This neglect of the national level goes a long way toward explaining the Dutch 'No' vote in the referendum. For Dutch citizens, European policy results have remained largely invisible; they felt inadequately represented and had major doubts about the way in which 'Europe' accounts for its policy choices. Although for many years there has been diffuse support for European cooperation, this had not led to a genuine identification with the European Union. Rather, whenever 'Europe' wished to pursue a particular policy, it was in fact mainly the European Union itself which became the topic of discussion. Major issues such as the enlargement of the EU and the introduction of the euro only added to the existing discontent.

All in all, a pressing need has arisen to ensure legitimisation via supplementary processes of representation (input), accountability and identification. However, new ways of strengthening the legitimacy of EU policy output must be found. EU policy has become so diverse that it can no longer be summarised under a single theme or project which is moreover fairly uncontroversial (in the way that peace/security and the internal market were Archimedean points in the past). At the same time, citizens are aware of important and complex social problems, but they question the ability of the EU to resolve them.

It is essential that national politicians and policymakers actively contribute to the legitimacy of EU policy. They must take the lead in identifying important European issues and themes and they must then make *choices* regarding the tangible and achievable goals. Moreover, they must promote those choices much more explicitly and account for them in Parliament, within the political parties, civil society organisations and the news media. Only under these conditions, will Dutch citizens be more prepared in the

future to accept the legitimacy of new European policies. At least for the time being, this is also the only way of to establish a basis whereby Dutch citizens can more readily identify with the EU.

Thus the legitimising role of national politicians and policymakers needs to be strengthened considerably. This report contains proposals for the development of parameters to help achieve this. These proposals are firstly aimed at making the legitimisation of EU policy a regular and integral part of the activities of the various actors. Secondly, the proposals are intended to go beyond the black-and-white oppositions which tend to dominate the public debate ('more' versus 'less' Europe; 'Dutch' interests versus 'European' interests), as the legitimisation of EU policy often demands political choices of a different kind.

The first requirement to this end within the domain of politics and administration is that government involvement at the European level be much less driven by the internal 'logic' of policy domains and trails in the wake of European developments to a lesser extent than at present. The key is to strongly prioritise European themes and at the same time create a more robust and more anticipatory political control system. The government must be able to identify the European issues that are crucial for the Dutch political arena at an early stage, to then weigh those issues and finally, adopt a position on them. This requires a clear allocation of political responsibilities. The influence of the Prime Minister is an important element in this process. The legitimising role that political parties and the Dutch Parliament play should also be strengthened. Political prioritisation is also important for these actors, as well. In order to strengthen the role of Parliament, the WRR recommends that parliamentary activities relating to high priority EU policy proposals be linked to parliamentary scrutiny akin to the British model.

In addition, new types of safeguards could make a valuable contribution to the legitimisation of EU policy. In this connection, the WRR recommends the inclusion of two safeguards in the Dutch Constitution: a clear but *general* formulation of the values and key objectives which the Netherlands seeks to achieve through its EU membership, and an explicit formulation of the key elements of national identity that the Netherlands will seek to promote and protect within the EU. Incorporating such safeguards in the Constitution first requires a fundamental political debate about the desired nature and direction of the EU and the Netherlands' role within the EU. As a corollary to this, the WRR also recommends that these safeguards be subjected to constitutional review in order to offer an additional safeguard to citizens. This also offers a supplementary accountability mechanism.

The most powerful instrument for legitimising EU policy within the public domain remains the referendum. However, referenda also have major disadvantages, which can be ameliorated to some extent through a process of familiarisation among politicians and the public alike. But these will, for the most part, have to be dealt with more effectively through strict frameworks and parameters. A referendum cast in the form of a *preferendum* (in which several substantial policy alternatives are put to voters simultaneously) held at an appropriately early stage in the decision-making process offers the best perspectives.

It is not realistic to expect civil society organisations and the news media to instantly heed the call to contribute to the legitimisation of EU policy. Thus, in the view of the WRR, politicians and administrators need to fulfil a crucial role in mobilising these actors. It is only after politicians and policymakers assume this role that the news media and civil society can be adequately mobilised. And only then can a virtuous circle be set in motion that will encourage both the media and civil society organisations to begin functioning more effectively as legitimising links between policymakers and citizens. EU policy will, in the process, become more firmly embedded in Dutch society. This means that politicians and policymakers will have to take into account the objectives and working methods of the news media and civil society more effectively than they have until now.

Above all, future-proofing Dutch EU policy requires that the Netherlands prepare itself to assume the substantial challenges that Europe will face. The proposals from this report offer a portfolio of instruments from which politicians and policymakers may choose. Some of these can be realised in a relatively short period of time, while other proposals, such as the introduction of *preferenda* and the creation of constitutional safeguards, are more radical in nature and will require extensive political consideration and debate, partly in light of possible reforms at the EU level. Regardless of the combination that is chosen and the (supplementary) sources of legitimacy that are addressed, it must be acknowledged that there are no simple remedies or quick fixes. The dynamic of European integration and the various social and political changes encountered in the Netherlands demand assiduous attention to the various European and national processes of democratic and constitutional legitimisation.

## ZUSAMMENFASSUNG

Dass die niederländische Bevölkerung den Entwurf der Europäischen Verfassung im Juni 2005 per Referendum abgelehnt hat, war nach Meinung vieler Beobachter Ausdruck sowohl eines tiefen Unbehagens über den Verlauf der europäischen Integration als auch einer offenbar vorhandenen breiten Kluft zwischen den Auffassungen der Bürger einerseits und der EU-Politik der politischen und technokratischen Eliten andererseits. Anlässlich der Ergebnisse dieses Referendums hat die Regierung ihren Wissenschaftlichen Beirat (WRR, Wetenschappelijke Raad voor het Regeringsbeleid) um Empfehlungen zur Verbesserung der politischen und gesellschaftlichen Verankerung der EU-Politik in den Niederlanden gebeten. Der Beirat hat in seinem daraufhin erstellten Bericht zwei Fragen untersucht:

1. *Handelt es sich um einen Legitimitätsverlust der EU-Politik in den Niederlanden?*
2. *Sollte dem so sein, wie kann dann die politische und gesellschaftliche Legitimierung der EU-Politik in den Niederlanden verbessert werden?*

Der Beirat hat zunächst analysiert, mit welchen Schwierigkeiten die EU-Politik in den Niederlanden zu kämpfen hat, und geprüft, ob es Hinweise auf (untergründige) längerfristige Probleme der Legitimierung bzw. Akzeptanz der EU-Politik gibt. Die Analyse erfolgte anhand von vier vom Beirat aufgrund theoretischer und empirischer Überlegungen unterschiedener Legitimitätsquellen. Die vier Quellen sind: europapolitische Ergebnisse, Vertretung, Rechenschaftslegung und Identifikation. Bei den *Ergebnissen* geht es um die Frage, ob in den Niederlanden die Ziele der EU-Politik verstanden und vor allem in befriedigendem Umfang verwirklicht werden. Bei der *Vertretung* steht die adäquate Berücksichtigung der Wünsche der niederländischen Bürger in den Entscheidungsfindungsprozessen im Vordergrund. In puncto *Rechenschaftslegung* geht es darum, ob es genügend Informationen, Debatten und Gelegenheiten gibt, die den Bürgern ermöglichen, das Handeln der Verantwortungsträger im Nachhinein sachgemäß zu beurteilen. Die *Identifikation* schließlich betrifft die Frage, inwieweit sich die niederländischen Bürger mit dem europäischen politischen System, dem sie angehören, verbunden fühlen.

Diese vier Legitimitätsquellen liegen auch den im Bericht entwickelten Lösungsvorschlägen zugrunde. Sowohl für sich als gemeinsam können die vier Quellen zu einer besseren Legitimierung der EU-Politik in den Niederlanden beitragen. Entsprechend der Anfrage der Regierung hat der WRR

auch die Frage behandelt, wie innerstaatliche Akteure den niederländischen Bürgern die EU-Politik näherbringen können. Gemeint sind damit staatliche und politische Verantwortungsträger (Regierung, Parlament, politische Parteien und Politiker- und Beamtenelite) sowie gesellschaftliche Organisationen und Nachrichtenmedien.

Aus der Analyse des WRR geht hervor, dass die europäische Integration lange Zeit Expertensache der politischen, administrativen und funktionellen Eliten in Brüssel und in den Mitgliedstaaten war. Die Eliten handelten eher nach „technokratischen“ als „politischen“ Prinzipien. Damit konnten wichtige Ergebnisse verbucht werden: Der Binnenmarkt wurde verwirklicht, Garantien für eine dauerhafte makroökonomische Stabilität auf diesem großen Binnenmarkt wurden geschaffen und Erträge wie mehr als fünfzig Jahre Frieden und Stabilität in der EU wurden erzielt. Dank dieser Leistungen und wegen der eher bescheidenen Auswirkungen der Integration auf den Alltag waren die meisten europäischen Bürger stillschweigend mit der Union einverstanden oder standen ihr zumindest gleichgültig gegenüber. Das bedeutete, dass sich die Eliten nicht sonderlich um eine Legitimierung der europäischen Politik über europäische und nationale Verfahren der politischen Vertretung und Rechenschaftslegung zu kümmern brauchten.

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Seit Beginn der neunziger Jahre wurde diese Form der Legitimierung jedoch nicht länger als ausreichend empfunden. Die schnelle Internationalisierung, die ständige Verbreiterung, Vertiefung und Erweiterung der EU und das Aufkommen konstitutioneller Debatten haben zu einer zunehmenden Politisierung europäischer Fragen geführt. Dadurch ist die EU-Beschlussfassung umstrittener geworden und Gegenstand der Kritik von immer mehr mündigen Bürgern und gesellschaftlichen Gruppierungen mit unterschiedlichen Standpunkten und Überzeugungen. Die Menschen sorgen sich u.a. um die Zukunft des Versorgungsstaates, die Beschäftigungsentwicklung, die Folgen der Euroeinführung, die demokratischen Defizite und die nationale Identität in einem sich schnell wandelnden Europa. Diese Fragen lassen sich immer weniger mit der üblichen technokratischen Europarhetorik der Politiker beantworten.

Die traditionelle Legitimierung der EU-Politik unter Verweis auf die europapolitischen Ergebnisse, wird vor allem in den Niederlanden als defizitär und sehr enttäuschend empfunden. Erstens wurden diese Defizite hier – jedenfalls im Vergleich zu anderen EU-Staaten, in denen es schon früher Volksentscheide und große Debatten über die Europapolitik gab – relativ spät, aber desto deutlicher wahrgenommen (insbesondere im Nachhall der Fortuyn-Revolution). Zweitens sind in den Niederlanden Staat, Politik und



Gesellschaft – oft stärker als in anderen Ländern – „Gefangene“ technokratischer und für Nachrichtenmedien uninteressanter Einbettungs- und Konsensmechanismen. Zu ideologischen oder verfassungsrechtlichen Debatten über Form und Richtung der europäischen Zusammenarbeit oder zu politisch-inhaltlichen Diskussionen kontroverser Themen kommt es fast nie. Dadurch steht in den Niederlanden die interne und administrative Koordinierung der europäischen Politik stärker im Mittelpunkt als das Informieren und Einbeziehen der Bürger bei politischen Weichenstellungen. In diesem Vakuum gibt es für Politik und Staat weder eine Notwendigkeit noch Anreize, einen aktiven Beitrag zur politischen Legitimierung der EU-Politik zu leisten. Es kann sogar von gegenteiligen Anreizen gesprochen werden, denn die Politiker sind allzu schnell geneigt, europäische politische Erfolge als persönliche Verdienste hinzustellen und politische Probleme „Brüssel“ in die Schuhe zu schieben. Drittens haben niederländische Politiker und Entscheidungsträger die Legitimierung der EU-Politik bisher vorrangig als eine *europäische* Aufgabe betrachtet. Wichtige Elemente dieser Strategie waren die Befürwortung einer starken Europäischen Kommission, eines vollwertigen Europäischen Parlaments und einer transparenten Beschlussfassung im Ministerrat. Die Bedeutung dieser Elemente ist für den Beirat unumstritten. Die daraus resultierende einseitige Orientierung auf die europäische Ebene führt jedoch dazu, dass bei der Legitimierung der EU-Politik die Rolle der *nationalen* Akteure vernachlässigt wird.

Mit dieser Vernachlässigung lässt sich zu einem Großteil das niederländische „Nein“ erklären. Die niederländischen Bürger konnten die der europäischen Politik zu verdankenden Ergebnisse nicht erkennen. Sie fühlten sich unzureichend vertreten und vertrauten den Rechtfertigungen politischer Entscheidungen durch die EU nicht. Zwar fand die europäische Zusammenarbeit jahrelang in diffuser Form Unterstützung, aber ohne dass es zu einer wirklichen Identifikation mit der Europäischen Union gekommen wäre. Wenn „Europa“ eine bestimmte Politik umsetzen wollte, schien es manchmal, als würde gleich die ganze EU zur Disposition gestellt. Im Blickpunkt der Öffentlichkeit stehende Fragen wie die Erweiterung der EU und die Einführung des Euro trugen zu dem genannten Unbehagen bei.

Insgesamt entstand ein wachsendes Bedürfnis nach Legitimierung über flankierende Verfahren der Vertretung, Rechenschaftslegung und Identifikation. Es muss jedoch auch in neuer Weise an der Legitimation der europapolitischen Ergebnisse gearbeitet werden. Schließlich ist die EU-Politik heute so vielfältig, dass sie sich nicht mehr auf wenige, kaum umstrittene Themen und Projekte reduzieren lässt wie in der Vergangenheit auf Frieden/Sicherheit und den gemeinsamen Markt. Für die Bürger stehen gegen-

wärtig wichtige und komplexe gesellschaftliche Probleme an, deren Lösung sie der EU nicht zutrauen.

Der WRR stellt fest, dass für die künftige Legitimierung der EU-Politik der aktive Beitrag der nationalen Verantwortungsträger entscheidend ist. Sie müssen bei der Bestandsaufnahme wichtiger europäischer Fragen und Themen eine Vorreiterrolle übernehmen und *entscheiden*, welche konkreten Ziele sie verfolgen wollen. Außerdem müssen sie für diese Entscheidungen öffentlich werben und darüber vor dem Parlament, den politischen Parteien, den gesellschaftlichen Organisationen und den Medien Rechenschaft ablegen. Nur dann werden die niederländischen Bürger in Zukunft neue europäische Politikfelder als legitim akzeptieren. Allein auf dieser Grundlage kann (vorläufig) eine Identifikation der niederländischen Bürger mit der EU hergestellt werden.

Die Legitimierung der EU-Politik durch die nationalen politischen und staatlichen Verantwortungsträger muss folglich wesentlich verbessert werden. Der vorliegende Bericht enthält Vorschläge zur Schaffung entsprechender Voraussetzungen. Zwei Punkten gebührt dabei besondere Aufmerksamkeit. Zum einen zielen die Vorschläge darauf ab, die Legitimierung der EU-Politik zu einem normalen und integrierten Bestandteil des Handelns der verschiedenen Akteure zu machen. Zum anderen müssen in den öffentlichen Debatten die Schwarz-Weiß-Gegensätze („mehr“ oder „weniger“ Europa, „niederländische“ kontra „europäische“ Interessen) überwunden werden, da die Legitimierung der EU-Politik oft andere Entscheidungen erforderlich macht.

Auf politischer und staatlicher Ebene wäre in erster Linie zu wünschen, dass sich die Regierungspolitik weniger von der internen „Logik“ der Themen leiten lässt und weniger den europäischen Entwicklungen hinterherläuft. Gerade bei europäischen Themen geht es um klare Prioritäten und um eine energischere und vorausschauende politische Regie. Von der Regierung wird erwartet, dass sie die für die niederländische Politik entscheidenden europäischen Fragen rechtzeitig erkennt, bewertet und dazu Stellung bezieht. Dafür ist eine klare Aufteilung der politischen Verantwortlichkeiten notwendig. Dabei ist die „Richtlinienkompetenz“ des Ministerpräsidenten ein wichtiges Element. Auch die legitimierende Rolle der politischen Parteien und des niederländischen Parlaments können gestärkt werden. Für diese Akteure ist ebenfalls eine Prioritätensetzung wichtig. Um das Gewicht des Parlaments zu erhöhen, empfiehlt es sich, die parlamentarische Arbeit an den als prioritär bezeichneten Vorschlägen zur EU-Politik mit einem Prüfungsvorbehalt nach britischem Vorbild zu verbinden.

Außerdem können neue Arten von Garantien einen wertvollen Beitrag zur Legitimierung der EU-Politik leisten. In diesem Zusammenhang spricht sich der WRR für die Aufnahme von zweierlei Garantien in die niederländische Verfassung aus: eine eindeutige, aber *allgemeine* Formulierung der Werte und inhaltlichen Hauptziele der Niederlande im Hinblick auf die EU-Mitgliedschaft und ein expliziter Auftrag, innerhalb der EU die Eigenheit und die dazugehörige Handlungsautonomie der Niederlande zu wahren. Die Aufnahme solcher Garantien in die Verfassung erfordert eine Grundsatzdebatte über die erwünschte Art und Entwicklungsrichtung der EU und über die Rolle der Niederlande dabei. Der WRR empfiehlt, solche Garantien einer verfassungsrechtlichen Prüfung zu unterziehen, um so den Bürgern zusätzliche Sicherheit zu bieten. Damit wird die Rechenschaftslegung erweitert.

Es gibt kein wirkungsvolleres Instrument, die Legitimierung der EU-Politik zu einer öffentlichen Angelegenheit zu machen, als einen Volksentscheid. Mit einem Referendum sind jedoch auch große Nachteile verbunden, die zwar in Politik und Öffentlichkeit zum Teil durch Gewöhnung gemildert werden können, die aber dennoch im Kern durch die Kopplung an strenge Bedingungen vermieden werden müssen. Die besten Perspektiven verspricht ein Volksentscheid in Form eines „*Präferendums*“, bei dem mehrere inhaltliche Alternativen vorgelegt werden und der in einer ausreichend frühen Phase des Entscheidungsfindungsprozesses stattfindet.

Es ist unrealistisch, von gesellschaftlichen Interessenverbänden und von Nachrichtenmedien einen selbständigen und unmittelbaren Beitrag zur Legitimierung der EU-Politik zu erwarten. Deshalb müssen diese Akteure nach Meinung des WRR von Staat und Politik aktiviert werden. Erst wenn die politischen Verantwortungsträger diese Rolle auf sich nehmen, werden Medien und Gesellschaft in Bewegung kommen. Nur dann kann die gewünschte Beschleunigung der Debatte erreicht werden, so dass sowohl Medien als auch gesellschaftliche Organisationen immer besser als legitimierende Bindeglieder zwischen Staat und Bürgern fungieren und eine festere Verankerung der EU-Politik in der niederländischen Gesellschaft befördern. Das heißt, dass sich die politischen und staatlichen Verantwortungsträger stärker als bisher auf die Ziele und Arbeitsweisen der Nachrichtenmedien und gesellschaftlichen Organisationen einstellen müssen.

Die Zukunftsbeständigkeit der niederländischen Europapolitik erfordert vor allem, dass die Niederlande auf inhaltliche Herausforderungen vorbereitet sein müssen. Die Vorschläge dieses Berichts bieten dafür eine Palette von Instrumenten an, auf die Politik und Staat zurückgreifen können. Manche Vorschläge lassen sich relativ kurzfristig umsetzen, andere – wie

die Einführung von „Präferenzen“ und die Aufnahme konstitutioneller Garantien – sind grundsätzlicherer Art und verlangen eine sorgfältige politische Abwägung und Debatte, auch im Lichte eventueller Reformen auf EU-Ebene. Welches Maßnahmenpaket auch gewählt wird und welche (weiteren) Legitimierungsressourcen auch erschlossen werden mögen, einfache Rezepte und schnelle Lösungen gibt es nicht. Die Dynamik der europäischen Integration und die gesellschaftlichen und politischen Veränderungen in den Niederlanden erfordern eine permanente Aufmerksamkeit für die europäischen und nationalen Verfahren der demokratischen und rechtsstaatlichen Legitimation.

## RÉSUMÉ

Le refus du Traité constitutionnel européen par le peuple néerlandais, lors du référendum de juin 2005, a été pour beaucoup l'expression d'un mécontentement profond au sujet de l'intégration européenne. De surcroît, il a révélé l'abîme qui sépare les citoyens néerlandais de la politique européenne des élites politiques et bureaucratiques. Le résultat du référendum a incité le gouvernement à demander conseil au WRR (Wetenschappelijke Raad voor het Regeringsbeleid / Conseil scientifique Néerlandais pour la politique gouvernementale) sur la façon d'enraciner la politique européenne plus profondément dans le domaine politique et social aux Pays-Bas. À cet effet, dans son rapport le Conseil a posé les questions suivantes :

1. *Est-il question d'un déclin de la légitimité de la politique européenne aux Pays-Bas?*
2. *Dans l'affirmative, est-il possible d'améliorer les processus de légitimation politique et sociale de la politique européenne dans ce pays?*

En premier lieu, le Conseil a analysé la nature des difficultés que rencontre la politique européenne aux Pays-Bas et il a cherché des signes de l'existence d'un problème (plus profond) de légitimité, ou d'acceptation, de cette politique à long terme. Cette analyse a été effectuée à l'aide de quatre sources de légitimité, que le Conseil a distinguées sur la base d'études tant théoriques qu'empiriques, à savoir : les résultats de la politique européenne, la représentation, la justification et l'identification. En ce qui concerne les *résultats*, il s'agit d'examiner si les objectifs de la politique européenne sont clairs aux Pays-Bas et surtout, s'ils sont suffisamment réalisés. Pour ce qui est de la *représentation*, la question principale qui se pose est de savoir si les priorités des citoyens néerlandais transparaissent de façon adéquate dans le processus décisionnel. En matière de *justification*, il faut se demander si les informations données, le débat et la marge de discussion disponible suffisent à se forger un jugement délibéré après-coup sur les actes des responsables politiques. L'*identification*, enfin, reflète la mesure dans laquelle les citoyens néerlandais se sentent concernés par le système politique européen dont ils font partie.

Ces quatre sources de légitimité ont également été utilisées pour la recherche de solutions. En effet, tant conjointement que séparément, elles contribuent aussi au renforcement de la légitimité de la politique européenne aux Pays-Bas. Conformément à la demande d'avis du gouvernement, le WRR a répondu dans le rapport à la question de savoir comment les acteurs *nationaux* pourraient rapprocher les citoyens

néerlandais de la politique européenne. Il s'agit d'acteurs issus de la politique et de l'administration (tels que le gouvernement, le parlement, les partis politiques et les élites administratives), ainsi que d'acteurs du domaine social et des médias.

L'analyse du WRR fait ressortir que l'intégration européenne a longtemps été la tâche des experts issus des élites politiques, administratives et fonctionnelles de Bruxelles, et des États membres d'orientation plus technocratique que politique. Des victoires importantes ont été enregistrées dans ce cadre, comme, dans le domaine du marché interne, les garanties de stabilité macro-économique durable au sein de ce grand marché et le fruit de plus de cinquante ans de paix et de stabilité internes. Grâce à ces performances et à l'influence directe plutôt restreinte de l'intégration sur la vie quotidienne des citoyens européens, ces derniers manifestaient une adhésion tacite, ou faisaient même preuve d'indifférence. De ce fait, les élites n'avaient pas à se soucier beaucoup de la légitimation de la politique européenne par l'intermédiaire des lignes politiques européennes et nationales de représentation et de justification.

Toutefois, dès le début des années quatre-vingt-dix, ce mode de légitimation a été soumis à une pression croissante. L'internationalisation rapide, les processus d'élargissement, d'approfondissement et d'extension constants de l'Union européenne et l'apparition de débats constitutionnels ont contribué à politiser davantage les problèmes européens. Non seulement le processus décisionnel commun de l'UE a soulevé plus de controverses, mais aussi il attire l'attention de davantage de citoyens et de groupements sociaux de plus en plus responsabilisés, qui ont des idées et des opinions divergentes. Ils se soucient, par exemple, de l'avenir de l'État-providence, de l'évolution de l'emploi, des conséquences de l'introduction de l'euro, du manque de démocratie et de l'identité nationale dans une Europe en mutation rapide. Or, toutes ces questions sont de moins en moins faciles à traduire dans le répertoire européen traditionnel et technocratique des politiciens.

Les défaillances du mode traditionnel de légitimation par le biais des résultats politiques se font durement sentir, surtout aux Pays-Bas. En premier lieu, parce qu'elles y ont été révélées plutôt tardivement – à fortiori en comparaison avec les États membres qui ont organisé antérieurement des référendums et de grands débats sur l'Europe –, mais, de ce fait, d'autant plus brutalement (et qui plus est, dans le sillage de la révolte Pim Fortuyn). En second lieu, aux Pays-Bas, souvent bien plus que dans d'autres pays, la politique, l'administration et le domaine social sont « prisonniers » de mécanismes technocratiques d'insertion et d'harmonisation, ce qui ne motive pas non plus les médias. Les débats idéologiques et constitutionnels sur la

nature et l'orientation de la coopération européenne ou les divergences d'opinions politiques sur des orientations spécifiques y sont pratiquement absents. Dès lors, la coordination interne et administrative de la politique européenne y occupe une plus grande place que le ralliement des citoyens et leur participation à des choix politiquement définis. Ce vacuum ne sollicite ni n'incite la politique et l'administration à contribuer activement à une légitimation de la politique européenne. Qui plus est, il est plutôt question de stimuli vicieuses, les politiciens se laissant facilement aller à s'approprier les succès politiques européens comme étant uniquement le fruit de leurs propres efforts, tandis qu'ils reprochent à « Bruxelles » les problèmes politiques. Troisièmement, les gouvernants et les décideurs politiques néerlandais ont considéré, jusqu'à ce jour, la légitimation de la politique européenne principalement et en premier lieu comme une tâche *euro-péenne*. Dans cette vision, une Commission européenne forte, l'attribution d'un rôle prépondérant au Parlement européen et la transparence du processus décisionnel au sein du Conseil des ministres sont des éléments de poids. Le WRR n'a aucunement l'intention d'en contester l'importance, mais le fait est que la fixation sur l'Europe qui en découle conduit à négliger le rôle des acteurs *nationaux* dans la légitimation de la politique européenne.

Cette négligence pourrait bien expliquer en grande partie le « Non » néerlandais. Pour les citoyens néerlandais, les résultats dus à la politique européenne n'étaient pas visibles, ils ne se sentaient pas suffisamment représentés et ils doutaient fortement de la façon dont l'Europe justifie ses orientations politiques. Et s'il était question, pendant des années, d'un soutien diffus à la coopération européenne, une véritable identification avec l'Union européenne n'a pas été entraînée. On aurait dit parfois que lorsque l'« Europe » voulait mener une certaine politique, c'était principalement l'Union européenne elle-même qui faisait l'objet du débat. Les dossiers les plus saillants, comme l'élargissement de l'UE et l'introduction de l'euro, ont contribué au mécontentement qui a déjà été mentionné.

Bref, un besoin accru de légitimation par le biais des processus complémentaires de représentation, de justification et d'identification se fait sentir. Mais il faut œuvrer également d'une autre façon à la légitimation des résultats politiques de l'Union. La politique européenne s'est tellement diversifiée qu'il est impossible de l'appréhender par un seul thème ou un seul projet, de surcroît peu controversé (comme l'étaient par le passé la paix et la sécurité, de même que le marché interne). Néanmoins, les citoyens voient bel et bien les problèmes sociaux pressants et complexes qui se posent et dont ils se demandent si l'UE sera capable de les résoudre.

Le WRR constate qu'une participation active des gouvernants et des décideurs politiques nationaux est essentielle pour la légitimité future de la politique européenne. Ce sont eux, en effet, qui devront prendre l'initiative d'identifier les problèmes et thèmes européens majeurs et qui devront opérer des *choix* dans les objectifs concrets qu'ils veulent poursuivre. En outre, ils devront faire connaître ces choix de façon plus explicite et en rendre compte au parlement, aux partis politiques, aux organisations sociales et aux médias. Ce n'est qu'ainsi que les citoyens néerlandais accepteront à l'avenir la nouvelle politique européenne comme légitime. C'est également la seule façon (pour le moment) de poser les bases de l'identification des citoyens néerlandais avec l'Union européenne.

Le rôle légitimateur des hommes politiques et des dirigeants nationaux doit donc être considérablement renforcé. Ce rapport contient des propositions pour créer des conditions préalables favorables à cet effet. Dans ce cadre, il faut retenir deux points importants : premièrement, les propositions visent à faire de la légitimation de la politique européenne un élément attiré et intégral des activités des divers acteurs. Deuxièmement, elles ont pour but de dépasser les polarisations traditionnelles du débat public (« plus » contre « moins » de pouvoir à l'Europe, ou bien encore intérêt « néerlandais » contre intérêt « européen »), parce que la légitimation de la politique européenne exige souvent d'autres choix.

Dans le domaine de la politique et de l'administration, il est souhaitable, en premier lieu, qu'au niveau européen, le cabinet ministériel se laisse moins conduire par la « logique » interne des dossiers politiques et qu'il soit moins à la traîne des développements qui se font jour en Europe. En effet, il s'agit justement d'établir des priorités plus marquées en ce qui concerne les thèmes européens, et d'une direction politique plus vigoureuse et plus à même d'anticiper. On attend du gouvernement qu'il sache distinguer à temps les problèmes européens cruciaux pour la politique néerlandaise, qu'il les étudie et qu'il prenne position à leur sujet. À cet effet, une distribution claire des responsabilités politiques, dont la suprématie du premier ministre est un élément important, est indispensable. Les partis politiques et le parlement néerlandais peuvent, eux aussi, voir renforcer leur rôle légitimateur. Pour ces acteurs également, l'octroi de priorités politiques est essentiel. Pour donner plus de poids au rôle du parlement, il serait recommandé de lier les activités parlementaires concernant les propositions désignées comme prioritaires pour la politique européenne, à une réserve d'examen parlementaire conforme au modèle britannique.



Par ailleurs, de nouveaux types de garanties peuvent fournir une contribution précieuse à la légitimation de la politique européenne. Dans ce cadre, le WRR plaide pour l'introduction de deux garanties dans la Constitution néerlandaise, à savoir un effort de formulation claire, mais *générale*, des valeurs et des objectifs principaux visés par les Pays-Bas dans le cadre de leur adhésion à l'UE, et la tâche explicite de maintenir au sein de l'UE le caractère propre des Pays-Bas et l'autonomie d'action qui en fait partie. L'incorporation de ces garanties à la Constitution exige un débat politique fondamental sur la nature et l'orientation souhaitées de l'Union européenne et le rôle que doivent y jouer les Pays-Bas. Dans le prolongement de cette question, le WRR recommande de soumettre ces garanties à un contrôle constitutionnel pour fournir aux citoyens une caution supplémentaire, ce qui offre une possibilité supplémentaire de justification.

Pour rendre public le débat sur la légitimation de la politique européenne, de quel instrument plus puissant dispose-t-on que de celui de la consultation populaire ? Cependant, celle-ci présente également des inconvénients majeurs, susceptibles d'être en partie atténués par l'accoutumance des milieux politiques et du public, mais qu'il y aura cependant lieu d'éviter en plus grande partie en posant des conditions préalables strictes. Une consultation populaire sous forme de *préférendum* (dans lequel plusieurs alternatives politiques sont proposées) à un stade suffisamment précoce du processus décisionnel offre les meilleures perspectives.

Il n'est pas réaliste d'attendre des organisations sociales et des médias qu'ils contribuent de façon autonome et directe à la légitimation de la politique européenne. De l'avis du WRR, la politique et l'administration doivent donc remplir un rôle capital de protagoniste dans la stimulation de ces acteurs. Et ce n'est que lorsqu'ils assumeront cette tâche que les médias et les organisations sociales se mettront en mouvement, et alors seulement que l'effet stimulateur recherché se fera sentir. Cet effet stimulateur permettra aux médias et aux organisations sociales de jouer de mieux en mieux leur rôle de trait d'union entre la politique, l'administration et les citoyens, de façon à ancrer plus profondément la politique européenne dans la société néerlandaise. Il faut donc que les gouvernants et les décideurs politiques soient plus en prise sur les objectifs et la méthode de travail des médias et des organisations sociales qu'ils ne le sont actuellement.

La résistance de la politique européenne néerlandaise à l'épreuve du temps exige surtout que les Pays-Bas soient prêts à relever les défis fondamentaux. Les propositions que contient ce rapport offrent à cet effet une palette d'instruments dans laquelle la politique et l'administration peuvent puiser.

Certaines de ces possibilités sont réalisables à relativement court terme, tandis que d'autres, comme l'introduction de référendums et l'insertion de garanties dans la Constitution, plus radicales, exigent un examen et un débat politique circonstanciés, à la lumière entre autres d'éventuelles réformes à réaliser au niveau européen. Quelle que soit la combinaison choisie et les sources de légitimité (supplémentaires) sur lesquelles on se fonde, il n'existe pas de remède simple ni de solutions rapides. La dynamique de l'intégration européenne, de même que les changements sociaux et politiques qui se font jour aux Pays-Bas, exigent d'accorder une attention constante aux processus européens et nationaux de légitimation en matière de démocratie et d'État de droit.



## PREFACE

Some fifty years ago, the Netherlands was one of the countries which was actively and wholeheartedly involved in the inception of what we know today as the European Union. In the years since then, a great deal of energy has been invested in building 'Europe'; it has been an impressive project which has achieved major results based on a deeply rooted acknowledgment of common interests, mutual interdependencies and shared destinies. The reward for those efforts has been reconciliation, peace, human dignity, an internal market and rising prosperity for more and more citizens.

The broadening and deepening of the European project have led to a shift from what was initially a predominantly 'diplomatic' association towards an increasingly 'political' Union. In the light of these changes major efforts have been made, particularly in recent decades, to secure a more direct legitimisation of Europe's institutions. 'Europe' has developed into an administrative and political system that is as complex as it is unique, and which is interwoven in a complex fashion with national politics. On closer reflection, this development has taken place largely as the preserve of well-initiated diplomats, specialists, politicians and stakeholders.

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Until the 'no' vote in the European Constitutional referendum, this project had been largely invisible for the citizens of the Netherlands. Where there was visibility, this mainly concerned the growing amount of 'sensitive' issues such as the further enlargement of the internal market, the Services Directive, the introduction of the euro and the negotiations with Turkey. The system was also characterised by 'perverse incentives': positive results were quickly sold to the public as national success stories, while negative experiences could be laid without fear of contradiction at the doorstep of an anonymous 'Brussels bureaucracy'.

The research and analysis that is presented in this report of the Scientific Council for Government Policy (one of the rare reports that the Council has written upon request by the Dutch Government) suggests that the rejection of the Constitutional Treaty can be explained to a large extent from the fact that the unfolding politicisation of the European level has not been adequately recognised or digested at the level of national political institutions. This situation will have to change if a lasting legitimisation of Europe in the Netherlands is to be achieved. The Council shows in this report that national politicians, the media and civil-society organisations all have a crucial role to play in this process. With this in mind, the Council

calls for a number of changes to be made, such as the introduction of constitutional safeguards, a greater role for the Prime Minister and the possibility of introducing preferenda. The Council does so in the realisation that the legitimisation of Europe will be driven above all by political results, not by long drawn-out discussions on treaties and institutions. In order to achieve those political results, however, a number of changes are urgently needed. Those changes must ensure that discussions about Europe do not become fatally stranded in debates concerned exclusively with the question of whether there should be 'more' or 'less' Europe; rather, the discussions need to focus on the question of what kind of Europe its citizens want.

This report has been prepared by an internal project group of the WRR. The group consisted of council members Prof. L. Hancher, Prof. J. Pelkmans, Prof. W.B.H.J. van de Donk and staff members Dr. W. Asbeek Brusse, Dr A. van den Brink (project coordinator), Dr. B.J.J. Crum, Dr. M. van Keulen and M. Sie Dhian Ho. G.A.T.M. Arts, S.L. Hollander and S.T. van Kessel were also involved as project group assistants. In addition, T. Boersma and K. Groeneveld served as trainees for several months during the course of the project.

The analyses in this report are based partly on studies commissioned by the WRR which can be consulted on the WRR website ([www.wrr.nl](http://www.wrr.nl)). The studies fall into three categories: perspective studies, the studies of actors and dossier studies.

### **Perspective papers**

- Apeldoorn, B. van (2007) *The Political Economy of European Integration in the Polder: Asymmetrical Supranational Governance and the Limits of Legitimacy of Dutch EU policy-making*, WRR Web Publication no. 15.
- Hancher, L. and A. van den Brink (2007) *Europe in Law, Law in Europe*, WRR Web Publication no. 16.
- Pels, D. (2007) *Faces of Europe. Searching for Leadership in a New Political Style*, WRR Web Publication no. 17.
- Prast, H. (2007) *The Psychology and Economics of Attitudes in the Netherlands*, WRR Web Publication no. 18.
- Thomassen, J. (2007) *Citizens and the Legitimacy of the European Union*, WRR Web Publication no. 19.
- Vreese, C.H. de (2007) *No News is Bad News! The Role of the Media and News Framing in Embedding Europe*, WRR Web Publication no. 20.

### Actor papers

- Arts, G.A.T.M. (2007) *Actor Paper Subnational Governments; Their Role in Bridging the Gap Between the EU and its Citizens*, WRR Web Publication no. 21.
- Berg, E. van den, and T. Brandsen (2007) *The Dutch Third Sector and the European Union: Connecting Citizens to Brussels?*, WRR Web Publication no. 22.
- Kiiver, P. (2007) *Europe in Parliament: Towards Targeted Politicization*, WRR Web Publication no. 23.
- Pellikaan, H., H. Vollaard and S. Otjes (2007) *Europe in the Netherlands: Political Parties*, WRR Web Publication no. 24.

### Dossier papers

- Crum, B. (2007) *The EU Constitutional Treaty in the Netherlands: Could a Better Embedding Have Made a Difference?*, WRR Web Publication no. 25.
- Engelen, E.R. (2007) *How to Solve the Riddle of Belated Euro Contestation in the Netherlands?*, WRR Web Publication no. 26.
- Hancher, L. and T. Boersma (2007) *Connection, Consumer, Citizen: Liberalising the European Union Gas Market*, WRR Web Publication no. 27.
- Heijer, M. den (2007) *Dutch EU-policies With Regard to Legal Migration – The Directive on Family Reunification*, WRR Web Publication no. 28.
- Hollander, S. (2007) *The Accession of Turkey to the European Union: the Political Decision-Making Process on Turkey in the Netherlands*, WRR Web Publication no. 29.
- Keulen, M. van (2007) *The Habitats Directive: A Case of Contested Europeanisation*, WRR Web Publication no. 30.
- Pelkmans, J. and S. van Kessel (2007) *Encapsulating Services in the ‘Polder’: Processing the Bolkestein Directive in Dutch Politics*, WRR Web Publication no. 31.
- Veen, E.B. van (2007) *Zorgen over de grens*, WRR Web Publication no. 32.

Reports presented to the Government fall under the responsibility of the Council. The authors named are responsible for the exploratory studies and Web Publications.

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A project group meeting took place on 21 March 2006 with ‘Young Dutch talent in Brussels’. Participants included HRH Prince Constantijn of Oranje-Nassau, R. Boogert (European Commission, DG Competition), M. Canoy (European Commission, Bureau of European Policy Advisers), S. Everts (Secretariat-General of the Council of the EU), C. Kann (Unilever), M. van der Klaauw (formerly Fortis Bank Brussels), G.J. Koopman (European Commission, DG Enterprise and Industry), E. Mastenbroek (European Parliament, PES/PvdA party) and F. Roscam Abbing (European Commission, Office of Vice-president Frattini).

The Council is grateful to all concerned for their contributions.

Prof. dr. W.B.H.J. van de Donk  
Chairman of the Council

# 1 INTRODUCTION

## 1.1 BACKGROUND AND REASON FOR THE REPORT

On 1 June 2005, the Dutch electorate, with a resounding majority of almost 62 percent, voted against ratification of the European Constitutional Treaty. This result followed the earlier rejection of the Treaty by the French electorate. This was striking enough in itself, but the discrepancy between the opinions of the Dutch voters, on the one hand, and the government and the vast majority of MPs, on the other, was even more surprising. Whereas 85 percent of the members of the house of representatives of the Dutch Parliament had expressed support for the Treaty, only 38.5 percent of the electors who voted did so (Voerman 2005: 44). How could this have happened?

Almost 18 months later, on 22 November 2006, parliamentary elections were held in the Netherlands. The political parties played a remarkable role in the run-up to the elections. Shortly after the hectic and unstructured referendum campaign, the established parties in particular did everything within their power to explain to their supporters that they indeed had a clear vision of 'Europe'. A majority of the political parties even published a 'Europe manifesto'. It was as if the debate on Europe had finally, albeit rather late, reached the centre of the Dutch political arena. In reality, however, nothing could have been further from the truth. The 'Broad Public Debate' (*Brede Maatschappelijke Discussie*), later renamed the National Europe Debate (*Nationaal Europa Debat*), was suspended when Parliament (which had earlier forced a referendum on the Treaty) withdrew its support. During the election campaign, most politicians decided to painstakingly avoid the subject of Europe altogether (Van Grinsven, Van Keulen and Rood 2006). Once again, the larger political parties appeared to have been embarrassed and showed visible signs of discomfort.

Initially, political commentators interpreted the rejection of the proposed Constitutional Treaty as an expression of a more general level of discontent with the 'self-complacent' political elites which had dominated the Dutch electorate since the 'Fortuyn revolt' in 2002 (Van Renselaar 2007). There are indeed sufficient indicators that support the political discontentment in the Netherlands. Meanwhile, political research has demonstrated that this discontent has not been restricted to the Netherlands (and France), but has also manifested itself in other established European democracies. Other countries share a similar distrust of politicians, political parties and political elites (Mair 2006: 6; Bovens 2006b; see also European Values Studies: Atlas of European Values 2005). Moreover, recent research has shown that



the Dutch electorate definitely used the referendum as a means of expressing their opinion on the EU itself and on the principles of EU policy in the Netherlands (Aarts and Van der Kolk 2005).

## 1.2 THE GOVERNMENT REQUEST FOR RECOMMENDATIONS AND THE PERSPECTIVE OF THE WRR

### 1.2.1 THE GOVERNMENT REQUEST FOR RECOMMENDATIONS

In light of the referendum outcome, the Dutch government asked the WRR to compile an advisory report on the issue of how the democratic mandate for and the social embedding of Dutch EU policy can be strengthened.<sup>1</sup> Several national advisory bodies have published their reflections on the role of the EU in the national administration, politics and society.<sup>2</sup> These bodies focussed mainly on the relevant institutional aspects. For example, the National Convention recently presented suggestions to streamline co-operation between the government and Parliament on European issues (Nationale Conventie 2006). Other bodies have pointed out that such measures alone, are probably not enough to engage *the people*. In its report, the Council of State focused on the citizens' position (Raad van State 2005). The government has also asked to take this element into account in its request for recommendations to the WRR. The government presented the WRR with two specific questions:

1. '... whether and how – through a better embedding of European decision-making in the Dutch political process – making European issues more political can contribute to bridging the gap that has emerged between citizens and Europe?
2. How can the social embedding of Europe in the Netherlands be fostered?' (Prime Minister 2006).

With its first question, the government is requesting more insight into the process of politicisation from several perspectives, such as the relation between politicisation and engaging greater public support and the mutual relations between government, Parliament and the Dutch electorate. Insights from and experiences in other EU member states can also be incorporated.

The government's second question demands more insight into 'the structural and cultural variables (and constants) which are relevant for embedding and the degree to which those variables can be influenced. The government wishes to gain insight in[to] the extent and ways in which various actors in the Netherlands can strengthen their 'European role' and

how they can increase the social engagement to Europe in the Netherlands. In addition to civil society, these actors include the news media, trade and industry and other relevant actors such as educational institutions'. (Prime Minister, 2006).

The government's questions are based on two underlying assumptions. The first is that there is an undesirable gap between Dutch citizens and the EU, which needs to be bridged. The government links the questions of whether and how the making of European issues 'more political' – i.e. politicised – can contribute to bridging this gap. The second assumption is that the 'social embedding' of Europe within the Netherlands needs to be promoted. In this report, the WRR first clarifies its perspective on these two assumptions and on the notion of politicisation as one of the possible remedies for bridging the perceived gap between Dutch citizens and the EU.

### 1.2.2 THE WRR'S PERSPECTIVE

#### *The gap*

Concerning the first assumption, the WRR shares the government's observation that there is a distance between the Dutch electorate and 'Europe', at least when one considers that 'Europe' is often perceived to stand for the *EU policy of the political and bureaucratic elites*. The WRR will in this report explore the potential consequences of this gap. It is also possible that this distance – as a consequence of the discussions surrounding the referendum – has declined, as such is not problematic, or is merely a symptom of deeper problems. The run-up to the referendum was the first time in Dutch history that the EU became a topic of discussion in everyday life at the local hairdresser's, in pubs, in newspapers and on TV. Never before had so many Dutch citizens turned out to vote on a European political issue. Of course, these observations can be countered by the argument that there had never before been an opportunity to do so and that these events are snapshots of a moment in time which do nothing to alter the gradually crumbling support for the EU among the Dutch public. But whatever the reality may be, the unexpected revival of the debate on Europe is at least reason to be cautious when it comes to 'gap pessimism' (Vollaard and Boer 2006: 200).

More generally, there are reasons to avoid the metaphor of a gap when exploring the relationship between politicisation and support for the EU in the Netherlands. Firstly, the notion of a gap can suggest a structural alienation between the political elites and the population, but it can also indicate that the alienation between these two groups is related to just one specific theme, for example European enlargement or the euro. The high turnout at the referendum indicates that both of these possibilities may

occur simultaneously. The metaphor of the gap does not however provide insight into the underlying mechanisms of this political process which are crucial in order to be able to address potential problems, now or in the future. Secondly, a certain distance between citizens and European politics (Brussels) in itself is not alarming. In fact, an appropriate distance can even be healthy for the problem-solving capacities of politicians and the critical opinions of voters (Tiemeijer 2006: 172; Pels 2006). It is only dangerous when that distance leads to long silences in the political debate about Europe in the Netherlands or if choices made by Dutch politicians are constantly and systematically at odds with those of the majority of the Dutch population. Citizens may then end up losing faith in (Dutch) EU politics, begin to view European decisions and laws as irrelevant to them and it may therefore structurally undermine the effectiveness and power of European politics (Prast, 2007). A downward spiral of declining political support may be the result, which, in turn, ultimately erodes the legitimacy or acceptability of both the European and Dutch political system, since the two are inextricably related to one another.

### ***Legitimacy and legitimisation***

This report focuses not so much on the distance or gap between Dutch citizens and Europe, but rather on the legitimisation and – resultant – legitimacy of European decision-making in the Dutch political process. Through a process of induction (based on empirical background studies in a number of policy fields and by specific policy actors)<sup>3</sup> and deduction (based on insights found in the political science and law literature on democracy and legal theory), the report identifies four ‘sources’ or dimensions of legitimacy: *results*, *representation*, *accountability* and *identification* (see below). According to the WRR, this perspective offers a refined instrument for both diagnosing the ills affecting Dutch EU policy and for identifying remedies.

However, there are two warnings that are relevant here. Firstly, legitimacy is a somewhat elusive concept. Like a notion such as ‘trust’, it cannot be easily measured, cannot be enforced and, in the context of policy and politics, refers to the outcome of a (continuous) process. Like trust, legitimacy is generally granted implicitly by the public; but as soon as the concept becomes the subject of explicit discussion or of a specific effort, problems arise. In this report, the WRR distinguishes between *legitimisation* *legitimacy*. The first refers to a striving for legitimacy (a process), the second to the outcome of this striving.

Secondly, the manners in which people make up their mind regarding the legitimacy of EU decision-making is closely related to the way they perceive the EU (WRR 2003). When one considers the EU – more or less by

comparing it with the emergence of modern nation-states – as a fully fledged European political system in formation, one usually applies a different perspective to the legitimacy of European decisions than a person who perceives the EU merely as an international organisation not unlike many others. Therefore, the WRR needs to briefly present its own views on the EU (WRR 2001; WRR 2003). The WRR regards the EU as a multilevel political system that operates at European, national, regional and local levels. The system is characterised by a combination of more or less unique (hybrid) forms of hierarchical, community and intergovernmental governance structures in addition to the governance based on horizontal, generally flexible networks of changing coalitions of stakeholders (e.g. between national actors and NGOs and/or between actors at supra-, sub- and national levels) (Marks, Hooghe and Blank 1996; Tatenhove 2003).

Formal legitimisation of this system occurs via both direct and indirect channels. The direct channel connects members of the public as *European citizens* to the EU and its supranational institutions, through direct elections of the European Parliament. The indirect channel connects members of the public to the EU as *national citizens*, through the mediation of elected national politicians and government officials. Politicians and government officials thus fulfil a pivotal or *linking function* between citizens and EU policy (WRR 2003; Raad van State 2005) and shape the democratic mandate for EU policy in the Netherlands.

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National politicians and government officials have increasingly begun fulfilling their linking function in the area of civil society and the news media actors. As per request, this report will pay explicit attention to the way in which actors from Dutch civil society and the news media (can) function as activating intermediates or links between Dutch citizens and Europe. This is not to say that the direct legitimisation of EU policy, independently of these national actors, is not just as important. Commercial media concerns for example, have become increasingly competitive on both the international and European playing fields. However, like the government, the WRR believes that important changes at both the European and national levels in recent decades demand a reconsideration of this indirect, national legitimisation process.

### **Politicisation**

The government has also requested that we look into the question of whether ‘making European issues more political’ (i.e., politicising those issues) would contribute to bridging the perceived gap. In this report, the concept of ‘politicisation’ is used to describe the process in which the EU decision-making process becomes more controversial, and partly as a result

of which, the number of stakeholders (people with an interest in the decision-making and those most directly affected by it) increases (Schmitter in Marks and Hooghe 2005: 6). This process assumes that there are relevant political actors who have contrasting views on European issues and who express and promote those contrasting views.

The WRR has four critical remarks for the government's second question. Firstly, politicisation has been evident for some time in sensitive areas of European policy (such as the EMU, the enlargement of the EU to Central and Eastern Europe, and asylum and immigration (WRR 2003)). However, the theoretical and empirical analyses carried out for this report also show that politicisation occurs to a lesser extent in the Netherlands than in other member states and still plays a too limited role in the way in which the Dutch political and administrative system functions. The urgency of this problem increases as the number of sensitive political issues increases (e.g., the Services Directive, Turkey's EU candidacy, the Constitutional Treaty). Politicisation has thus become a reality on a number of European issues. Secondly, politicisation offers no guarantee of social engagement because citizens may not feel engaged by the debate and the visions of the various political actors. Thirdly, politicisation may reveal contradictions that can have the effect of further complicating the shaping of a cohesive Dutch input into the EU decision-making process or an adjustment of the Dutch line of policy. And finally, politicisation can also lead to frustrations when it turns out that the Dutch position on an issue in a Union of 27 has very little chance of actually succeeding. In short, rather than seeing politicisation as a potential instrument for bridging the gap between citizens and European policy, the WRR conceptualises politicisation as a factual process which results from the ongoing integration in politically sensitive (policy) fields. The WRR explores the available means, within the Dutch context, to establish a system of mutual contact between political actors, citizens and social groupings that is productive for the legitimisation process.

## 1.3 DESIGN OF THE REPORT

### 1.3.1 OBJECTIVE, CENTRAL QUESTIONS AND LIMITATIONS

With this report, the WRR seeks to explore the ways in which Dutch politicians and government officials can develop a future-proof, socially relevant and legitimised EU policy in light of the increased politicisation of European issues. The WRR commences with a brief analysis of the problems surrounding Dutch EU policy, and subsequently formulates proposals which could reinforce the legitimacy of EU policy in the Netherlands. This results in the following central questions:

1. *Is there a problem of declining legitimacy of EU policy in the Netherlands?*
2. *If so, how can the political and social legitimisation processes of EU policy in the Netherlands be improved?*

The basic assumption regarding the improving of these legitimisation processes in the Dutch context, can be found in the domestic links which can help Dutch citizens relate better to EU policy. Two – preliminary – comments are relevant here. Firstly, the WRR is not concerned with finding remedies which foster public acceptance of existing Dutch government EU policies, but instead with remedies that reinforce the legitimacy of this policy. Put differently, stronger legitimisation may also mean that the government finds itself forced to adapt the content and direction of Dutch EU policy, as a result of greater citizen or civil society input. Secondly, the WRR realises that adaptations within the Dutch context, as desirable as they may be, will probably not be enough to actually increase the amount of democratic content regarding EU decision-making processes. This would also require incentives and reforms at the level of European institutions and procedures, such as the improved co-ordination of actual European (transnational) political party positions in the European Parliament, more transparent voting procedures and deliberation by the European Council, a more open election process for choosing the president of the European Commission as well as more decisive control by the European Parliament over the functioning of the European Commission.<sup>4</sup> In its recommendations, however, the WRR limits itself to proposals for improvement at the national level.

### 1.3.2 APPROACH AND STRUCTURE OF CHAPTERS

Actors within the national political arena and administration (government, Parliament, political parties and political elites) offer the most natural link to a nation's citizens. This is why many proposals to reinforce the legitimacy of EU policy in the Netherlands focus on these actors. However, it is precisely in the EU policy field where we find a 'perverse incentive structure' which discourages politicians and government officials from effectively fulfilling this desirable linking function. The multilevel structure of the EU, reinforces the tendency of politicians and government officials to claim the benefits of European co-operation as their own achievements, but disown responsibility for any disadvantages and/or they simply blame them on 'Brussels'. Remedies aimed at improving the functioning of politics and administration will accordingly have to be judged primarily on the contribution they make in breaking through these perverse incentives.

Secondly, attention cannot be restricted to the political and administrative system in a narrow sense; remedies will also have to be sought in both civil society and the news media. There are specific obstacles and limitations to this potential which arise from the inherent ‘logic of action’ of these two sectors. By stimulating mutual contacts between politicians and government officials, civil society and the news media, it may be possible to provide for more positive incentives. By way of illustration, the establishment of a parliamentary prioritisation committee for EU policy would encourage politicians to debate politically sensitive EU themes. The news media also has the capacity to contribute to direct civil engagement, namely through its providing of knowledge. With the various links functioning in a mutually cohesive way, favourable parameters may be created for stronger legitimisation processes. The WRR formulates its proposals in full awareness of the perverse incentive structure referred to above, and with it, the inevitable interaction between these different areas of society.

Given the breadth of the study, the WRR has decided to apply insights found in the communication sciences and social and economic psychology as well as those found in political science and law. The WRR commissioned a number of studies that explore the perspectives of these disciplines on Europe. The WRR also approached the issue of EU policy legitimacy in a more inductive way by employing empirical analyses of EU policy development within some specific European themes.<sup>5</sup> Finally, the WRR commissioned studies on the role that the Parliament, the political parties, the news media, sub-national governments, citizens and civil society can play. These three types of background studies provide important insights for this report. They may be consulted on the WRR website.<sup>6</sup>

### **Structure of the report**

Chapter 2 begins with a discussion of the concept of legitimacy from the perspective of democratic and legal theory. Elaborating on the discussion, four dimensions or ‘sources’ of legitimacy are then introduced: *representation* (input), *accountability*, *results* (output) and *identification* (section 2.2). The four dimensions of legitimacy form the analytical framework or ‘toolkit’ by which the report discusses and assesses possible legitimacy problems and solutions. The chapter also provides a brief empirical analysis of the way in which EU policy has traditionally been legitimised in the member states, and of the recent changes which have put pressure on this specific method of legitimisation (section 2.3). This provides the yardstick for the diagnosis of existing problems surrounding EU policy in the Netherlands (section 2.4).

Chapters 3 to 7 discuss the four dimensions of legitimacy in their mutual interrelationship as applied to actual problems and remedies. Problems at the representation level can have an impact on how engaged citizens end up feeling with regard to the EU as a political community, while the reverse also applies: improvements in representation can also improve and confirm its engagement with the political community. Furthermore, the undesirable results or effects of EU policy sometimes present an obstacle to Dutch citizen identification with the EU.

Chapter 3 explores solutions from the perspective of the representative democracy within the domain of Dutch politics and the administration. Chapter 4 explores solutions from the perspective of the constitutional state, based on safeguards which bind government actions to the law as well as from the perspective of direct democracy. Chapters 5 and 6 then discuss solutions in the areas of civil society and the news media. Finally, chapter 7 assembles the conclusions and remedies from the preceding chapters. It outlines a portfolio of options for activating and/or strengthening the legitimising role of national politicians and government officials, so that the Netherlands can continue to contribute to vital policy outcomes within the EU in the future.



## NOTES

- 1 In this report, EU policy is a broad term which refers to policy that results from the treaties, formal and informal decisions, networks and all EU jurisprudence which may have a direct impact.
- 2 AIV, RvS, ROB, RMO, National Convention.
- 3 See WRR web publications 15 to 32, [www.wrr.nl](http://www.wrr.nl).
- 4 See, e.g., the proposals of Simon Hix (Hix and Bartolini 2005).
- 5 The themes are: the EU Constitution, the accession of Turkey, the introduction of the euro, the Services Directive, the Habitats Directive, the gas directive and the Family Reunification directive.
- 6 See [www.wrr.nl](http://www.wrr.nl).

## 2 DIAGNOSIS

### 2.1 INTRODUCTION

This chapter presents a diagnosis of the problems surrounding Dutch EU policy based on both theoretical and empirical grounds. The central question addressed is: Was the outcome of the referendum on the European Constitutional Treaty an incident, or are there indications of broader problems concerning the legitimacy of EU policy in the Netherlands? The chapter begins with a brief theoretical description of the concept and the four dimensions or ‘sources’ of legitimacy, namely *results* (output), *representation* (input), *accountability* and *identification*. Democratic and constitutional approaches to legitimisation will also be discussed (section 2.2). This is followed by an empirical analysis, based on the four dimensions of legitimacy, of the way in which European policy has traditionally been legitimised in the member states and the recent changes that have put pressure on this specific method of legitimisation (section 2.3). This analysis forms the basis against which the question of whether there is a legitimacy problem with EU policy in the Netherlands is posed (section 2.4).

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### 2.2 LEGITIMISATION OF EUROPEAN DECISION MAKING IN EU MEMBER STATES

#### 2.2.1 PRELIMINARY REMARKS

While EU decisions often appear to pass by the average European citizen unnoticed, European decisions that do attract attention, often generate negative reactions. Resistance to European decisions, for example, is expressed in occasional irritation regarding issues such as Brussels’ desire to regulate, the consequences of the introduction of the euro, and of course in the rejection of the European Constitutional Treaty. It is quite normal and even healthy for politicians and citizens to disagree. However, the current tensions and exasperation in the Netherlands regarding the EU appear to be more than a simple accumulation of incidents; they may indicate a problem of legitimacy or a problem regarding the acceptability of European policy. Legitimacy is an important element of policy, because simply relying on the coincidence of continuously changing public interests would lead to an unstable political system (Weber 1976). In addition to the ‘specific support’ that is based on specific policy interests, political systems also need ‘diffuse support’, which, among other things, helps contribute to the acceptance of the system by citizens, and as well as help-

ing them think it is natural to be governed by the rules that apply within that system (Easton 1965; Beetham and Lord 1998: 1).

***Complications resulting from the specific nature of the EU***

When considering the issue of legitimacy, it must first be borne in mind that legitimacy is closely connected to the historical development of the nation-state, and second, that the character of the EU is contested at a fundamental level (Friss and Murphy 2000: 228-9). Regarding the first point, we must be wary of a state-centric approach in any attempts to strengthen the legitimacy of EU policy.

In this context, there is a tendency to assume that a strong sense of shared history and culture is a requirement for the legitimate functioning of the EU. Those who view the EU as an intergovernmental system emphasise that the member states form the core of a shared identification; by acting as representatives of the will of the people in the member states, they indirectly legitimise the decisions of the EU. Those who would like to see a federal future for the EU refer to the common European identity. Although the object of identification may differ, these EU visions still manage to share a state-centric vision of legitimacy (in which identification plays a central role) (Sie Dhian Ho 2004: 167).

Neither vision is entirely accurate: the EU is not a state, at least not in the classic Weberian sense of the word because, for one, it does not have a monopoly over the lawful use of force, which remains in the hands of the member states (Hix 2005: 4). Moreover, the limited powers and resources of the EU cannot be compared with the general tax and budgetary powers of the nation-state (Majone 1998: 10). Nor is the EU an ordinary international organisation, due to its unique legal system and unusual political order it has much greater capacity to intervene in the economics and politics of the member states than other international organisations (Wyncott 2002: 491). Beck (2004) accordingly concludes that the usual concepts and theories fall short of what is needed for a robust definition of the EU:

Diese historisch einmalige und einzigartige Form der zwischenstaatlichen und zwischen-gesellschaftlichen Gemeinschaftsbildung entzieht sich allen gängigen Kategorien und Konzepten. Am Beispiel Europas zeigt sich besonders deutlich, wie historisch wirklichkeitsfremd und stumpf unsere politischen Begriffe und das theoretische Instrumentarium der Sozialwissenschaften geworden sind – sind beide doch noch immer in dem Denkgelände eines methodologischen Nationalismus gefangen. (Beck 2004: 7).

As we have already stated in chapter 1, the WRR regards the EU as a multi-level system *sui generis* political (at the European, national, regional and local levels) which is characterised by a combination of more or less unique (hybrid) forms of 'governance' (hierarchical, Community and intergovernmental governance structures alongside governance in horizontal networks) (Marks, Hooghe and Blank 1996; Crum 2004). This system has an explicitly decentralised configuration,<sup>1</sup> and assigns a crucial linking function to national institutions. A multilevel administrative approach, which devotes particular attention to the role of those national institutions, is hence required (Raad van State 2005).

A second point concerns the *disputed nature* of the EU. There are various normative ideas about what the EU is and in what direction it should develop (WRR 2001; WRR 2003; Caporaso 1996; Sie Dhian Ho 2004). Differences of opinion about the 'ultimate goal', or '*finalité*' of the EU, mean that initiatives that are interpreted as an improvement of the legitimisation process by one camp can be viewed as a deterioration by another camp. For example, the Danish 'No' vote in the referendum on the Treaty of Maastricht, as well as the commotion surrounding the Constitutional Treaty in the Netherlands, showed that legitimisation strategies aimed at strengthening European citizenship are perceived by some as a democratic step forward, and by others as confirmation that the EU is developing into an illegitimate superstate. Conversely, democratisation initiatives aimed at increasing the powers of national parliaments are in turn perceived by others as undesirable '*intergovernmentalisation*' (an example is the 'red card' procedure, by which national parliaments can block European Commission initiatives). Politically aware and practical democrats should be more alert to this disputed nature of the EU, and develop a legitimisation strategy which is not merely one-dimensional.

The emphasis in this report is on strengthening the legitimacy of EU policy through national channels. The WRR, however, realises that the present transformation phase requires strategies that are neither exclusively intergovernmental or federal, nor exclusively national or European, but strategies which are designed to strengthen legitimacy at different levels of governance which fit the specific character of the EU.

### 2.2.2 FOUR SOURCES OF LEGITIMACY

Bearing the above mentioned conceptual and political caveats in mind, we identify four dimensions or 'sources' of legitimacy, i.e., four criteria on the basis of which the 'acceptability' of a political system can be evaluated (see Beetham and Lord 1998; Thomassen 2007). These dimensions are *results*,

*representation, accountability and identification.* They occur in most normative theories of democracy and are powerfully encapsulated by Abraham Lincoln's famous call for 'government *of, by, and for* the people'. 'Of the people' refers to identification, '*by* the people' to representation and accountability, while '*for* the people' refers to policy results.

In international co-operation situations, priority is generally given to legitimacy based on the *results* achieved. The legitimacy of NATO, for example, derives mainly from the security it offers, while the World Trade Organisation (WTO) draws its legitimacy chiefly from perceived economic benefits. The *results* dimension, focuses on whether policy actually contributes to the security, freedom, prosperity and welfare of citizens ('government *for* the people'). Central questions include whether policy serves relevant goals and whether it actually achieves these goals. If international organisations fail to deliver the envisaged results, the basis for membership crumbles. Legitimacy by results is also called 'output legitimacy' (Scharpf 1999) It is concerned exclusively with the outcome of policy, regardless of how policy is created.

This takes us to a second dimension of legitimacy, namely *representation*. Representation is based on the democratic idea that political choices should ultimately lie in the hands of the people themselves: 'government *by* the people'. The emphasis is on the democratic process and the extent to which this process guarantees that the wishes of the people are ultimately reflected in political decisions. This form of legitimacy corresponds with what Scharpf (1999) calls 'input legitimacy'.

We would stress that, in addition to the mechanisms of representation, 'government *by* the people' also explicitly demands mechanisms of *accountability*. The presence of adequate accountability mechanisms therefore constitutes the third dimension of legitimacy. Is information provided in a way that enables a well-founded assessment of the policy to be formed? Does a solid debate based on this information follow? Do those who are held accountable have – and use – the opportunity to explain their actions? Who forms an opinion on the policy and how does that opinion develop? (Bovens 2006a: 23-4). What sanctions can be applied, if necessary, in order to guarantee accountability?

Following Beetham and Lord (1998), we would like to add another dimension to the distinction between legitimacy based on results and legitimacy by means of political control, namely legitimacy by means of *identification* ('government *of* the people'). Whereas the first three aspects are practical or even instrumental by nature, the identification dimension is different. The

underlying idea is that citizens who feel they are connected to one another and to the community they belong to will be more inclined to accept decisions taken within that community. In modern societies, it is hard to imagine that feelings of identification alone will be enough to ensure the acceptance of (unrepresentative and ineffective) decisions. However, where the other aspects of legitimacy prove to be imperfect in daily practice, feelings of identification can play an important role in broadening the margins of what is regarded as acceptable. If political representatives are forced to make concessions in the decision making process, it will not necessarily lead to alienation toward a particular policy among the rank and file, especially if they can identify (feel involved with) the community as a whole. The WRR also believes that a higher degree of identification leads to a greater tolerance of policies that may be short of their anticipated outcomes.

The connection between the four sources or dimensions of legitimacy can also be portrayed in another way, by concluding that each dimension focuses on a different political object (Easton 1965). In this approach, identification is the most comprehensive dimension, which focuses on the relationship between citizens and the political community (*polity*) they belong to. Political control aims for a level just below this, which is the specific configuration of the political system (the ‘regime’ in Easton’s terms) that has been chosen within the community. At the next level below this one we find the results, which focus on a specific *policy* that arises from within the political system.

Viewed in this way, it is clear that the four dimensions function, in part, independently of each other. It is possible that citizens may acknowledge the legitimacy of a democratic process, even if this results in decisions they may not (always) like. Similarly, they may raise objections regarding the structure of the political process, but still feel connected to a particular political community. If policy continues to systematically fall short, it may lead to the citizenry becoming increasingly sceptical about the political system and perhaps even about the political community itself. In this sense, the four dimensions can interact negatively as well as positively. The possibility of mutual compensation must also be taken into account. This means that not all four dimensions need to be developed equally for all topics. In certain domains, policy results may still have primacy, without necessarily giving rise to legitimacy problems.

### 2.2.3 DEMOCRATIC AND CONSTITUTIONAL APPROACHES

The best way to legitimise political systems has been a constant subject of debate. Two lines can be identified in the debate, namely the constitutional

and the democratic approach. The two approaches are closely related (as is expressed in the concept of constitutional democracy), yet each has its own specific characteristics. The constitutional tradition has focused mainly on the legitimisation of political systems by offering safeguards by binding government actions to the rule of law, distribution of power, checks and balances, protection of the individual and independent judicial review. The democratic tradition has concentrated mainly on the influence citizens have on policy (De Jong 1991). Depending on the particular school within the democratic tradition, scholars have concentrated on the influence of citizens, via the principle of division of responsibility (the elector votes, the politician speaks, deliberates and judges) (representative democracy); on the design of instruments which enable citizens to decide what the political system should do (direct democracy); on the citizenry's influence via deliberation rather than decision making modes based on majorities (deliberative democracy); and finally, on social self-government (associative democracy) (Engelen and Sie Dhian Ho 2004: 28-35).

The four dimensions of legitimacy are important in both the constitutional and democratic approach, but they are converted into institutions and practices in a different way. This is evident, for example, in the way in which people identify with a particular political system. In the democratic tradition, identification with a political system depends mainly on the existence of a *demos*, a political community with a collective identity. In the constitutional tradition, by contrast, the focus is on shared interests and common rights which together reveal a collective identity. The significance of elections also differs in the two traditions. In the democratic tradition, elections are primarily the channel by which the wishes of a *demos* are expressed, while the constitutional tradition emphasises the significance of elections as a central accountability mechanism (Scharpf 1999).

The EU has traditionally been legitimised in its own, non-state way. In the remaining sections of this chapter we will further analyse the four dimensions of legitimacy (results, representation and accountability, identification):

- how has legitimisation of EU policy traditionally taken place and what recent changes have put pressure on this specific method of legitimisation (section 2.3);
- how has the Netherlands traditionally legitimised its EU policy and what recent changes have put pressure on this specific method of legitimisation (section 2.4).

## 2.3 CHANGES IN THE LEGITIMISATION OF EUROPEAN POLICY

### 2.3.1 THE TRADITIONAL METHOD OF LEGITIMISATION

#### *Legitimacy through results*

European integration was originally a political project which derived its legitimacy primarily from achievements in three mutually related areas, namely the realisation of peace, stability and prosperity in Western Europe. The common market for coal and steel (1951) and the European economic community (1958) were the most important instruments toward the realisation of these goals. From the beginning, the integration project was based on a process-oriented approach, in the sense that an inherent dynamic of ‘spillover’ to other policy domains would occur. This vision was enshrined in the original mission of the EC treaty, with its ‘ever closer union among the peoples of Europe’ (Preamble to both the EC and the EU Treaties).

Traditionally, European integration has been a rather technical affair reserved for political, administrative and functional elites. A great deal of policy is formulated within a closed circle of policymakers, who have a vast amount of expertise and knowledge, but much less in the area of external orientation. Not only does this small group pay little attention to public preferences, but the parliament and the citizens are pretty much totally excluded, or at best enjoy limited involvement in the development of dossiers which clearly impinge upon citizens’ responsibilities.

This ‘technocratic reflex’ with the associated ‘walls’ erected between policymakers and those who have to comply with or apply various policies, restricts the options for representation, accountability and identification with the EU. It is also the – all too understandable – cause of many implementation problems and the lack of understanding among administrators regarding ‘unworkable’ European regulations which have no bearing on ‘work floor’ problems. Obvious examples of these kinds of problems are the Habitats Directive (Van Keulen 2007) and, more recently, the Air Quality Directive (Rood, Van Keulen, Nollen and Arts 2005). The relatively long interval between the agenda-setting, decision making and implementation processes, which are often out of synch with the various political and official cycles in the member states, are partly the reason for this. Attempts are then made later on in the policy process to revise the policy, something for which there appear to be no mechanisms at EU level where the emphasis is placed on timely and correct implementation. The policy issues studied for this report provide numerous examples of problems involving timing and administrative uncertainty, which in turn, cause



problems for the European debates in member states because they often occur too late. Moreover, this situation prompts national politicians, on the one hand, to claim the benefits of European co-operation as their own achievements and, on the other hand, to blame 'Brussels' for any disadvantages or problems, or simply fail to account for them. This frequently leads to negative attention paid to EU policy in the media, which in turn has an impact on the citizens and on public opinion.

### ***Legitimisation via representation and accountability***

As a result, traditional EU policy is designed within the 'steel triangle' of elites comprised of national and European politicians and officials, who are, at best, watched by small elite groups of special interest organisation representatives (Hooghe and Marks 2005a). Within this closed system, the decision making follows the more or less fixed procedures of the 'community method' or 'intergovernmental method'. This first administrative mode assigns a relatively large role to the European Commission as the drafter of policy, to the European Parliament as the watchdog over the Commission, to the European Court of Justice as the arbiter and supervisory mechanism of national enforcement of common regulations, and to specific interest groups (WRR 2003: 36-7). The second administrative mode is characterised by the active involvement of the European Council of government leaders who establish the course of policy, assigning a major role to the Council of Ministers and a limited circle of national policymakers who hammer out the details of that course. Meanwhile, there is only minimal involvement by the European Commission and a consultative rather than a full role for the European Parliament and the European Court of Justice (Wallace 2006: 79-87).

The political mechanisms for representation and accountability from and to citizens thus operate along three formal lines (Van Middelaar 2004):

1. From citizen to Parliament to line minister in the Council of Ministers;
2. From citizen to Parliament to Prime Minister in the European Council;  
and
3. From citizen to Parliament to Commission.

In the first line, the political legitimacy of the Council of Ministers is guaranteed via national general elections, which send government ministers to the Council of Ministers with a national agenda and which also holds them accountable afterwards. However, this is not a purely national mechanism, as is often erroneously thought. After all, although the minister is sent to the European Council with a national mandate, that same minister has to defend decisions taken in the Council before his or her own parliament *as if he or she were a representative of the EU in the Netherlands*. As Van

Middelaar rightly observes this line of representation, inextricably European and national, is very strong. It is the line back to the EU member state which makes the Council such a powerful *European* institution. Thanks to this line of representation, the national parliaments and populations are also drawn in along with the ministers' (Van Middelaar 2004).

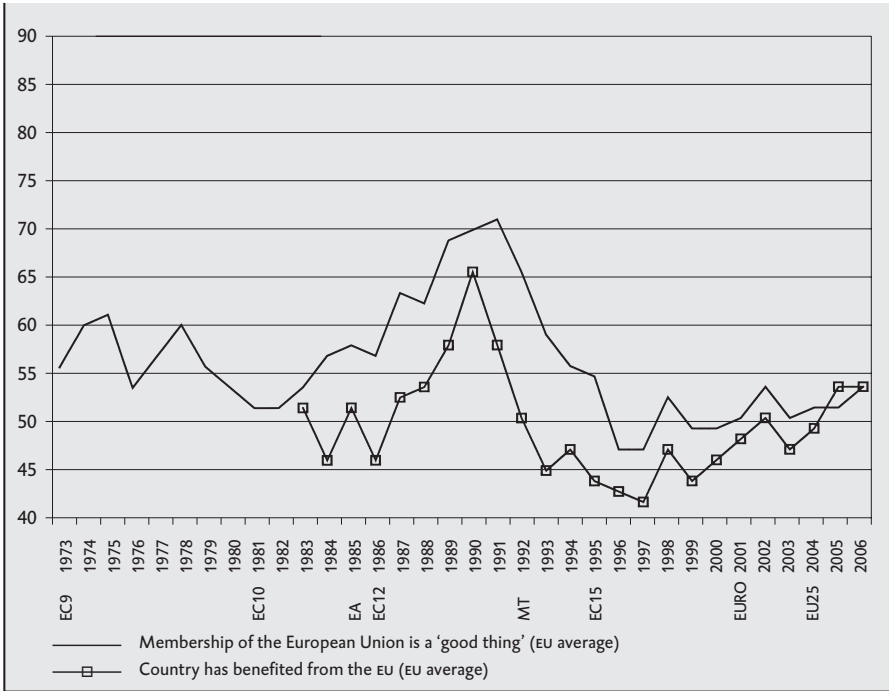
The second line legitimises European decisions by the European Council in a comparable way, which again is inextricably both national and European. The Head of government attends regular European Summits, where he or she represents his or her country, with a mandate from the domestic Parliament while acting on behalf of the Dutch population. He or she is jointly responsible for the collective outcome of the meetings and subsequently defends that outcome on behalf of the European Council before his or her Parliament and often, through the attention of the news media for these meetings, to the population at large.

And finally, the third line can be described as explicitly federal or supranational. Since 1979, the people of Europe have had the right to elect European Parliament members directly; in its turn, the Parliament supervises the actions of the European Commission and – depending on the policy domain – works on an equal footing with the Council of Ministers in the legislative process.

In the 1980s and early 90s, the move towards European integration received a boost with the completion of the internal market and the development of accommodating policies on competition, the environment and cohesion. During this same period, there was also an increase in public support for the EU within the member states, reaching a provisional high point in the run-up to completion of the 1992 program (see graph 2.1 and section 2.4) (Hix 2005: 150-1). Similarly, the position and powers of the European Parliament and the European Commission were expanded and/or strengthened in a number of areas. Moreover, partly because of developments such as growing international competition, the emergence of public-private partnerships and the accession of the less prosperous member states of Greece, Spain and Portugal, the EU developed other variants of the Community and intergovernmental administration methods. These required the involvement of ever more varied groups of stakeholders as well as of regional and local authorities (Arts 2007).

Despite the presence and improvement of these different mechanisms, EU policy still rests primarily on legitimacy based on results. Even if the 'steel triangle' allows some involvement by elected national representatives, they are often put off by the Byzantine decision making processes and

Figure 2.1 Public support for European integration in the EU, 1973-2006



Source: Eurobarometer

technical intricacies of European affairs. Therefore, in practice, they generally steer well clear of the output of ‘Brussels’ and give ministers and their officials full scope to establish their own major lines of policy themselves. Until the early 1990s, MEPs were also often kept at a distance and therefore they only had limited input, which was moreover invisible to the national populations (Wallace 2006: 79). Furthermore, the European Parliament elections have relatively low voters turnouts and have a second-rate or ‘second-order’ character; voters are ultimately more influenced by their national preferences than by European policy considerations (Reif and Schmitt 1980). This contributes to the fact that, until the early 1990s, ordinary citizens generally had a ‘passive’ but positive attitude toward the European integration project, which they associated mainly with the tangible benefits of ‘no more war’, continued economic prosperity as well as the prospect of market liberalisation via the 1992 program (Lindberg and Scheingold 1970; Hix 2005: 149). Identification with the EU accordingly has the character of a functional process among a small, Euro-centric circle of politicians, senior officials, lobbyists and the highly educated.

### 2.3.2 THE TRADITIONAL LEGITIMISATION METHOD UNDER PRESSURE

#### ***End of the permissive consensus***

For a long time, the ‘permissive consensus’ of a majority of Western Europeans with respect to the positive results of the European integration process and the active involvement of this small elite circle matched the observations of neo-functionalists like Ernst Haas and *intergovernmentalists* like Andrew Moravcsik. They claimed that the elite representatives of functional and sectoral interest groups were the driving forces behind the process of European integration. Their ‘elite perspective’ is based on three assumptions:

1. The European public has such a superficial vision of European integration that this does not provide a stable incentive structure for political parties to take a position on European issues;
2. For most European citizens, European integration is of virtually no interest. What interest there is, is restricted to business, farmer and other functional groups;
3. European issues are by definition unique and ‘*sui generis*’. As a result, they are not connected with the basic conflicts that dominate normal adversarial political life in Western democracies.

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In contrast to the *intergovernmentalists*, the neo-functionalists predicted that this one-sided involvement of the elites in Europe would be only temporary. Ultimately a process of politicisation would emerge, which would draw the European public into the European political arena. Thanks to the positive results of European integration, that public would also increasingly begin to identify with the EU (Hooghe and Marks 2005a).

Experience since the early 1990s, however, suggest that the traditional method of output legitimisation has come under increasing pressure. At the same time, it has become clear that the assumptions of the ‘elite perspective’ are also no longer tenable. In accordance with the predictions of the neo-functionalists, there has indeed been a rapid politicisation of key European issues, but this has by no means led to unambiguous support for and identification with the EU by the citizens of Europe. On the contrary, opinion polls carried out for Eurobarometer surveys suggest that support for EU membership and confidence in the benefits of EU membership have declined among the citizens of EU member states since 1992 (see graph 2.1). Although there are differences in levels of support between the EU member states (CPB and SCP 2007: 9). How can this change be explained?

### ***Increases in scale and differentiation of scale***

In the first place, the processes of upscaling (such as globalisation and Europeanisation) and scale differentiation (such as localisation and functional differentiation) put permanent pressure on the efficiency of the levels of scale at which politics and administrations are organised. This has the added effect of making the existing bond of trust between politicians and administrators, on the one hand, and citizens, on the other, more precarious and complex. The increased mobility and the rise of the information society have contributed to a stronger orientation by the highly educated groups in particular towards the national political community and towards transnational communities. Moreover, many of these highly educated groups are increasingly over-represented in politics and administrative positions, while those with lower-educations have rapidly fallen even further down on the social and political participation ladders (Bovens 2006b). While the well-educated are increasingly at the forefront of inter-active policy formulation, large groups of people with less education are discovering that their influence in this representative 'diplomacy democracy' is dwindling and that politicians and administrators are less responsive to their social needs (Bovens 2006b). This, in combination with the processes of globalisation and Europeanisation mentioned above, leads to socio-economic and cultural uncertainty as well as a sense of powerlessness and alienation among these groups (WRR 1995: 15-25).

### ***Sensitive issues***

In the second place, a deepening and broadening of European integration has taken place in a number of politically sensitive and complex policy areas. The benefits of co-operation for individual member states in these areas are therefore sometimes less clear-cut than the benefits derived from 'old' projects such as negative market integration or lasting peace in Western Europe. Moreover, a number of these policy domains impinge directly upon (the image of) traditional national sovereignty and for that reason alone they are particularly politically sensitive and controversial. For example, the Economic and Monetary Union (EMU) project was hedged in by a variety of differing views regarding the need for – and ultimate purpose of – co-operation (a political union, a confederation or a European economic government?). It was also affected by the uncertainty regarding the effects it would have on prosperity as well as fears that it would undermine the national institutions of the welfare state. These concerns were translated into left-right dichotomies on Europe within the European Parliament and, on a more limited level, within the national parliamentary debates on Europe. Right-wing parties often took a positive view of EU policies regarding economic liberalisation and market integration, while left-wing parties mainly supported EU policies that gave certain powers to European

authorities in areas where national autonomy was threatened (issues such as social policy and the environment).

The issues of European co-operation on security policy, police and judicial co-operation and the co-ordination of social policy, all of which arose in the early 1990s, are at least as controversial and problematic. Increased integration in these areas united new alliances of domestic and transnational actors and helps produce a greater diversity of views. Given the increase in (national) sensitivities and the differences in national systems and preferences, the formal decision making process largely takes place via the intergovernmental method where the Council dominates, and where consensus building is a slow process that generates lowest common denominator outcomes. The decision making processes in these policy domains are largely supported by an ever more complex and differentiated system of formal and informal institutions, legislative and implementation procedures which differ per domain and per topic. As a result, the policy process is still technical and opaque in nature and has become less and less visible to the broader public and national parliaments than has been the case up till now involving the traditional Community or intergovernmental methods (WRR 2003).

### ***Controversial enlargement***

Thirdly, the transition of the EU via a process of broadening and deepening coincided with the placement (at the Copenhagen Summit in 1993) of an unprecedented expansion of the EU from 15 to 25 member states on the agenda, a number which has since grown to 27. In the early 1990s, it was already clear to large sections of the population that the ten candidates from Central and Eastern Europe had a significantly lower level of development and administrative capacity than the existing member states, while their experiences with the democratic process, the market economy, and the EU policy process was only in its infancy. Accordingly, it quickly became clear that the future 25-member-state EU would have to reconcile many more different traditions and interests. This, it was expected, would make the already slow decision making process even more cumbersome, time-consuming and non-transparent, and consequently, put even more pressure on the processes of legitimacy that are based on tangible results. But the alarm bells among the broad European public – and particularly the lower-educated groups – only really began to sound when a discussion arose prior to enlargement on its consequences for the welfare state and employment at the lower end of the labour market. In the majority of member states, the media succeeded in effectively encapsulating this debate using the symbol of the ‘Polish plumber’.

***The 'Constitution': a bridge too far?***

A fourth development, which marks a reaction against this transition within the EU, is the emergence of a constitutional discourse on Europe. The 'constructive ambiguity' from which the European process has benefited since its foundation and which has traditionally justified a process-based approach, was buried once and for all with the referenda on EMU, the debates on the democratic deficit, the Convention and the Constitutional Treaty. This change of discourse has not gone unnoticed by the public. European citizens no longer unquestioningly allow themselves to be convinced by their elites about the benefits and necessity of 'Europe' and new European projects. The introduction of European citizenship has done little to change this. The period 1992-1993 brought the first major protests against the Treaty of Maastricht, in the form of negative referendum results in France, Ireland and Denmark and a negative vote in the British House of Commons. Euro-sceptic voices were subsequently also heard with the emergence of various anti-European parties during the European elections in 1994; in referenda concerning EU accession in Austria, Sweden, Finland and Norway; in the opinion polls preceding the introduction of the euro in 1999; during the European elections in 2004; and of course in the French and Dutch referenda on the Constitutional Treaty in 2005. The anti-European genie, it seems, has certainly escaped on numerous occasions from its bottle since the 1990s (Hix 2005: 151).

***Politicisation and questions of identity***

Research has shown that the politicisation of the EU has also gradually transformed the behaviour and attitudes of the public towards European integration. Not only does public opinion now reflect more clearly structured opinions, but those opinions also more frequently influence the national voting behaviour and are linked into basic political conflicts within national democracies. The consequence is that national governments, political leaders and their political parties, especially in countries where referenda have been held on European issues, have become more responsive to public preferences. The EMU referenda in the early 1990s marked a turning point in this regard, in that they confiscated the political initiative from the representatives of the major government parties and placed it directly in the hands of the national electorate (Hooghe and Marks 2005a). This enabled smaller, Euro-sceptic parties on the more extreme left and right of the political spectrum, with their anti-capitalist critique of the internal market and EMU on the one hand and a populist defence of the national state against further integration on the other, to tap into latent public discontent more effectively than the larger political parties occupying the political middle ground. These latter parties have in turn become

more alert to European issues, enabling them in turn to mobilise potential voters (Hooghe and Marks 2005b; Hix 2005; Pellikaan, Vollaard and Otjes 2007).

More recently, an important trend has emerged as a corollary to this populism and the debates on constitutional issues, in that issues of identity have been accorded more weight in the choices made by the political parties and citizens in Europe. Socio-psychological research suggests that European and national identity (regardless of how 'strong' that national identity is) can reinforce each other, but can also compete with each other (WRR, to be published in 2007). Elites and highly educated citizens, whose greater knowledge and mobility means they see (or experience) the benefits of the EU more directly than the average citizen, are moreover found to identify less exclusively with their national state (Marks and Hooghe 2005a en 2005b; Hix 2005: 165; Bovens 2006b). The citizens' identification with Europe occurs mainly as a result of common actions and ambitions over an extended period, and is not so much based on a shared history or 'essence' (Pels 2007: 6-7). In other words, identity is not just a question of 'being', but also of 'doing' (Schmidt 2006:17).

Moreover, a European identity will always be a composite of diverse national and European elements, and as a result, will always be different from any specific national identity. However, given that the average citizen continues to derive his or her image of 'Europe' more from national media reports and political claims than from direct European experiences, the communicative strategies of (national) political elites and parties have a crucial influence on the way citizens end up identifying with Europe (see chapter 5). If a government leader turns to the national news media following a European Council to explain how he (or she) has just rescued their country from the clutches of a despotic EU (as Margaret Thatcher did so very effectively in the 1980s), he or she creates an image of the irreconcilability of the national and European identities. However, a government leader can also choose to portray the process of European integration as a natural extension of the political 'vocation' and grandeur of his or her country (as is customary in France). This image implies that citizens are able to identify more easily with Europe as a political community (Schmidt 2006: 37-38). In recent years, we have seen politicians in a number of member states adopting a populist 'framing' of pro- or anti-European standpoints, thereby fuelling fears of a European 'superstate'. In the eyes of many citizens, the EU is not simply a 'soulless' and remote technocratic project with which they cannot ever possibly identify, but is also a real threat to their own national identity.



In her study on the influence of the EU on the political systems of the member states, Schmidt (2006) shows that the rise of the populist discourse on Europe is symptomatic of the legitimacy problems faced by European policymakers. In order to give genuine legitimacy to the multi-layered European political system, with its new political and administrative practices, politicians face the equally difficult task of developing the right vocabulary in their communications and debates with their own citizens, which ultimately distances itself from traditional conceptions of democracy, power, authority and influence based on the nation-state. This forces them to clearly state the reasons for and consequences of the processes of *Europeanisation* which has increasingly led to power being shared with 'Brussels'. Most of them are unwilling to do this, however, because in the short term the political cost is greater than the benefits. Instead, many politicians talk and act as if they still have access to all the traditional levers of national power, and citizens are still able to hold them accountable in all of these domains. This dilemma is illustrated by the actions of former German Chancellor Gerhard Schröder, who found himself caught between European Commission demands that in order to join EMU, Germany had to adhere to a 3% budget deficit norm as stipulated in the Stability Pact, and a German public which holding him accountable for rising unemployment and falling economic growth. Schröder ultimately opted – along with his French counterpart, Chirac, who was in a similar predicament – to ignore the agreements set out in the Pact and to press for renegotiations (Schmidt 2006: 30). In taking this step, however, he was jeopardising the credibility of the Stability Pact in the eyes of the public in the rest of the Eurozone, with all of the possible related negative consequences on the public's confidence in the EU. Sometimes, however, political leaders are simply unable to convey the motives for the particular choices they make in relation to Europe, because they are still too accustomed to regarding EU policy as the technical, relatively uncontroversial preserve of administrative and functional elites and too little as a battle for political ideas and power. The increasing politicisation of new European policy issues and the calls for more political representation and accountability mean that it is precisely these politicians who have the most difficulty in gaining or maintaining the support and trust of their citizens (Schmidt 2006: 261).

## 2.4 CHANGES IN THE DUTCH LEGITIMISATION OF EU POLICY

### 2.4.1 THE TRADITIONAL METHOD OF LEGITIMISATION

It was noted above that the traditional method of legitimising EU policy is coming under increased pressure. There is a need for new sources of legitimacy that can alongside the old legitimacy processes based on tangible

policy results. This naturally also has consequences for the legitimacy of European policy *within* national states, especially as European and national policy cycles have become more and more intertwined. How is the Netherlands dealing with the consequences of this pressure and this intertwining? To answer this question, we will first offer a brief description of the traditional Dutch method of legitimising EU policy, and then look at the implications of these new pressures for the Netherlands.

Since the start of the European integration process, successive Dutch governments have developed a strong preference for economic over political integration. The elimination of trade barriers within Europe, the creation of a stable, predictable internal market based on legal certainty and characterised by a common trade policy vis-à-vis third countries fits in well with a small, open economy like the Netherlands, which is so strongly linked to the economies of its European neighbours. This economic focus has given rise to a solid dose of pragmatism, together with a distrust of ideological and constitutional debates in which the central focus is on differences of opinion regarding policy content. Dutch policymakers prefer to deal with European issues as if they were purely technical and apolitical, and prefer to settle them in closed networks of elites and experts (Van Keulen 2006). Other actors, such as community-based organisations and the news media, generally have little to contribute and little influence, either in the process of influencing policy (input) or in the implementation (output) of that policy. Those civil society organisations that *are* consulted are often absorbed into the inner cocoon of EU policy, so that their contribution does very little to generate new perspectives or differing stand-points with regard to the legitimisation of EU policy.

This technical rather than social or political ‘embedding’ remains, in part, the result of the desire for consensus in the European Council of Ministers as well as the nature of European measures themselves, which consist largely of technical provisions and ‘soft’ recommendations (*soft law*) (Raad van State 2005). However, the Dutch tradition of pillarisation – the division of society along religious, ideological and political lines – with its emphasis on pragmatism and de-politicisation, and more generally, the relatively fragmented Dutch constitutional, administrative and political system, reinforce this inclination towards ‘poldering’, technical embedding and legitimisation through end results (Lijphart 1974; Van Deth and Thomassen 1999).

Technical embedding and de-politicisation also have positive aspects. Some (EU) issues really are thoroughly technical in nature and are best dealt with by competent specialists. According to some observers,

however, this approach sometimes restricts the scope of objections, alternative viewpoints and the capacity to evaluate and determine the accountability for a particular policy. Others go a step further and assert that the tendency towards technical embedding and de-politicisation sometimes implies a certain disdain on the part of the Dutch political elites for the idea of the sovereignty of its own people and the related notions of political representation and accountability mechanisms (Daalder 1966; Van Middelaar 2004). This is understandable if we remember that the aristocracy and patrician classes were over-represented in the Dutch parliament and government until well into the 20th century. As in many other European member states, the rise of the information society, which emerged in the 1960s, has meant that these elites have gradually had to make way for highly educated people, which, in turn, has led to the emergence of 'diploma-democracy'. In contrast to many of those with less education, this group continue to regard a (European) administration based on expertise and results as legitimate, because they can relate to the arguments and preferences of the political and administrative elites (Bovens 2006b: 212).

At the governmental level, we see the de-politicisation and technical embedding reflected in both the substantive and process characteristics of Dutch EU policy (cf. Van Keulen 2007; Pelkmans and Van Kessel 2007; Hancher and Boersma 2007; Engelen 2007; Hollander 2007). Open conflicts on European issues are usually averted, and instead, problems are made even more technical or specialised than they are in reality. In this way, potential conflicts – between ministers, between key coalition parties and even between government and the opposition – are suppressed and/or accommodated. Comparable mechanisms exist in the organisation of civil servant policy. Here again, tensions between different policy domains and the policy elites are suppressed or ignored, so that they remain virtually invisible to the politicians concerned and completely so to the public. Policy questions are often addressed as individual aspects which are approached separately as part of the day-to-day policy routine. When on the rare occasion an issue does come under political scrutiny, it quickly gives rise to a panic situation. Options, conflicts of interest and potential alternatives are rarely explored, so that the European element of policy is generally presented as a *fait accompli*. The usual advisory bodies also contribute to this smoothing over of potential conflicts, since they, too, generally restrict themselves to fairly technical issues and problem-solving recommendations. Moreover, these advisory bodies are allied to the government and ministries, so that their contribution primarily serves the internal policy formulation mechanisms rather than feeding into the public debate in the broader population.

The Netherlands not only has a preference for economic integration, de-politicisation and technical embedding of European policy, but also has traditionally favoured the 'Community method' of decision making. This method fits in well with the traditional, more or less routine and technical legislative and decision making procedures for negative market integration. What is important for a small country like the Netherlands is that this method enables the European Commission to play a crucial role as an independent representative of the general interest of the community and as the defender of the Treaties, while the European Court of Justice oversees compliance of adopted legislation and regulations. This reduces the risk of crude power politics by the larger countries. This method is also relatively transparent thanks to the involvement of the European Parliament. As a corollary to this, the Dutch policy elites have traditionally felt a profound distrust of what is known as the intergovernmental method, with its dominant role for political (power) plays by the major countries in the European Council and the Council of Ministers (WRR 2003: 232-3 and 238-9). However, it would be a misunderstanding to interpret this preference for the Community method as an ideologically driven desire for an ultimately federalist outcome. Dutch governments have largely been opposed to 'grand', let alone federal blueprints for further integration. Moreover, they have consistently demanded that decisions on the transfer of sovereignty from national to supranational institutions be preceded by lengthy and detailed intergovernmental negotiations (Van Keulen 2006: 98).

#### 2.4.2 THE TRADITIONAL METHOD OF LEGITIMISATION UNDER PRESSURE

What are the consequences of the transitional phase in which the EU currently finds itself for the legitimacy of EU policy in the Netherlands? Has the specific Dutch method of legitimisation (as a result of this?) become threatened by the various outcomes since the 1990s? Let us begin with a brief look at the general trends of support for the EU in the Netherlands.

##### ***Dwindling but still strong support for integration among the Dutch population***

Opinion polls show that the general level of support for European integration among Dutch citizens (expressed as the percentage of citizens that consider membership of the EU a 'good thing' and the percentage of citizens that think that EU membership has benefited their country) compared with citizens in other member states has remained relatively high since the 1970s. Since the peak in the early 1990s support has, however, slightly but regularly dropped (see graphs 2.2 and 2.3 and CPB and SCP 2007: 31-40). Around 1990, almost 90 percent of the Dutch population supported the

opinion that Dutch membership of the EU was a good thing, compared to 73 percent in 2006. The average levels of support among all EU citizens were 70 percent in 1990 and 55 percent in 2006. Where over 80 percent of the Dutch citizens felt that the Netherlands was benefiting from EU membership in 1990, this support had fallen to less than 65 percent in 2006.

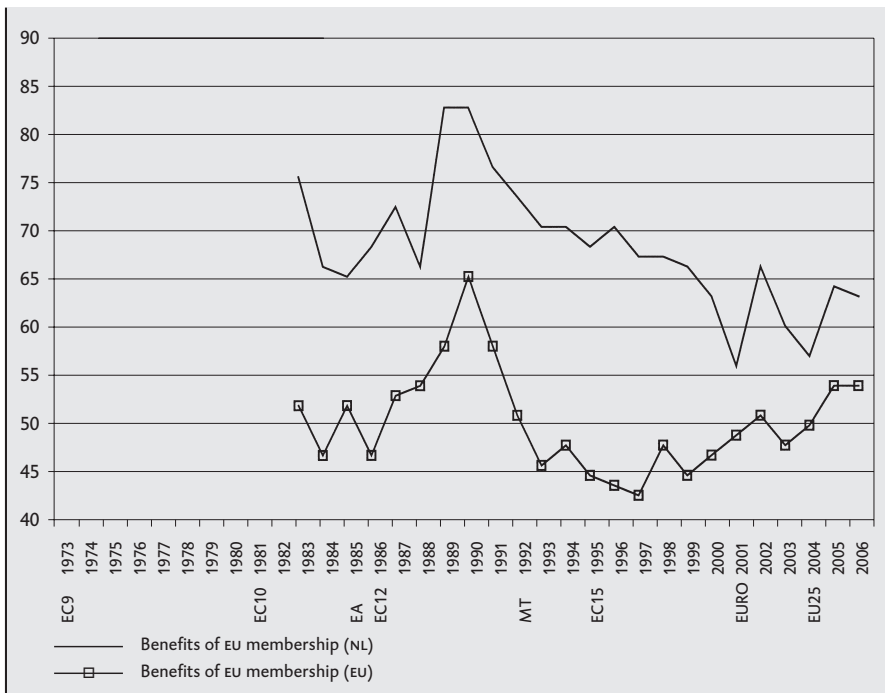
**Figure 2.2** Public support for European integration in the EU, 1973-2006  
*EU membership is a good thing*



Source: Eurobarometer

Research shows that the outcome of the referendum was indeed an expression of discontent with European integration, which goes beyond the content of the Constitutional Treaty (Aarts and Van der Kolk 2005; Dekker and Wennekens 2005; Thomassen 2005 and 2007). Dissatisfaction with the lack of focus and direction of the European integration process played a role, as did dissatisfaction about the further enlargement and democratic content of the EU, the decision making entailed in and the (consequences of the) introduction of the euro, and the organisation of the European internal market. Early in 2004, just after the referendum, a majority of Dutch citizens thought that European integration was developing ‘too quickly’ and, more specifically, that the most recent major enlargement had been a step too far (Aarts and Van der Kolk 2005: 85-6). Recent studies

**Figure 2.3** Public support for European integration in the EU, 1973-2006  
Benefits of EU membership



Source: Eurobarometer

from the Netherlands Bureau for Economic Policy Analysis (CPB) and the Social and Cultural Planning office of the Netherlands (SCP), however, suggest that the percentage of citizens opposed to further enlargement has stabilised again after the referendum 'dip', while the percentage of citizens who believe that European integration is developing 'too quickly' is also declining again. The *Cultural Changes in the Netherlands* survey carried out by CPB and SCP shows that general support for Dutch EU membership varied considerably in the period 1996-2006 depending on age, level of education, level of prosperity and political preferences. Young people, more highly educated people and people who consider their family and country to be prosperous are more positive about EU membership, such as those who voted for GroenLinks (*Green-left*) or the ChristenUnie (*Christian Union*) (CPB and SCP 2007: 59-68).

In short, while general support for the EU in the Netherlands has been decreasing, it can still be described as high, despite the negative result of the referendum and the broad dissatisfaction regarding the Dutch political and administrative elites. Thus the CPB and SCP prefer to describe the refer-

endum outcome as ‘the result of a combination of circumstances, including a mood of low political confidence, and especially of a largely autonomous dynamic process towards formation of public opinion’. (CPB en SCP 2007: 59). At any rate, people mostly envision a positive role for the EU, especially regarding specific cross-border policy domains (such as fighting terrorism and crime, defence and foreign affairs, immigration and environmental protection) (CPB and SCP 2007: 63).

Despite these positive notes, there are indeed reasons for concern. Firstly, support for the EU is based on the general social and economic climate in a society and the economic position of the citizenry itself, and much less on the judgement and knowledge of the EU’s contribution to economic prosperity. The CPB and SCP study consequently notes a ‘vulnerable basis’ of support for the EU (CPB and SCP 2007: 71). Secondly, general support for the EU implies little about the extent to which different groups of Dutch citizens are going to be willing to accept *specific EU policy choices* in the future to be legitimate, especially now that these choices are increasingly taking place in politically sensitive domains (such as immigration, new enlargement rounds, social policy and education), which could have widely differing consequences for these various groups.

### ***Politicisation as an uncomfortable phenomenon***

Looking back over the last 15 years, many informed Europe observers believe that the Dutch political system is still having difficulties with the increased politicisation of the enlarged EU. In the wake of the broadening and deepening processes, the more Europe has come to focus on non-economic issues (which have frequently proven to be controversial and sensitive), and the more complex and changeable the political playing field has become as a result of European enlargement, the more visibly Dutch EU policy loses its sense of direction, control and robustness (Van Keulen 2006: 196-7; Van Middelaar 2004; Pels 2007; De Vreese 2007).

One example of this is the trepidation with which Dutch politicians approach European constitutional issues. According to insiders, this has to do not only with the deeply rooted Dutch focus on the economic benefits of integration, but also on the ‘Black Monday hangover’ – a reference to the period following the events of September 1991, when the Dutch President of the European Council at that time suddenly tabled an ambitious proposal for a Common Foreign and Security Policy. The proposal was diametrically opposed to the dominant preferences of a majority of the citizens in the member states, leading to a scramble to rescue an old proposal by the Luxembourg presidency (Van Keulen 2006: 102). This fiasco brought an abrupt end to The Hague’s tentative flirtations with ambitious

long-term federal goals. In the wake of this debacle, the majority of Dutch politicians and administrators have largely tried to ignore or belittle the significance and consequences of the European constitutional discussions in recent years, so that their input has often been late and reactive. This stands in stark contrast to the abundant energy that successive governments have invested since 1994 in improving the position of the Netherlands as a net contributor to the EU in compliance with the Stability Pact. As Luuk van Middelaar, former advisor to EU Commissioner Frits Bolkestein, bemoaned:

... in many other aspects of political life on which Europe now impinges – the environment, health care, criminal justice, foreign policy, immigration, etc. – the Dutch government in The Hague has no idea precisely what we wish to achieve (nor how). ... The Netherlands has changed from a versatile *pays fondateur* into a one-issue country. ... Financial criteria do not however provide a solid basis for negotiation on constitutional affairs and sometimes lead to strange effects. Anyone who, in the absence of a clear destination, allows themselves to be led by the price of the ticket, will not get very far. (Van Middelaar 2004).

Moreover, this trepidation on the part of the Dutch government with regard to constitutional discussions, and its one-sided focus on finances, meant that insufficient attention was devoted to the need to provide the politicising Union with sources of legitimacy other than just results. The fact that the constitutional debates were also undoubtedly concerned with the question of how the legitimacy of Europe could be increased among Europe's citizens through new means of representation and accountability, appears to have been fully appreciated by the Dutch government only at a fairly late stage. In 2002, the government was still afraid that the involvement of national parliaments in the subsidiarity test would slow down European decision making and 'threaten to confuse national and European democracy' (Van Middelaar 2004). There was thus a failure to realise that in reality the national and European democracies had already been inextricably linked for decades thanks to the lines of representation referred to earlier that move from citizen to Parliament to line ministers in the Council, and from citizen to Parliament to the Prime Minister in the European Council. Partly thanks to the shock of the 'No' vote in the referendum, however, the government has finally become an enthusiastic proponent of this subsidiarity test. Furthermore, it supports other democratic innovations from the Constitutional Treaty such as the civil initiative, increasing the role of national parliaments and greater transparency (Ministry of Foreign Affairs 2007).<sup>2</sup>



***Apprehension regarding democratic legitimisation***

The initial fears that there would be a ‘confusion’ between national and European democratic channels illustrate a more general inability by the Netherlands to deal with both existing and newer mechanisms and concepts for democratic legitimisation. Successive governments have – in line with the traditional preference for the Community method – from the beginning recommended that greater powers be given to the European Parliament and the European Commission as a response to a lack of democratic mechanisms in the EU. However, there is plenty of evidence that shows that this route currently offers only limited possibilities for more input legitimacy (Van Middelaar 2004; Hix 2005; Schmidt 2006). The European Parliament elections, after all, are not concerned with genuine European issues, because political parties and the news media use them as a yardstick for national rather than European power relations. The majority of European citizens accordingly have no connection whatsoever with their national MEPs, whereas they still often feel connected to their national MPs. The multifaceted European Parliament debates are also difficult to follow and highly technocratic. The result is that European elections generate virtually no European political debate that would enable voters to form an opinion and develop political preferences. The fact that increases in the European Parliaments powers offers only a limited counterweight to the dwindling controlling powers of national parliaments is at least as important a factor, because the Council is more influential in the legislative process and budgetary procedures than the European Parliament (Hix 2005: 177-180).

The traditional Dutch focus on the Community method and its aversion to ‘intergovernmentalism’ also leads to a neglect of opportunities to improve representation, accountability and identification via government and Parliamentary channels. Both form crucial links between the citizens, on the one hand, and ministers and the Prime Minister in the Council of Ministers and the European Council, respectively, on the other. Moreover, it is precisely in many of the more recent (politically sensitive) policy domains in which the input legitimacy of EU decisions is open to discussion and the commitment to consensus is essential, that an embedding of national institutions is taking place within European frameworks. As the WRR noted in its report on Europe in 2003:

... with the increasing variation of governance methods, the formal and informal interdependence of national and European institutions has also been systematically [increasing] in recent years’ ... National governments have acquired an important pivotal function in more and more phases of the policy implementation process, forcing them to bridge the

gap between global and European developments on the one hand and regional trends on the other. ...

Given these developments, the opposition between the intergovernmental and supranational element of the EU offers little in the way of a solid basis in the debate and negotiation process on governance. If anything, such labels tend to paralyse the process. In the first place, they link every innovation that deviates from the familiar Community methods to a political battle between proponents and opponents of Europe. Secondly, they appear to suggest that every alternative to the Community method is by definition second-best, 'soft' and therefore inferior. (WRR 2003: 239-40).

The tendency to ignore this intertwining of European and national democratic channels and the increased importance of domestic actors as links between sensitive European policy and citizens still causes problems for the Netherlands, as evidenced by the negative outcome of the referendum on the Constitutional Treaty. The studies commissioned by the WRR for this report show that, as a result, 'Europe' enjoys virtually no political or social embedding in the Netherlands. The input into the (Dutch) policy on Europe through mechanisms of representation and accountability with regard to European decisions runs up against obstacles in the traditional channels that are supposed to connect citizens to national and European politicians. For example, increasing parliamentary control over the development of Dutch standpoints depends partly on the embedding of Europe in party democracy. However, as stated in chapter 1, the promising manifestos on Europe which most parties produced internally following the negative outcome of the referendum did not lead to more attention being paid to Europe in the subsequent national election campaign. Even where the question of power is prominent on the agenda at both the European and national levels, Europe plays no role in the national election battles – at least, this was the experience during the Dutch general elections of 22 November 2006. The substantive gap between what exercises the political party families at European level and their sister parties in the Netherlands is also only rarely bridged by the occasional MEP or parliamentary party specialist. The activities of the majority of national MEPs generate little in the way of political or media attention and thus are only partially visible to the public.

### ***Defective debate and limited media attention***

This vacuum is exacerbated in the Netherlands by the absence to date of a debate among political heavyweights with diverging views regarding the present and future significance of the EU for the Netherlands, the specific Dutch ambitions in specific areas of European policy and the ways in

which the government would like to strengthen the legitimacy of EU policy based on the four dimensions cited earlier. Now that the economic and political benefits are no longer always unambiguous, this shortcoming is even more noticeable. The rare attempts at a debate on Europe, such as the debate surrounding the European referendum in 2005, usually get no further than gross oversimplifications and a discourse that takes too little account of the new forms of administration that have become so characteristic of the EU as a political community or *polity*. Instead, the emphasis is on a black-and-white debate between the traditional ‘positive-sum’ approach based on a diplomatic union (‘the European interest is the Dutch interest’) and, on the opposing side, the equally unsubtle ‘zero-sum’ approach (‘more Europe means less Netherlands’).<sup>3</sup> As a result, Dutch citizens are confronted with what Van Middelaar strikingly refers to as ‘the false choice between “charging ahead” or “putting on the brakes”, between the bright Euro-mantra of more power for the European Parliament and Commission as an EU government, and on the other hand the Eurosceptic hope in the national parliaments that they will be able to unleash a centrifugal force directed against Brussels.’ (Van Middelaar 2004). In short, Dutch politicians have to date failed to adequately recognise that the national political arena definitely can and must offer legitimising channels for Brussels. They have also proven to be incapable of filling the vacuum between these extremes with creative alternative images, let alone with meaningful substantive debates (Crum 2007a; Schmidt 2006).

European co-operation for civil society organisations is also just as much a speciality reserved for a small number of individuals or a department within the organisation, rather than being a dimension of their regular activities. While it is true that the Confederation of Netherlands Industry and Employers, the VNO-NCW, and the small-business federation, the MKB-Nederland, are highly ‘Europeanised’ and organised at the European level, most civil society organisations prefer to operate at a national or local level and prefer direct action to the abstraction of representing interests at the European level, a role which is ultimately fulfilled by umbrella organisations. Despite the great efforts of a handful of ‘professionals’, civil society organisations have played virtually no significant role in getting citizens involved in issues such as the introduction of the euro (Engelen 2007), or in the referendum campaign for the European Constitutional Treaty (2007b). The decision making process on the Services Directive was initially also seen as a more or less exclusively technical administrative matter in the Netherlands. The Directive was seen above all as a necessary and unavoidable result of the Treaty agreements governing the free movement of services. It was only because France opened up the debate on the draft Directive and even opposed it based on the political and social impact

it would have that a debate (albeit a limited one) eventually took place in the Netherlands on the merits of the Directive at all (Pelkmans and Van Kessel 2007).

Communication studies along with the case studies used for this report also show that the public's views concerning the results of European policy outcomes do not depend directly on the content or the costs and benefits of that policy, but are partly influenced by the ways and the context in which they receive and filter information about those results (Prast 2007). People are more receptive to (media) information which fits within their existing personal frame of reference (Zaller 1992). If they can be convinced of the EU's image as that of an organisation obsessed with rules or one that devours money, they will be receptive to any information which confirms that image, but may create a mental block concerning information that undermines that image. This means that politicians and administrators have a particular responsibility to convey the results of their EU policy to the public in an appealing way, and also to take citizens' concerns about that policy seriously. As Schmidt demonstrates, however, in a decentralised and fragmented political system such as the Netherlands, this vital communicative skill is only developed on a very insubstantial level (Schmidt 2006). Regarding the physical introduction of the euro, for example, citizens concerns about increased levels of inflation were initially ignored by the politicians. The fact that the introduction of the euro occurred during an economic recession, and amidst growing distrust of the political and administrative elites, was also evidently not taken into account in their assessment of the public's reaction (Engelen 2007).

The traditional absence of debate on Europe and the low priority given to Dutch EU policy by politicians are also reflected in the media's reporting on the EU which is much less in the Netherlands than in other member states (De Vreese 2007). The cyclical nature of that reporting accentuates this: during European elections and referenda on Europe, there is a brief flurry of media attention, whereas before and after these events it is largely absent (Norris 2000; De Vreese 2001, 2007). One explanation for this is that the principal actors and points of dispute are relatively unfamiliar to politicians and public alike, and the absence of 'fights' and 'faces' does not fit in with the modern news media's logic of action. In the words of De Vreese (2007: 21): 'If European issues are treated as political second-rate issues the result will be a third-rate media coverage and no public debate'. Comparative research confirms that Dutch newspapers devoted relatively little attention to European elections in 1999 and 2004. 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. Taken together, these trends reinforce the impression that Europe is a phenomenon which is largely ‘imposed’ upon national politicians and citizens against their wills. Despite the relatively high level of support that still exists for the EU in the Netherlands, Dutch EU policy is in danger of running up against increasing legitimacy problems as a result.

## 2.5 CONCLUSION

European integration has been traditionally a matter reserved for the ‘technocratic’ rather than the ‘political’ elites, who nevertheless achieved major results by playing the game according to the rules of diplomacy and international law. They could rely on economic and legal instruments to realise this process. The results achieved formed the basis for the legitimacy of the integration process that was as natural as it was vulnerable. This technocratic orientation can be easily explained by the dominant input of experts from the political, administrative and functional elites in Brussels and the member states. It is, above all, these experts, together with a small circle of politicians, senior civil servants, lobbyists and highly educated individuals, who are able to identify with the idea of Europe as an embodiment of ‘ever closer ties between the peoples of Europe’ (Preamble to EC and EU Treaty).

Despite this, the legitimisation of EU policy in the Netherlands through the processes of representation and accountability is relatively weakly developed. In the first place, the complex methods of EU decision making lead to situations where elected national MPs often end up distancing themselves from active involvement in this ‘layered’ policy process. This is easily explained by the often highly technical content of European issues and the lack of media attention for them. This has a negative impact on the European debate in national politics, mainly because any such debate generally takes place at a later stage in the process and therefore has less relevance. Moreover, this vacuum gives rise to a perverse incentive structure which tempts politicians to claim European political successes as purely their own achievements whilst pushing the blame for political problems on to ‘Brussels’.

Secondly, the European Parliament cannot be said to have a full mandate. This is both a cause and a consequence of the fact that few electors bother to vote at elections for the European Parliament. Those elections, like the local elections in the Netherlands, also primarily reflect the national political landscape. This is further exacerbated by the fact that there has to date been a lack of a strong, programmatic party political focus on European issues. In contrast to federal systems, there is no EU government which

derives its legitimacy from EU-wide elections; instead, we have a complex EU administration which is closely interwoven into the politics and administrations of the various member states. The system is largely based on the strong but indirect national representation in the Council of Ministers and the European Council, and the weaker but direct representation by the nationally elected MEPs in the European Parliament.

The traditional method of legitimising EU policy, which was based mainly on the tacit support of the public for successes achieved in the past (governance *for* the people) has been under pressure since the 1990s. Here again, past results have offered no guarantee whatsoever for the future. Social and political changes, such as the increasing internationalisation, broadening, deepening and enlargement of the EU and the accompanying politicisation of European issues, create a growing need among citizens for legitimisation through processes of representation, accountability and identification (governance *by* and *of* the people). It was often claimed that this need could be met by strengthening European democracy; to some extent the rejection of the Treaty was an attempt to achieve this. The paradoxical effect, however, is that the increased need for legitimisation of EU policy through *national* channels is also increasing in parallel, because the direct European channel offers insufficient opportunities. This is manifest in all member states and is certainly not a specifically Dutch phenomenon. The core of the tensions that have arisen, to put it in terms used by Schmidt (2006), is that a great deal of EU-level policy is still made with no political input (*policy without politics*), while the member states are confronted with politics without the input of European policy (*politics without policy*): large swathes of the policy of the member states no longer fall under exclusive national competence (Schmidt 2006).

Another factor that is by no means an exclusively Dutch phenomenon is that the traditional tendency towards legitimisation based on results was still dominant in the 1990s and was accompanied by a strong emphasis on optimising administrative and political co-ordination of EU policy in the ever more complex, multi-layered EU. This tendency – which was accompanied by a relatively weakly developed ‘communicative discourse’ on 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 the traditional processes of legitimisation through results – certainly compared to other member states that have already held referenda and had major debates on Europe – were exposed and acknowledged relatively late in the day, namely *after* the ‘No’ vote on the referendum. They were also reflected in the climate of general discontent among Dutch voters with

‘complacent’ political elites that arose after the ‘Fortuyn revolt’ in 2002. In this sense, we can say that these events amounted to a wake-up call, although there are indications that not everyone was woken-up because there is much evidence that the new realities of European co-operation are still not being fully addressed. Without a change in the way in which the Dutch political system addresses and legitimises the investment in and the results of Dutch EU policy, the inadequate and incomplete legitimacy of EU policy will continue in the future. In other words, if we wish to avoid a situation where, whenever Europe perpetrates a policy intervention, the issue of ‘Europe’ itself becomes the most important topic of discussion, then things will have to change.

Without additional sources of legitimacy, the signs seem to be that Dutch politicians and administrators will be permanently confronted by major legitimacy problems with regard to EU policy.

It will become clear that this complex diagnosis of general European ills and problems, which are specifically related to the nature of the Dutch political system and EU policy, cannot be cured with simple remedies. The ensuing chapters take as their starting point that the national institutions (politics and the administration, media and civil society) will continue to play a crucial linking role in the legitimisation of Dutch EU policy. This is not to say that major reforms at the European level are not also desirable in the longer term. This report, however, is concerned primarily with the national level.

The analysis set out in chapters 3-7 draws upon insights from both the constitutional and democratic traditions and the four dimensions of legitimacy and is accordingly focused on the question of how the existing perverse incentive structures can be broken down and the legitimacy of Dutch EU policy strengthened.

## NOTES

- 1 For an analysis of the involvement of decentralised government agencies in EU policy in the Netherlands, see Arts 2007.
- 2 The 'Letter to Parliament concerning the EU Treaty amendments' ('Kamerbrief inzake de EU-verdragswijzigingen') of 19 March 2007 observes that '... a change in attitudes is beginning to take place in Europe. For example, subsidiarity is no longer a dirty word.' (Ministerie van Buitenlandse Zaken, [Ministry of Foreign Affairs] 2007).
- 3 The latter approach was evident in Socialist Party campaign posters that portrayed the Netherlands as having literally fall off the map of Europe.





### 3 POLITICS AND ADMINISTRATION

#### 3.1 INTRODUCTION

The EU's multi-layered political system is explicitly decentralised in its configuration. National politics and administration consequently play a crucial role in the legitimisation of EU policy at the national level. In a perfect democratic process, politicians and administrators would ideally represent and be responsible for EU policy input for the citizens of their respective nations. Politicians and administrators are, after all, part of the EU policy decision making process, often because they have a formal role to play within it (e.g., cabinet members), or more informal and indirect roles. They also have the important task of implementation of EU policy in the Netherlands.

In the previous chapter, however, it was observed that the changes that have occurred in the relations of citizens to the European integration process have not been translated, or at least not adequately, into supplementary means of legitimisation. Politicians and administrators have thus far received virtually no incentives to contribute to the legitimisation of EU policy in the Netherlands or to break down the barriers to that legitimisation, and this has led to the national political system's structural neglect of the European dimension.

This leads to the worrying situation of changes at the political and administrative levels that are difficult to enforce, whereas this is precisely where the key to the achievement of the desired strengthening of policy legitimisation lies. To this can be added the urgency of the questions that will face politicians and administrators in the short term, such as ratification of the new Treaty and Turkey's candidacy. In the longer term, other fundamental questions also deserve persuasive answers: How can accountability for EU policy in the Netherlands be strengthened? What does the Netherlands wish to achieve in the EU, and how? What actually binds us to 'Europe'? Politicians and administrators will also have to take responsibility for defending their proposals in Parliament, among their political supporters and in the media.

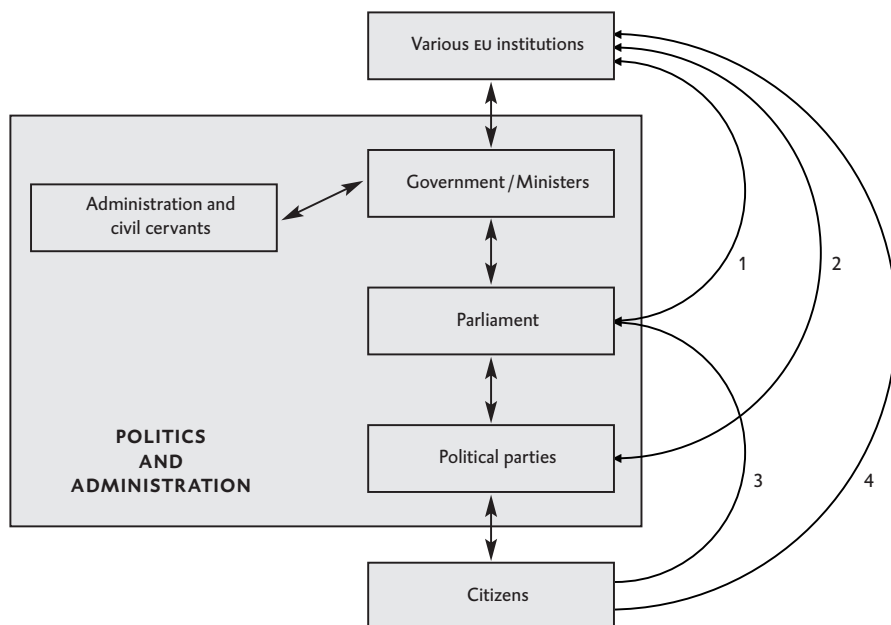
The central question in this chapter is what new ways are open to national politicians and officials that could contribute to the legitimisation of EU policy in the Netherlands. When thinking of solutions within the context of the Dutch political system there is the risk that these do not go beyond formal/institutional solutions, which have little or no direct relevance for

citizens. The only thing that happens then is procedural intervention, which may improve the system internally, but may not contribute to the legitimisation of policy. This chapter presents an alternative to this scenario, which looks for solutions that can eliminate the perverse incentives that politicians and administrators have which can present obstacles to the legitimisation of EU policy. These solutions exploit one or more dimensions of legitimacy, namely representation, accountability, results and identification. The WRR will also use this yardstick to evaluate proposals from other relevant advisory bodies and authors in this context.<sup>1</sup>

### Actors

The government, Parliament and the various political parties are the main actors in the arena of politics and administration (see figure 3.1). The following sections explore the possibilities of these actors to contribute to the legitimisation of EU policy in the Netherlands. While doing so, however, it is important to bear in mind the specific interests and positions that determine the actions of these actors.

**Figure 3.1** Connections between actors in the political system



1. Parliamentary contacts with EU institutions
2. Political contacts via party politics (national/EP)
3. National Parliamentary elections (every four years)
4. European Parliamentary elections (every five years)

### 3.2 THE GOVERNMENT

The government is a key actor in the EU's political system: individual ministers are members of the Council of Ministers and the Prime Minister is a member of the European Council. Moreover, civil servants from various government departments are members of all sorts of formal and less formal networks, consultative structures and decision making committees in Brussels. Dutch citizens consider the national government important, if only because of its visibility. It plays a central role as part of the EU's political system, on the one hand, and as a link to its citizens, on the other hand. An essential condition for better EU policy legitimisation in the Netherlands is that the government must take the lead.

However, the previous chapter revealed that certain major obstacles to EU policy legitimisation present particular problems for the Dutch government, in particular the tendency to treat policy issues as purely technical matters, leaving little scope for political opposition. This also makes it difficult to assess how Dutch interests are represented in Brussels and whether the government has exploited the scope and possibilities for taking – or avoiding – its responsibilities with respect to EU policy.

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The government's responsibility for the preparation, adoption and implementation of EU policy is caught between opposing forces of centralisation and decentralisation. On the one hand, there is a need for consistent and coherent input from the Netherlands, which requires continual co-ordination and centralisation. On the other hand, the diverse and largely technical nature of EU policy and legislation requires issue-specific knowledge and the active involvement of experts, officials and (line) departments. In the *horizontal co-ordination* model that the Dutch government has applied since 1972, the Ministry of Foreign Affairs acts as the co-ordinator of this process, in which input from line departments in the various policy issues and fields is secured through a complex web of interdepartmental committees. In practice, however, this attempt to accommodate centralisation and decentralisation leads to a rather delicate balancing act. The creating of a scope within this horizontal co-ordination model for the politicisation of EU policy and keeping ministers accountable to their responsibilities are sensitive matters, distributed as they are between line ministers, the Minister of Foreign Affairs and the Prime Minister. Moreover, it is difficult to come to a uniform strategic position which both embraces and goes beyond individual interests.<sup>2</sup>

Two elements in the recurrent proposals to strengthen the role of government in the legitimisation of Dutch EU policy are relevant. The first is

aimed at according higher priority to the preparation of policy on issues and themes of particular political importance from a Dutch perspective. The second is concerned with the configuration of the political steering and direction of Dutch EU policy.

Firstly, prioritisation by the government means that the government must be able to rise above specific policy issues, to identify and weigh the importance of issues that are of crucial political importance to the Netherlands, and to adopt a standpoint on those issues. Such substantive choices have become essential in a political Union which impinges more and more upon the vital interests of Europe's citizens. What are the key developments for the Netherlands in areas such as asylum and immigration, the environment, the social impact of internal market policy, and what does the government wish to emphasise here? Within which specific areas should views of this kind manifest themselves? Adopting such an approach would prevent the Dutch input from being driven too much by the internal 'logic' of individual policy issues, with the risk that only relevant expertise would count. Thus, substantial prioritisation demands not only information on European issues (an aspect which is currently strongly emphasised, especially in relation to Parliament), but also a substantive position, on the part of the government on why certain issues are (not) important, what is at stake (for the Netherlands), which goals the government wishes to achieve, which strategies need to be employed and what sacrifices or trade-offs it is willing to make toward that end.

Substantive prioritisation places the democratic legitimisation of political choices in the foreground. This also makes the European political process of representation and accountability far more interesting for Parliament, the media and the public. Within the constraints of an EU in which the Netherlands is just one of 27 member states, substantive prioritisation is of course also intended to influence the development and results of EU policy and to strengthen output legitimacy.

The second element, the configuration of the political control of Dutch EU policy, is closely related to this. After all, prioritisation requires a level of robust political control based on the main strategic lines. In order to be able to make general political assessments that go beyond the scope of individual issues, a clear allocation of political responsibilities is necessary. The complex division of tasks within the Cabinet, which in addition to the line ministers assigns a role to the Minister of Foreign Affairs, the State Secretary for European Affairs and the Prime Minister, is somewhat at odds with this. It has therefore been proposed at regular intervals (most recently by the Council of State in 2005) that the political primacy for Dutch EU policy

could be transferred from the Ministry of Foreign Affairs to a position closer to the Prime Minister, as part of the Ministry of General Affairs. Whatever mechanism is chosen in order to bolster the central responsibility for the strategic choices in relation to EU policy, it is essential that EU policy becomes an increasingly important and integral part of national policy. Comparable developments have been taking place in other countries: the French *Conseil d'Etat* has, for example, recently proposed a strategic advisory council for Europe be set up under the aegis of the French President (*Conseil d'Etat* 2007).

Even within the existing structures, much can be done in the short term in order to strengthen this central responsibility. Several proposals have been put forward to this end, for example, giving the Prime Minister the power to place items on the agenda in the Council of Ministers (Raad van State 2005), a proposal which has already been implemented in part (see the Explanatory Memorandum to the Ministry of General Affairs budget 2007). Other suggestions include the creation of ministerial steering groups at the Cabinet level for 'horizontal' issues which go beyond the responsibilities of individual departments (such as the national EU presidency and the Financial Perspectives). The actual contribution of these proposals to the strengthening of national EU policy legitimisation has however been limited to date, even where they have been applied for some time (such as the 'State of the Union' that is presented annually to accompany the Ministry of Foreign Affairs budget). Consideration could also be given to the notion of strengthening the strategic role of the Prime Minister via the existing Cabinet subcommittee charged with European affairs (known as the REIZ-EA Committee).<sup>3</sup>

In the longer term, the need for a central strategy may require more radical measures. A shake-up of Cabinet functions, with the position of the Prime Minister being further strengthened, would then be a logical move. After all, both within the Cabinet and in the European Council – which is has become increasingly important as a steering factor at the EU level – the Prime Minister carries the ultimate political responsibility for Dutch EU policy. Strengthening the central strategy function would adequately reflect the preparation, implementation and monitoring of the consistency of the government policy's main strategic lines with regard to the EU. In this way, the Prime Minister, as chair of the Cabinet, can then focus on the development and promotion of the main lines of EU policy in the Netherlands. The government would then be sending out a clear signal to citizens, civil society and the media that the EU is no longer part of Dutch foreign policy, but derives its legitimacy in part from *Dutch* political channels of representation and accountability. This would not affect the *individual*

ministers' responsibility for the European dimension of their specific fields of activity.

The WRR draws a clear distinction between this strategic role and the co-ordination of the Dutch input into the EU decision making process. The Ministry of Foreign Affairs, and in particular, the State Secretary for European Affairs, has the primary responsibility for the latter task. Assigning the strategic function does not mean that the – often technical/administrative – co-ordinating role necessarily needs to fall under the responsibility of the Prime Minister's ministry (the Ministry of General Affairs). It is chiefly of internal importance that the day-to-day co-ordination of departmental interests and issues is performed adequately. However, this is of limited importance when it comes to the improvement of the strategic linking function between the government and its citizens. Therefore, the WRR does not devote attention here to how this role can best be structured, and believes that reinforcing the accountability function of the Prime Minister on European issues can best be achieved by giving the Prime Minister ultimate strategic responsibility.

### **3.3 PARLIAMENT**

#### **3.3.1 PARLIAMENT IN RELATION TO THE GOVERNMENT**

Many analyses of the position of EU policy within the Dutch political system point to the limited involvement of the national Parliament (Kiiver 2007). There are many areas where the legislative function of Parliament has changed into a monitoring function of the government's actions regarding 'Brussels'. At the same time, Parliament is still the ultimate anchor point of representative democracy. This observation makes the fact of its lack of involvement even more urgent. Therefore, it is not surprising that various proposals have recently been made and initiatives implemented to strengthen the Parliament's involvement in EU policy. A key area of attention in these proposals is the need to better equip Parliament by providing it with improved information flows and to facilitate its internal analytical capacity with regard to Europe. There have been many improvements in this respect in recent years. For example, national parliaments are no longer dependent upon their respective national governments for information regarding EU issues. Instead they use their own direct 'information channels' at the European Commission. Furthermore, since 2004, the Dutch Parliament has posted a parliamentary representative in Brussels, who maintains contacts with various European institutions. Interestingly, the Senate (First Chamber) of the Dutch Parliament has initiated the creation of a special European Bureau, and in the House of

Representatives (Second Chamber) as well, there is a modest but steady build-up of European expertise and support capacity.

While the previous chapter demonstrated that a lack of involvement by Dutch MPs is not primarily due to their inability, but more the result of a deliberate and realistic political judgement. It is often difficult and usually not that appealing for politicians to adopt a high profile on European issues. It is essential to acknowledge this because it means that changes in the institutions and working methods of the Dutch Parliament will only lead to greater involvement on the part of MPs if they have stronger incentives to do so. The challenge is therefore to provide national MPs with incentives which mobilise them on European as well as national issues. Even then, the success of the proposals set out below will depend on the commitment of those involved. A further constraint is that all of the proposals will have to fit within the parameters of the common structures of European decision making at the EU level.

The first step in activating the linking function of national MPs lies in substantive issues. This impulse regarding the content of dossiers has occasionally already manifested itself. A political debate did eventually arise in the Netherlands regarding the possible socio-economic consequences of the Services Directive (Pelkmans and Van Kessel 2007). It is important that MPs, in exercising their mandate, ensure that full attention is given to the wishes, concerns and expectations of Dutch citizens concerning the content and results of Dutch EU policy. This is difficult because citizens not only have high expectations when it comes to EU policy – in fields such as the combating of terrorism and environmental policy – but at the same time they assume that the national government will protect them from what they perceive as EU undesirable interference in their personal lives (European Commission 2006b, Standard Eurobarometer 65). A good starting point is to tap into the experiences of citizens in areas where ‘Europe’ has already made itself felt in all kinds of ways: the Europe of the ‘Polish plumber’ and the tourist, the ‘green’ or ‘social’ Europe, the free market or ‘Fortress Europe’. Europe has a multitude of meanings for its citizens, which politicians could readily access. Moreover, assigning a stronger strategic role to the Prime Minister and offering a clearer prioritisation and profiling of substantive themes by the government could also provide an incentive for MPs to express their own views and to insist that the government take responsibility for its positions. In this way, Parliament could function as a platform from which the views of the citizens on European issues are articulated, which, in turn, could reinforce legitimacy through representation. This could, moreover, facilitate the influence Parliament has on the outcome of EU policy – though this would require politicians



who are able to portray those outcomes in an appealing way, including to the media (Pels 2007; Prast 2007; De Vreese 2007).

A second way of mobilising national MPs is through the activities of the Temporary Joint Committee for Subsidiarity which was installed in the spring of 2006 to conduct a parliamentary check on legislative proposals from the European Commission on the observance of the principles of subsidiarity and proportionality.<sup>4</sup> In principle, this Committee offers a platform for political debates on the desired content and scope of European policy. The principles of subsidiarity and proportionality can actually be applied not only to technocratic but also to political interpretations (Van Kersbergen and Verbeek 1994; 2004; Méndez-de Vigo 2002; Pelkmans 2005; Ederveen, Gelauff and Pelkmans 2006). In practice, however, the first – highly technocratic – reports from the Joint Committee on Subsidiarity appear to confirm yet again the traditional tendency in the Netherlands to depoliticise EU policy in Parliament. Moreover, where political opposition does become visible, the focus is primarily on the opposition between EU policy and Dutch policy. While this may not in itself be surprising, given the way that Dutch politicians have embraced the subsidiarity principle, it may obstruct a broader political debate. All in all, there is a clear danger that this Committee will just end as a technical control mechanism, overseeing the work of the European Commission. If that does happen, the potential contribution of the Committee to the legitimisation of EU policy will be very limited, especially if there is a lack of communication with the rest of Parliament and beyond (particularly the media).

However this type of parliamentary committee does offer the possibility for encouraging a national parliament as a whole to contribute to the legitimisation of EU policy. The National Convention cites the example of the British parliamentary ‘Scrutiny Committee’ in this regard.<sup>5</sup> The emphasis in this Committee’s brief is to select (filter) those European initiatives (in the broadest sense) that are relevant to the national parliamentary debate, using both legal and political criteria. Instead of smothering political debate at the very beginning with a technical or specialist approach, this approach genuinely facilitates political debate. This allows the diversity of political opinions on a specific issue to be voiced and thus reinforces legitimacy through representation. Such parliamentary debates can also prompt the government to become more accountable for its actions. Supplementing the work routines of this Committee would be appropriate to the strengthening of this accountability function by again using the British example, by adding a ‘scrutiny reserve’. This would mean that Dutch ministers in the Council of Ministers could only co-operate on the adop-

tion of policy proposals after the national Parliament had expressed a view on those proposals deemed politically sensitive by the Prioritisation Committee.<sup>6</sup>

### 3.3.2 DIRECT LINK BETWEEN PARLIAMENT AND EUROPEAN INSTITUTIONS

The emphasis in the foregoing section has been mainly on strengthening the legitimising function of Parliament via the activation of ministerial responsibility. However, *direct* links between MPs and European institutions can also contribute to the legitimisation of EU policy (especially in the area of representation). Greater attention to these links would reinforce the image of the EU as a complex, multi level, polycentric and only partially hierarchical system (Kiiver 2007). This, in turn, would require that national parliaments not to solely focus on ministerial responsibilities, but also directly engage with European institutions at the European level and/or with parliaments in other member states.

The most far-reaching (and most often cited) practical suggestion in this regard is that delegates should be allowed to combine a mandate for the national parliament with a mandate for the European Parliament (the 'dual mandate'). The National Convention recently called for the reintroduction of the dual mandate (Nationale Conventie 2006). This suggestion fits in with the idea that the many administrative layers of the EU are closely interrelated, and those interrelationships demand closer attention. Dual mandates could make national MPs more aware of both the European and the specific national context of specific policy issues. This also offers opportunities and scope for the broadening of substantive debates and creating a forum for richer choices, beyond the dichotomous opposition between the EU and the Netherlands. In this way, the dual mandate could strengthen the representative legitimacy and increase the scope for national MPs to call the government to account.

However, there are also objections to the dual mandate. In the first place, there is the issue of the wearing of two hats: a Dutch MP has to serve Dutch interests, while the duty of an MEP is to serve European interests. It is important that the mandate of the MPs concerned should not become 'infected' by their role as 'institutional representatives of the Dutch Parliament in the European Parliament' (and vice versa). The workload of the two positions is such that it is virtually, if not entirely, impossible to combine the two roles, especially for members of the smaller parties. These and related considerations resulted in the abandonment of the dual mandate at both the European and national levels.<sup>7</sup>

However, less radical means are also available for the establishment of necessary links. One promising initiative is that MEPs address the national parliament, although under existing conditions this type of input sometimes has a fairly 'ritualistic' character. Similarly, it is both possible and desirable for national MPs to show up regularly in Brussels and Strasbourg, for example by taking part in European Parliament committee meetings. Co-operation between the parliamentary parties in the national and European Parliaments would also have positive effects (see section 3.4).

Therefore, it is crucial that Parliament, based on its position in both the national and European systems, should establish a link with the other administrative branches. National MPs could then fulfil a more independent role in the area of EU policy as representatives of the people, and could acquire additional opportunities to call the responsible ministers to account. This could provide an opportunity for the media to focus on the role of national politicians regarding European issues, and could have a positive impact on the national implementation of EU policy in the Netherlands, since early involvement by national political figures in the adoption of EU policy would reduce the risk of problems in the later phases. The tendency towards 'scapegoating' and 'blaming Brussels' could then be suppressed, and the obstacles to the legitimisation of policy results removed.

### 3.4 POLITICAL PARTIES

Political parties play an important role in conveying the prevailing views to politicians and administrators at the grassroots level.<sup>8</sup> They are the 'gatekeepers' who gather and articulate the views of citizens and ensure that these are coherently expressed and that they have an influence on (EU and national) policy. However, there is little substantive debate within and between the various political parties on European issues. Whenever debates do take place, they are often limited to a discussion of 'more' or 'less' Europe (Kiiver 2007; Pellikaan, Vollaard and Otjes 2007). And within the political parties, Europe is often considered the preserve of a small number of specialists (Van den Berg and Brandsen 2007). Yet the involvement of political parties is crucial in the connecting of citizens to the EU. As Hix puts it, 'With the experience of watching and participating in a democratic debate, and with politicians who are forced to respond to voters' concerns and develop rival policy ideas, public support for the EU would gradually begin to be rebuilt' (Hix 2006: 13, in: Hix and Bartolini 2006).

This next section will discuss the possibilities of political parties being able to function in such a way that the public is able to exploit the 'golden route'

of elections to express their European political preferences and to hold politicians and parties accountable for the EU policies they pursue.

In the short term, the possibilities for strengthening the contribution of political parties with regard to the legitimisation of EU policy in the Netherlands are to be found among those European policy issues that easily fit into a specific party's political profile and ideology. In this context, Kiiver (2007) calls for selective or targeted politicisation. Current developments on European policy already offer opportunities in this respect. The traditional left-right opposition, for example, appears to be becoming more relevant. Political choices on the structuring of the internal market are also becoming increasingly important, especially in light of ongoing co-operation in the area of the free movement of services and persons. The Services Directive is a good example (Pelkmans and Van Kessel 2007). Immigration is currently so high on the political agenda that the majority of parties included passages on this issue in their party manifestos. Security is another example of an issue with an increasingly international dimension, which guarantees a diversity of standpoints among the different political parties.

The second option for strengthening the role of political parties is encapsulated in the opposition between 'more' and 'less' Europe, which continues to acquire increased importance in Dutch politics in the wake of the ebbing away of the unquestioning 'permissive consensus' of Dutch citizens with regard to European integration (see chapter 2). The critical standpoints of the various political parties on (specific components of) European co-operation have been put forward more clearly since their successful performance in the referendum campaign (Crum 2007b). The parties that have taken a more positive view of European co-operation appear to have little awareness of this change, or at least do not seem to know how to deal with it, whereas politicisation places higher demands, especially on the 'automatically' pro-European parties who have no desire to lose the battle for electoral support before it has even started. Their traditional approach, that European interests are automatically equated with Dutch interests, is just as one-sided as the approach of those parties more critical of Europe, which regard Dutch interests as being diametrically opposed to European interests. Now that European co-operation has proven to be a politically charged subject in some respects, the 'burden of proof' has increased for the proponents of further European integration.

Both the preferences and expectations of Dutch citizens and the actual challenges facing Europe imply that the political discourse cannot remain permanently limited in scope, however (see section 2.4.2). Therefore, the

present discourse needs to first of all be opened up to more views, considerations and standpoints on the problems, solutions, responsibilities and agenda of the European policy arena, of which the member states have formed an inextricable part for decades. In other words, the discourse must embrace all of the different facets of a *policy*. Secondly, these views and considerations on policy must be linked to a vision of the EU as a political community (*polity*). Thus, in an ideal political discourse, it is not only a question of which policy will fit into the European arena that is important, but also how that policy relates to the 'Europe' that people wish to achieve and along which pathway that 'Europe' can be realised (Van Apeldoorn 2007). What the substance, direction and nature of European co-operation should be can no longer be left unsaid or regarded as automatic, but needs to be constantly articulated, argued and established. Moreover, this needs to be linked to views on the desired development of the EU as a political community. Unless this link is established between tangible policy ambitions, on the one hand, and opinions on the EU as a political system, on the other, the political discourse is in danger of becoming bogged down in elevated abstractions ('the federal union'), doomsday scenarios ('the super-state') or grand visions (the peace and reconciliation project). None of these ideas fit in completely with the contemporary reality of the EU as a complex, multi level and increasingly politicised administrative system. The often highly subtle way in which the national and European dimensions of policy domains are interwoven, the diversity of institutional arrangements and the different ways in which national and European actors are involved, are becoming more difficult to capture under a common header. Therefore, the challenge for political parties is to link the views expressed regarding actual problems and the opinions of their grassroots supporters with their own profiles and to then link them to views concerning the further development of the EU. This type of approach would avoid an over-fixation on purely institutional issues, which are far removed from the problems, wishes and views of citizens. This is the substantive 'route' via which the role of political parties ought to become manifest.

The WRR notes that, while these visions already exist to some extent, they have yet to reach the majority of citizens. One reason is because the traditional discourse of Dutch politicians is totally inadequate because of its strong preference for internal policy co-ordination. Dutch politicians are not used to pursuing a persuasive communicative discourse on Europe, which also meets the concerns of its citizens. The referendum campaign on the Constitutional Treaty is a textbook example of poor political communication (Aarts and Van de Kolk 2005). The governing parties and most of the Cabinet members not only voiced their positions far too late in the debate,

but also had no idea of how to talk about Europe in the media. Their divergent, sometimes conflicting calls for a 'Yes' vote lacked authority and conviction (Schmidt 2006: 261-262). In order to reach the public on European issues, capable politicians who are willing and able to develop a communicative discourse are needed (Pels 2007). These politicians will have to align themselves with the logic of the media, especially on European issues that are far removed from citizens' personal experiences and which generally reach them only via the media (De Vreese 2007; see also chapter 6).

In addition to substantive incentives, the mobilisation of political parties would also benefit from an improved embedding of European integration into the party organisation. In this respect, proposals made in earlier reports for more co-ordination between the parliamentary parties in The Hague and Brussels/Strasbourg are particularly relevant (see section 3.3.2), both regarding the substantive orientation and the strategic role division concerning European issues. This co-ordination is shaped within the political parties in varying ways, such as via institutionalised discussions, informal and formal contacts via international secretaries who function as a link between politicians and party leaders (Van den Berg and Brandsen 2007). There are also contacts, albeit fairly unstructured, with similar parties in other member states. To improve the contribution that political parties can offer to the legitimisation of EU policy, it is essential to stimulate links of this kind. This can occur, for example, via financial support from political party think tanks to joint European publications, campaigns and debates. This would further strengthen the national political embedding of EU policy and at the same time stimulate the formation of a European political sphere.

### 3.5 CONCLUSION

Government, Parliament and political parties are indispensable when it comes to the issue of improved legitimisation of EU policy in the Netherlands. However, these actors have thus far not functioned optimally in this regard. Therefore, radical changes are needed, in accordance with a strategy that encompasses all four dimensions of legitimacy but leaves room for specific emphases within that strategy depending on the specific issue and context.

#### **Output**

The legitimisation of EU policy in the Netherlands has traditionally been characterised by a strong focus on policy results and outcomes (chapter 2). It is clear that the social relevance of actual policy results will continue to

be an important source of legitimacy in the future. After all, there will always be policy domains that are characterised by relatively ‘technical’ issues, where the envisaged solutions arouse little controversy. In other cases, the results of EU policy will be no less important, but will have to be enforced in a context of conflicting interests and policy objectives, making painful trade-offs unavoidable. Therefore, the WRR supports calls that are made by other advisory bodies for the establishment of a clear political prioritisation of EU policy in the Netherlands by both the government and Parliament. To this end, the WRR recommends that responsibility for strategic policy choices be placed explicitly in the hands of the Prime Minister, and that the parliamentary Subsidiarity Committee be transformed into a prioritisation committee. This would make it possible to explicitly rely on output legitimisation for those issues which are more technocratic and politically less sensitive, while still allowing the use of additional sources of legitimisation for politically sensitive issues.

### **Representation**

Ideally, political parties represent the views that manifest themselves in Dutch society, while Parliament represents the Dutch people and the government formulates and represents Dutch interests. It is becoming increasingly important for these actors to assume their roles on various European issues; which become increasingly politicised and therefore deserve a position within the national representative system. A major element here is the offering of a diversity of views, that appeals to a broad spectrum of the citizens and takes into account their preferences. Another is to avoid the adoption of an overly technical or specialised approach on European issues. *Visibility* is thus both a prerequisite and an incentive to fulfilling the representational role more effectively. Placing responsibility for EU policy strategy with the Prime Minister could achieve this. The WRR thinks that this would also underline the close interconnectedness of national and European policy. The Prime Minister would thus acquire visible responsibility for the promotion of European interests in the Netherlands and of Dutch interests in Europe. This would also be in line with the European reality in which the European Council (of which the Prime Minister is a member) has begun to play an ever-more prominent role on the political stage. Visibility is not only crucial for the government, but also for Parliament and the various political parties, in that it would avoid the trap of treating European issues as purely ‘technical’ or specialised matters.

The visibility of European issues and the *diversity* of views in Parliament could be strengthened by transforming the recently installed parliamentary Subsidiarity Committee into a prioritisation committee. Political choices

on EU policy go beyond the question of whether the EU is the appropriate place for the development of policy. A prioritisation committee would more adequately reflect the complex reality of European co-operation, with its varieties of policy domains, instrumentation and relations between the actors. *Connecting to citizens* begins with the political parties that are able to make their first 'gains' with positions on European issues that match their profiles. The challenge for these parties is then to be involved in more than just the traditional debate of 'more' or 'less' Europe but also in the formulation of appealing answers to topical questions such as 'What kind of Europe do we want?'

### **Accountability**

To date, the Netherlands has always promoted *European* accountability mechanisms, and partly as a result, it has devoted little attention to national accountability mechanisms for European issues at the national level. As members of the Council of Ministers, government ministers are part of the European legislature, but the Council is not accountable to other institutions at the European level. Because the government is accountable to the Dutch Parliament on European issues, the WRR proposes that the activities of the parliamentary Prioritisation Committee be linked to a parliamentary scrutiny reserve. This would mean that the government would be required to await the outcome of parliamentary debates before adopting definitive positions in the Brussels decision making process. By linking the outcomes of the parliamentary debate directly to the Dutch input in the European decision making process in this way, an *ex ante* accountability mechanism would be created. This is all the more important because the traditional *ex post* accountability mechanisms are less suited to amending European legislation once it has been adopted. The strategic function of the Prime Minister that we mentioned earlier also has great potential as an accountability mechanism, since it enables Parliament to call the Prime Minister to account for the strategic input of the Netherlands at the European level.

### **Identification**

Initiating processes in which citizens can identify more closely with the EU is mainly a matter for the longer term and is something that is virtually impossible for actors from the national political and administrative echelons to enforce (see also WRR 2007). Whether or not this happens depends in part on factors such as the role of 'Europe' in education, the question of whether Dutch citizens trust the citizens of other member states (Prast 2007) and the degree to which they benefit from the EU and are actually aware of it. The contribution of national politicians and administrators lies primarily in the creation of a fruitful *breeding ground* for such identifica-



tion processes. In order to do this, they must themselves assume responsibility for playing the role of a link and not an obstacle. If politicians and public administrators improve the legitimisation of EU policy via the more consistent representation and accountability of their choices and stand-points, citizens will be able to develop knowledge, awareness and a certain familiarity with European issues, which will enable them to identify more readily with Europe in the longer term. Obviously, the question of whether this will actually happen is not something that politicians can control, but this should not be a reason for not trying to contribute to citizens identifying with Europe.

Politicians and public administrators can also stimulate this by portraying Dutch participation in the EU in more appealing ways. It has several times been observed in this report that European co-operation is a complex and multi-layered affair. Citizens accordingly find it difficult to identify with the EU as a political system and are understandably susceptible to doomsday images of a European 'superstate' (Crum 2007b). Here again, there is an important role for administrators and politicians, as well as for a more politically visible strategic role for the Prime Minister.

To date, the national level has been neglected in the context of the legitimisation of EU policy and this therefore needs to be rediscovered. This chapter has discussed a number of options toward this aim. For the WRR, the most important thing is that the various routes help to enable politicians and public administrators to improve their contribution to the legitimisation of EU policy; the precise structuring of these proposals may however vary. At the same time, the obstacles to overcome remain particularly persistent. Therefore, the options outlined in this chapter are a necessary but possibly insufficient condition for a stronger EU policy legitimacy process. Bearing this in mind, the following chapters focus firstly on different constitutional and democratic traditions and subsequently on actors outside of the political and administrative arena, and address the question of how these traditions and actors may contribute to EU policy legitimisation in the Netherlands.

## NOTES

- 1 See, in this respect, the report by the Council of State (Raad van State, Kamerstukken II 2005/06, 29 993, no.22); the reaction of the government to that report, The Hague, 23 May 2006 (Kamerstukken II 2005/2006 29 993, no. 27); the Public Administration Council (Raad voor het Openbaar Bestuur, *Nationale coördinatie van EU-beleid: een politiek en proactief proces*. The Hague, 2004); the Advisory Council on International Affairs (Adviesraad Internationale Vraagstukken, *De Europese Unie en de band met de burger*. The Hague, 2005 (advisory letter)); Rood, J.Q.Th., S.J. Nollen, M. van Keulen and G.A.T.M. Arts, *Nederland en de totstandkoming van EU-milieurichtlijnen*. Instituut Clingendael, The Hague, December 2005; Brink, A. van den, *Regelgeving in Nederland ter implementatie van EU-recht*. Deventer: Kluwer 2004; Final report of the 'Combined Steering Committee on EU Affairs' ('Gemengde Commissie Sturing EU-aangelegenheden', The Hague, 2005); Advisory Council on International Affairs (Adviesraad Internationale Vraagstukken, *Europa een prioriteit!*, The Hague, 2006).
- 2 See, e.g., ROB, *Coördinatie van EU beleid, een politiek en pro-actief proces*; Van Keulen, 2006.
- 3 Until recently known as the REIA-EA committee.
- 4 This committee consists of members of the Senate and House of Representatives; for more information on the proposals discussed see: <http://www.tweedekamer.nl/kamerleden/commissies/EU/sub/index.jsp#TitleLink5>.
- 5 *Hart voor de publieke zaak*, 2006, p.54.
- 6 Cf. the recommendation of the National Convention which rightly prefers a scrutiny reserve based on the British example rather than the Danish example; *Hart voor de publieke zaak*, 2006, p. 53-4.
- 7 After the European parliamentary elections of 2004, the dual mandate was abolished (pursuant to a Decision amending the Act concerning the election of representatives of the European Parliament). In the Netherlands, this was adopted in the Incompatibility of Office (States-General and European Parliament) Act.
- 8 Limited membership and limited public involvement both raise important questions about the representativeness of political parties. They also place the problem of the legitimisation of EU policy in a sharper perspective, but this section is concerned with proposals aimed specifically at strengthening the legitimacy of EU policy.



## 4 SAFEGUARDS AND DIRECT CITIZEN PARTICIPATION

### 4.1 INTRODUCTION

The previous chapter discussed the role of politicians and policy makers from the perspective of representative democracy, in which citizens elect their representatives who then deliberate and make decisions based on that mandate. That approach is thus based on the *indirect* influence that citizens can exert on the decisions taken by their elected representatives. In this chapter, other perspectives will be explored. Firstly, it discusses the constitutional tradition, within which the offering of safeguards on the basis of subjecting public authority to the rule of law, distribution of power, checks and balances, protection of the individual and an independent judiciary are important elements for the legitimisation of public authority. Secondly, this chapter discusses democratic perspectives other than representative democracy. The central question here is how citizens themselves can participate *directly* in decision making processes, for example via referenda or citizens' forums, and how this can contribute to the legitimisation of EU policy in the Netherlands.

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Neither the constitutional tradition nor direct citizen participation generate substitutes for representative democracy, instead, they must be seen as complementary perspectives. The referendum on the Constitutional Treaty, for example, made clear that a referendum is not a means for national politicians to hand over decision making to citizens, but in fact, imposes a special responsibility on them of taking a stand on the relevant issue. Therefore, this chapter focuses on the possibilities and mechanisms offered by these perspectives that could reinforce the contribution of national politicians and policy makers to the legitimisation of EU policy in the Netherlands.

### 4.2 SAFEGUARDS

#### 4.2.1 DEFINITION OF SAFEGUARDS

The notion of safeguards ensues from the constitutional tradition whereby all actors in society, i.e. including the government, are subject to the rule of law. This provides citizens with legal certainty and protects them against arbitrary actions on the part of public authorities. The separation of powers and a system of checks and balances are central elements in arrangements based on the constitutional rule of law. At the European level, these elements are expressed *inter alia* in the institutional balance between the three political institutions (European Commission, European Parliament

and Council of Ministers) and the independent European Court of Justice. However, not only *institutional* but also *substantive* safeguards are relevant. At the European level, for instance, these include the safeguards enshrined in treaties relating to the internal market (the four freedoms) to which the actions of the EU must be geared.

In addition to such ‘horizontal’ safeguards at the European level, ‘vertical’ safeguards function in the relationship between the EU and the member states. Examples are the ‘competence catalogue’ (*Kompetenz-Katalog*), national vetoes and subsidiarity. However, European integration also has consequences for the separation of powers *within* member states. In most member states, a shift has taken place whereby the executive power has acquired more power, largely at the expense of national parliaments. This development is in fact not limited to EU policy, although it manifests itself prominently in that domain. In several countries this shift has led to the introduction of correction mechanisms aimed at preserving or restoring the balance between government and Parliament. The most striking example in this regard is the parliamentary mandate to which the Danish government is bound in its decision making on EU policy (Van den Brink 2004).

The last type of safeguards involves the citizens. Based on the doctrine of direct effect, individuals may seek recourse in national courts to enforce compliance with European law, in both horizontal (i.e., with regard to other citizens and businesses) and vertical (i.e., vis-à-vis the national government) relationships. European law itself already offers an elaborated framework for this. The judiciary can consequently provide a substantial counterweight to the growing power of the administrative branch, provided citizens are sufficiently aware of the possibility of this aspect.

Safeguards thus have a protective function in the context of European co-operation. However, it is not just the protection of the individual against national and European administrative institutions that is at stake, but the protection mechanisms available within and between these levels are just as relevant. By their very nature, safeguards are reciprocal in their application. The subsidiarity principle provides a good illustration in this respect; not only does it offer protection to the member states against unbridled intervention by the EU, but it also provides a guarantee that decisions will be taken at the Community level if the EU is in a better position to take those decisions than the individual member states.

Chapter 2 of this report argued that Dutch politicians and administrators often obstruct the legitimisation of EU policy in the Netherlands rather

than contributing to that legitimisation. The question in the context of this chapter should therefore be to what extent safeguards can offer suitable remedies. Therefore, safeguards are here defined as checks and balances which enable national politicians and administrators to contribute to the legitimisation of EU policy in the Netherlands.

Horizontal safeguards at the European level fall outside the scope of this definition, since they do not contribute to improving the role of the national administration and national politicians in the legitimisation of EU policy in the Netherlands.

In the foregoing, the examples thus far used have mainly related to hard, legally binding or even constitutionally embedded safeguards; however, less mandatory safeguards, not necessarily anchored in the law, are also relevant. The ‘red lines’ introduced by UK Prime Minister Tony Blair at the time of the discussion on the European Convention provide a good example. The subsidiarity principle, which only has political significance and cannot be legally enforced, is another example of such a safeguard.

#### **4.2.2 THE NETHERLANDS AND SAFEGUARDS**

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The Netherlands has an established tradition of emphasising safeguards at the EU level. When it comes to institutional safeguards, the Dutch position has traditionally been that European co-operation must be based on the ‘Community method’. This means that the Commission was assigned a key role in initiating policy and that the European Court of Justice had an independent role in applying and enforcing European law. For this reason, the Netherlands was not a supporter of national veto rights and flexible forms of co-operation, in which certain countries could opt out (or participate only under certain conditions) of specific forms of European co-operation (e.g., Denmark, the UK and Ireland in Justice and Home Affairs). According to the Dutch view, these practices could jeopardise the substantive safeguards in relation to the internal market. These safeguards remain extremely important to the Netherlands. Safeguards are thus closely related to specific views on European co-operation. If the EU is viewed as a legal community, for example, the emphasis will be on safeguards for parliamentary and judicial scrutiny. In the past, the combination of substantive and institutional safeguards created a balance at the European level which matched Dutch wishes and needs. As a result, little attention was paid to other types of safeguards.

This has changed in recent years. In the first place, the substantive safeguards of the EU in relation to the internal market have become more

ambiguous; it is becoming ever clearer that these can no longer be so sharply distinguished from safeguards in other areas, such as social protection (where the member states have primacy). This has given rise to debate in recent years on vertical safeguards, which are intended to offer guarantees in the relationship between the EU and the member states. The European Council responded with the Laeken Declaration (2001), which established that the European Convention necessarily had to include proposals for making the division of powers between the EU and the member states more explicit. The ‘competence catalogue’ and the proposal to give national parliaments a role in testing the subsidiarity principle can be regarded as the tangible outcomes of this discussion. Notwithstanding the rejection of the Constitutional Treaty, the debate on the subsidiarity principle was picked up by the Dutch States-General, and this led to the establishment of the parliamentary Temporary Committee on Subsidiarity Testing. This was accompanied by more attention being paid to substantive vertical safeguards. Several political parties and politicians<sup>1</sup> after a ruling by the European Court of Justice,<sup>2</sup> announced that they were in favour of protecting the national criminal justice system from EU influence.

Since then, national horizontal safeguards have also emerged, albeit to a somewhat limited extent. Since the ratification of the Treaty of Maastricht, the two Houses of the Dutch Parliament (the States-General) have negotiated a right of assent in Justice and Home Affairs (JHA) matters, which left the European Parliament uninvolved as a co-legislator. The Dutch Constitution is also important in this regard; at present, the Constitution contains no reference whatsoever to Dutch membership in the EU, but there are those who are urging a change in this situation (see, e.g., National Convention 2006). These voices are not just concerned with establishing EU membership and thus making the Dutch Constitution reflect the existing constitutional reality, but also with providing appropriate safeguards as a response to that reality. Horizontal safeguards are also sought outside the context of the Constitution; the National Convention has, for example, called for the introduction of a ‘scrutiny reserve’ along the lines of the British model, which would forbid a Dutch minister from collaborating in Council of Ministers decisions before the Dutch Parliament has had an opportunity to scrutinise the proposal in question.

Such safeguards are to date, however, virtually non-existent in the Netherlands and receive less attention than the first two types. In some member states, the situation is quite different; countries with a more critical attitude towards European integration (such as Denmark and the United Kingdom), countries with a federal structure (such as Belgium, Germany, Austria and, to a certain extent, Spain) or countries which acceded to the

EU more recently (Sweden, Finland and also many of the countries included in the enlargement of 2004) have taken steps (often anchored in their constitutions) to address the domestic consequences and impact of European co-operation. The same can, in general, be said for citizens' safeguards. EU law offers citizens both substantive and procedural rights and remedies. However, the Dutch government does not always co-operate fully in their realisation, as will become apparent in this chapter. Moreover, the Constitutional Treaty stipulates that the EU Charter of Fundamental Rights be declared binding, but on this point, too, the Dutch government has thus far displayed little enthusiasm. Former Foreign Minister Ben Bot even went so far as to recommend that the Charter be omitted from the new draft treaty.<sup>3</sup>

#### 4.2.3 SAFEGUARDS OPERATING BETWEEN THE EU AND NATIONAL LEVELS

##### *Subsidiarity*

The subsidiarity principle was originally laid down in Article 5 of the EC Treaty, but has gained prominence since the Constitutional Treaty stipulation that national parliaments should play a role in testing subsidiarity. In order to prevent unnecessary centralisation, and to guarantee that decisions are made as close to the affected citizens as possible, the EU, based on the subsidiarity principle may only exercise the powers it shares with the member states if and in so far as the objectives of the proposed action cannot be sufficiently realised at the national, regional or local levels.

Despite the rejection of the Constitutional Treaty, the Dutch Parliament installed a Temporary Committee on Subsidiarity Testing in March 2006 (hereafter called the 'Subsidiarity Committee'), which currently oversees compliance with the subsidiarity principle by testing new EU policy proposals. An interesting aside – especially from the perspective of this report – is that civil society organisations are also involved in this process. The Subsidiarity Committee offers a platform for national political debate on European policy and proposed legislation in the (preparatory) phase when the possibilities for adjusting proposed policy are still available. This can put the image that the national system is being overrun by European regulations into perspective and can open up the political debate to the articulation of policy alternatives and options. The debate on the setting of European policy would thus not be solely limited to the departments affected, but would also be conducted by MPs with a direct electoral mandate.

There are also a number of objections, however. In the first place, the 'watchdog function' of the Subsidiarity Committee, whose focus is primarily on combating unwanted interference from Brussels, is strongly



emphasised. As a result, the debate about EU policy is mainly framed in terms of ‘more’ or ‘less’ Europe. This reinforces the impression of a Europe obsessed by rules and provides a breeding ground for distrust among the public. As chapter 2 has already showed, a one-sided approach that is limited to the question of ‘more’ or ‘less’ Europe too often plays a central role in the national political debate on Europe, while the debate on the substantive merits of European proposals is often ignored (Pelkmans 2005). It is for this reason that the WRR has called for the establishment of a prioritisation committee (see chapter 3).

Secondly, the Subsidiarity Committee is itself likely to become part of the ‘technocratic cocoon’, as it is somewhat hidden away in Parliament. Moreover, the Committee has already rejected a number of new EU policy proposals, but there is still no sign that the Committee’s activities are having much impact on the media or the public.

However, subsidiarity testing is extremely convenient for politicians who want to stress the ‘us’ versus ‘them’ approach. Subsidiarity testing, on the one hand, can thus be an important tool for protecting national interests. However, on the other hand, it can offer a platform for politicians to promote a common approach to problems concerning the environment (e.g., reducing CO<sub>2</sub> emissions), security (e.g., human trafficking) and the securing of energy supplies. Employing the subsidiarity principle as an instrument to erect a barricade against European interference would thus be wrong; it may just as well end up leading to exactly the opposite effect, namely a more comprehensive role for the EU.

The Subsidiarity Committee thus has some potential for contributing to new forms of representation and accountability (by binding the actions of ministers to the opinions of the Committee). It may also offer opportunities for allowing a better match between Dutch preferences and substantive EU policy to emerge. Much depends, however, on the remittance and actual functioning of the Subsidiarity Committee. Surely, the visibility of its activities deserves attention, but the primary requirement – if it is to make a real contribution to the legitimisation of EU policy in the Netherlands – is that the Committee goes beyond its one-sided mandate (i.e., the question of ‘European or national policy’). The recommendation of the WRR for the transformation of the Committee into a ‘prioritisation committee’ is based on this premise (see chapter 3).

### **Red lines**

The substantive debate has definitely been the central focus in a second type of political safeguards, known as ‘red lines’. These are boundaries or

lines which mark the limits of potential EU intervention and which cannot be crossed by European institutions, national politicians or policy makers. An interesting example is offered by the British government's approach, which, in the run-up to the negotiations on the Constitutional Treaty in 2003, adopted a series of red lines in the areas of taxation, social security, judicial co-operation, the European budget and defence. The Prime Minister, in the name of the British government, even went so far as to declare that the United Kingdom would be willing to use its veto power to prevent further European co-operation if its demands regarding these red lines were not met. The red lines involved issues on which UK representatives could be expected to not make any concessions in negotiations. In the Netherlands, the Joint Committee on EU Affairs (*Gemengde Commissie 'Sturing EU-aangelegenheden'*) has proposed that the Netherlands also adopt these types of red lines for specific policy issues.

In the UK's case, red lining has been highly effective. Their adoption and sanctioning (in the form of a possible veto against the Constitutional Treaty) helped create an image of Prime Minister Tony Blair as a principled, steadfast and visionary European leader with whom British citizens could identify. The involved politicians and policy makers were thus encouraged to negotiate within the established limits in Brussels. The transparency and visibility of the negotiating framework simplified the political debate on Europe, which in the UK has often also been dominated by specialists. It also reduced the reticence of many national politicians to discuss European affairs, who up until that point had not considered themselves equipped to do so. The red lines also offered an accountability mechanism for politicians vis-à-vis citizens, the media and civil society. As a result, several newspapers and current affairs programs devoted quite some attention to the negotiating process and the UK's and specifically Prime Minister Blair's role in that process.<sup>4</sup> British citizens were informed about the steps they could take at this particular moment in the European integration process and the role the UK played in it.

However, a number of critical remarks need to be made regarding red lines. They are also defensive by nature, at least when – as in the British case – they are not accompanied by 'green lines', designating the specific topics on which the EU *should* act. Additionally, the personal characteristics of politicians have been of crucial importance regarding the effectiveness of red lines. Moreover, mechanisms for formal sanctions (e.g., legislative sanctions) do not exist, and authority thus rests entirely on the powers of persuasion of the politicians who employ them. It is also no coincidence that the idea of red lines should be a United Kingdom invention; the political and administrative atmosphere there made it easier for Tony Blair to

project himself as a leader than it would have been for his Dutch counterpart. In other words, the social context in which politicians act is also an important factor (Weber 1976).

Red lines are well suited to political views involving a positive approach toward European co-operation, whilst at the same time, the need for certain limits is acknowledged. Red lining may thus highlight the relevant differences in views between political parties. For example, parties that emphasise individual freedoms may formulate red lines to protect Dutch legislation and practices on issues such as euthanasia, abortion, soft drugs and the rights of homosexuals, whereas other parties may be less troubled if these issues were to become the focus of debate as a result of European initiatives.

### ***Concluding remarks***

Two safeguards have been discussed in this section which operate in the vertical relationship between the EU and the individual member states. Obviously, this is not an exhaustive elaboration of all of the possible safeguards of this type. Veto rights, the attribution principle (whereby the EU only has those powers which the member states have explicitly conferred upon it) and the ‘competence catalogue’ are other salient examples. However, the two examples cited do provide good insight into the potential and the risks. Although these kinds of safeguards may offer opportunities for Dutch politicians to improve the legitimisation of EU policy in the Netherlands, the following aspects must also be taken into account. Firstly, these safeguards apply to the relationship between the EU and member states. This provides no guarantee, however, that citizens will actually be involved. Much of this depends on the way the safeguards are applied. Secondly, safeguards of this kind – if they are applied by national politicians – are of a defensive nature and therefore fit in primarily with political views which highlight the defensive aspect. Clear demarcation lines may contribute to the genuine legitimacy of EU policy in the Netherlands in some respects, but it also requires a clear view of what EU actions are actually desirable. Moreover, social and political problems are often not tackled simply by choosing between Europe and the member state; instead, they involve more intricate choices from a much richer ‘policy menu’. The substantive choices that have to be made could disappear into the background by emphasising the choice between ‘the Netherlands’ and ‘Europe’.

#### **4.2.4 SAFEGUARDS WITHIN THE NETHERLANDS**

As observed in section 4.2.2, the Netherlands has never paid much attention to horizontal safeguards. Other countries have established safeguards

to compensate for any changing relationships between the executive branch and parliament that might occur as a result of Europeanisation. The Danish parliamentary mandate is a well-known example: The arrangements allow Danish ministers to co-operate in European decision making only after a mandate has been approved by the Danish Parliament (Van den Brink 2004). Other EU member states have established comparable – albeit generally less far-reaching – safeguards. Although the Netherlands has established a parliamentary right of assent in matters concerning Justice and Home Affairs (JHA), the intention of the two Houses of Parliament was never to regulate the relationship with the government, but, instead, to compensate for the lack of parliamentary involvement at the European level (Van den Brink 2004). In practice, however, this mechanism has actually developed into a tool that enables Parliament to exercise some measure of control over the government. However, there are also problems, such as a lack of insight into the dynamics of the European decision making process and the overloading of the parliamentary committees concerned (Raad van State 2003; Den Heijer 2007). Consequently, there may be a risk that a parliamentary right of assent will be transformed into a serious obstacle in the decision making process (which also frustrates decision making in Brussels), rather than a means of initiating a substantive debate on EU policy proposals. Another problem is that the parliamentary right of assent has virtually no visible impact on Dutch citizens. Even if a substantive debate were to take place in Parliament, it would contribute very little to the notion that citizens' views are being represented in the areas of Justice and Home Affairs.

Horizontal safeguards may not only be relevant at the level of specific policy issues, but also in the accommodation of generic views on European co-operation. As indicated in chapter 2, legitimacy problems are not limited to the level of individual policy issues, but manifest themselves on the level of political community as well. These latter problems can be explained by the inherently ambiguous nature of the EU itself. Indeed, the EU is not just an unprecedented entity (and can therefore not be understood in state-like terms), but is also engaged in a continuous process of intensive change and permanent development. Beck (2006) accordingly argues that Europe is permanently in the 'design phase'. Shaping the EU is not only a European matter, but also a permanent national and therefore a Dutch responsibility.

### ***Constitutional safeguards***

The present discussion on the significance of the Dutch Constitution for government and society (see, e.g., Nationale Conventie 2006) provides some interesting perspectives on the strengthening of EU legitimacy in the

Netherlands. At present, the Dutch Constitution is at the centre of attention because of its potential to ensure the cohesion of Dutch society (Van der Tang and Zoethout 2006). The political and academic debate on the introduction of constitutional review in the Dutch legal system is also relevant in this context. The National Convention has proposed the establishment of a special Constitutional Court with the power to test the constitutionality of Dutch legislation.

This is in line with earlier proposals in this regard (Besselink, Kummeling, De Lange, Mendelts and Prechal 2002), that the Dutch Constitution should at the very least reflect the reality of EU membership. At present, the Constitution contains no reference at all to this reality. The debate concerning any amendment to the Dutch Constitution should also address European co-operation and the variety of views on the subject. Based on the various policy issues that have thus far been studied, it can be concluded that views on specific topics are strongly determined by views on European co-operation in general. It would therefore be useful to create a formal opening to ensure that this debate is actually conducted and that it ultimately leads to the formulation of common elements which together constitute a Dutch view on EU membership. The Constitution would then not only reflect what binds the Dutch as a people, but also what binds them to the world around them. In this respect, experiences from other member states can also provide some interesting examples. The German Constitution (see box 4.1), for example, stresses the democratic and constitutional development of the EU. In its Instrument of Government, Sweden lays down the protection of fundamental rights as a basic principle of the European integration process, while France articulates the role of EU member states which have voluntarily decided to commonly exercise sovereign powers. The French Constitution also makes explicit mention of French participation in and its commitment to the Economic and Monetary Union and the free movement of persons. These countries have decided to lay down specific views, without these necessarily being the '*finalité*' of the integration process. Thus, the Netherlands has a comprehensive menu to choose from regarding the formulation of views to be enacted in the national constitution.

#### **Box 4.1 Constitutional review in Germany and France**

Germany has established a specialised Constitutional Court, the *Bundesverfassungsgericht* in Karlsruhe, charged to the exclusion of regular German judicial bodies with reviewing the constitutionality of the exercise of public authority. Fundamental rights and the provisions on the protection of the German federal structure are the most important

substantive norms in the German Constitution as by the *Bundesverfassungsgericht*. German citizens have direct access to the *Bundesverfassungsgericht* with constitutional complaints (*Verfassungsbeschwerde*) about the infringement of the fundamental rights as set out in the Constitution. Citizens have no standing rights, however, with regard to conflicts arising from the federal structure. These conflicts can only be brought before the Constitutional court by confederal and federal state institutions. Article 23 of the German Constitution stipulates that the German view of the EU is aimed primarily at the achievement of democratic, constitutional and social principles as well as the protection of fundamental rights. The same article contains provisions on the institutional and federal effects of EU membership. The Constitutional Court is known for its 'Solange' rulings and the 'Maastricht Urteil' in which the Court tested the constitutionality of the Treaty of Maastricht. Moreover, the constitutionality of specific EU institutional measures such as the introduction of the euro and the European arrest warrant, also led to important rulings by the Court.

In France, constitutional review is much more a political than a judicial matter. This is closely related to the concept of the sovereignty of the people as manifested in the legislature. This concept is difficult to reconcile with the idea that the legislator should be controlled by (unelected) judges. Instead, courts should be no more than '*bouches de la loi*' ('mouthpieces of the law'). Constitutional review in France is thus a matter for the Constitutional Council ('*Conseil constitutionnel*'). The composition of the Council is determined by political colour which tests legislation *ex ante*, which means that it is part of the legislative process. Once adopted, laws are exempt from any form of judicial review. The political nature of the review is underlined by the fact that only political institutions (the President, Prime Minister, president of the two Houses of Parliament and a small number of delegates) have access to the Council. As a result, the Council often acts as an arbiter between the parliamentary majority and minority.

A constitutional debate would provide an opportunity for politicians to more explicitly express the Dutch view on European integration and the Dutch position within that integration process. Examples from other member states show that it does not necessarily mean that European decision making is by definition hindered or that the scope of specific party views or interpretations is reduced. In fact, a constitutional debate actually provides an opportunity to raise this issue. It offers citizens anchors so that they can identify with and connect to the notion of European co-operation, without necessarily having to respond to the question of what the EU precisely is. These views may also encompass those topics or policy issues for which the Netherlands wishes to ensure the primacy of its own established practices or to limit European actions to the cross-border dimension of those policies. For example, in the area of criminal justice, there are fears that the EU will undermine the essence of the national

system, whereas in reality the activities of the EU in that area are limited to cross-border problems. A constitutional safeguard would offer a degree of certainty on this point and thus help to quell these fears. Many uncertainties about European co-operation are the result of the dynamic nature of that co-operation. It is precisely the stable character of a Constitution that can offer an appropriate response to this.

### ***Constitutional safeguards as an accountability mechanism***

Dutch courts are not allowed to review the constitutionality of legislation (Article 120 of the Constitution). In this respect, the situation in the Netherlands also differs from that of many of the neighbouring countries, which often have separate constitutional courts charged with reviewing the constitutionality of the exercise of public authority. The German *Bundesverfassungsgericht* mentioned above and the Constitutional Court in Belgium, are good examples, while Austria, Italy, Spain, Portugal and many of the countries that joined the EU in 2004 have established special Constitutional courts. Meanwhile, the National Convention has called for the introduction of a Constitutional Court in the Netherlands.<sup>5</sup>

The experiences of other countries indicate that constitutional courts can also play a legitimising role in the context of European co-operation. By subjecting the ratification of European treaties to constitutional review, entering into new relations at the European level would not just be subject to Parliamentary review, but also by an independent judicial authority. The practicalities of the rulings by the German *Bundesverfassungsgericht* on the ratification of basic treaties are well known, also to the general public (with the *Maastricht Urteil* being the most renowned). In this sense, a Constitutional Court may also offer an alternative to organising referenda during the ratification phase.

Secondly, specific European legislation could be reviewed indirectly on the basis of the implementing legislation. The Constitutional Court in Germany, for example, reviewed the introduction of the euro and the European arrest warrant. In the latter case, the German court decided that the margin of appreciation left by the European framework decision had been incorrectly interpreted. This isolated the fact that responsibility for the constitutional infringement in this case lay with national politicians, and could not be attributed to the underlying European decision. Constitutional review thus makes it more difficult for policy makers to use the EU as a scapegoat for their own policy failings. Constitutional review can provide an incentive for Parliament not to allow itself to be dominated by the government in EU matters, and to take its own responsibilities more seriously. This would bolster *ex post* accountability (the possibility that the

Constitutional Court could quash legislation for which Parliament is jointly responsible).

The rulings of constitutional courts in other countries frequently have a major social impact. They often generate a lot of media attention that sometimes emanates beyond national borders, as was the case with German Constitutional Court proceedings related to European issues. The independence of the judiciary *vis-à-vis* policy makers and politicians may also be relevant, especially because the judiciary is seen as one of the most trusted institutions by the Dutch public (European Commission 2006b, Standard Eurobarometer 65). The fact that national politicians and policy makers in a Constitutional Court could be responsible for aspects of EU policy could consequently contribute to the legitimisation of EU policy.

### **Concluding remarks**

Also with respect to horizontal safeguards in the Netherlands, there is the risk that these safeguards will not encourage more involvement by citizens and will thus not have the necessary positive effects on EU policy legitimisation. These safeguards do, however, offer definite possibilities, especially in view of the fact that these safeguards are relatively virgin territory in the Dutch context. One specific advantage of these types of safeguards is that they are less defensive in nature and therefore able to focus more clearly on the linking function of national policy makers and politicians.

## **4.2.5 SAFEGUARDS FOR CITIZENS**

Finally, we now focus on the safeguards for citizens. These may be both horizontal safeguards (in mutual relations between citizens) or vertical safeguards (in relations with public authorities). These safeguards are in fact far from new. The best example is the ability of Dutch citizens to enforce certain rights and employ certain remedies accorded to them by the EU through the national judiciary. This section examines how national politicians and policy makers may ultimately become a link in EU policy legitimisation in the area of 'citizen safeguards'.

### **Results**

The fact that the EU accords its citizens tangible rights and remedies does not mean these citizens will actually ever exercise them. This is especially true in the complex legal area of EU law, where citizens not only have to be made aware of the existence of their rights and remedies, but also of the content and meaning of specific norms that are relevant to them. For example, a common debate concerns the rights of patients in one country to receive medical treatment in other EU countries, often as a way of avoiding



long waiting lists in their own country. However, these developments appear to have had little impact thus far on either health insurers or patient associations (Van Veen 2007). The Dutch government could stand to become a bit more pro-active in this area to ensure that these developments actually become relevant for society, and thus contribute to (result-based) legitimacy.

### **Accountability**

In certain circumstances, national policy makers and politicians are not only held accountable on European issues by political institutions, but also sometimes directly by its own citizens. If a citizen or a company suffers damages due to the non-implementation or the faulty implementation of an EU law, they can seek compensation for damages by appealing to the national courts. The possibility of constitutional review, which was discussed in the preceding section, offers another recourse for citizens, but only if they are awarded a hearing in the Constitutional Court.

Moreover, 'lighter' forms of accountability are also a possibility and could be provided by the national ombudsman who offers citizens a low-threshold remedy to independently investigate public authorities. The national ombudsman can first of all contribute to the internalisation of European law within national policy. In individual cases, the ombudsman can investigate whether a particular European law has been applied correctly and alert public authorities to any errors. This role by definition need not be reactive by nature. For example, in a recent case, the Dutch ombudsman highlighted the negative effects that proposed health insurance legislation would have on Dutch citizens living abroad. The ombudsman thus fulfilled an 'early warning' function, by anticipating problems and proposing solutions before the problems actually occurred. The contribution that the national ombudsman could make to the legitimisation of EU policy in the Netherlands must also be assessed in light of his membership to the (recently created) European network of ombudsmen. National experiences can thus be more easily compared to similar experiences in other member states. Moreover, this network simplifies the exchange of information. The network may thus be seen as an embryonic accountability mechanism (Fischer 2004), which is easily accessible to citizens and which fits in with the multi-level system of European governance. The increased visibility of the national ombudsman offers extra opportunities in this respect.

The Brenninkmeijer and Diamandouros (2005) report on the role of national ombudsmen in the national application of European law raises a number of critical remarks, however. For instance, it is noted that the national ombudsmen of the 27 member states seldom regard European law

as a source of protection of fundamental rights. As a result, national ombudsmen seldom utilise European law to scrutinise national measures. Instead, they tend to advise citizens that they complain to the European Commission or the (national) courts. The study also indicates that national ombudsmen have received virtually no complaints concerning the non-implementation of EU law. Moreover, they are often also lacking in the necessary knowledge regarding the intricacies of EU law.<sup>6</sup>

## 4.3 DIRECT CITIZEN PARTICIPATION: DIRECT, DELIBERATIVE AND E-DEMOCRACY

### 4.3.1 INTRODUCTION

At a time when the perceived gap between Dutch citizens and politicians is attracting a lot of attention, it is hardly surprising that alternative forms of citizen participation are on the increase. In October 2006, the National Convention presented proposals to give citizens a greater and more direct say in the national political system, by calling for the introduction of referenda and citizen forums. As it was composed of a group (albeit a select one) of academics, politicians and opinion makers, the National Convention could itself be regarded as a form of direct consultation. This section will, via a (comparative) literature study, analyse to what extent such initiatives might contribute to the legitimisation of EU policy. To that end, in section 4.3.2 the pros and cons of referenda on European issues and decisions will be evaluated. In section 4.3.3 the focus will be on experiments with deliberative democracy, which seeks to stimulate the processes of common opinion formation either by physical interaction and consultation or via the Internet. In the latter case, we refer to this as *digital* or *e-democracy*.

### 4.3.2 REFERENDA INSTEAD OF REFERENDA

A referendum enables citizens to vote for or against a proposed policy decision. The prospects that referenda will actually reinforce democratic decision making processes are currently being intensely debated both in academic literature and in politics. Two attempts have been made to incorporate referenda into the Dutch constitution. The required majority was, however, not reached, which makes the Netherlands to date one of the few countries in the EU without any formal arrangements for organising referenda (Kortmann 2007). Nevertheless, referenda have been held at the local level. More important in the context of this study, however, is the fact that the only national referendum in recent history (which was in fact organised on an *ad hoc* basis due to the lack of general provisions) concerned the ratification of the European Constitutional Treaty. Partly as a result of this

referendum, the current issue is no longer just whether and how referenda can contribute to the legitimisation of Dutch EU policy, but also whether their use – either across the board or specifically for European treaty reforms – can reasonably be ignored in the future.

However, the referendum on the Constitutional Treaty on 1 June 2005 revealed a number of obvious shortcomings. It is a well-known fact that citizens and politicians are not only focused on the issue they are voting on, but they were influenced by more or less related issues. The referendum on 1 June 2005 functioned as an (unforeseen) outlet for latent dissatisfaction with European policy decisions, which had been imposed on the population as *faits accomplis*, such as earlier Treaty amendments, EU enlargement and the abolition of the guilder in favour of the euro. The public felt that they ‘finally’ had an opportunity to express a view on Europe and logically, they also incorporated their broader assessment of European co-operation and associated points of conflict into their vote (Aarts and Van der Kolk 2005, 183-206). Other factors not even related to Europe played a role as well.

On the other hand, the referendum did at least put the Constitutional Treaty into the spotlight, which no similar political moment or substantive issue had ever achieved before. Even the Treaty of Maastricht – which was in substantive terms much more important than the Constitutional Treaty – aroused only a fraction of the public interest that the Constitutional Treaty generated. In this sense, the referendum was more successful than any of the other political strategies in the area of EU policy. The turnout for the referendum was twice as high as the previous European Parliamentary election. Van Gunsteren (2005) even goes so far as to argue that this lively debate was just a first step in the creation of a *European* public space.

However, the experiences with the referendum on the Constitutional Treaty in the Netherlands provide only a limited picture of the instrument’s true potential, precisely because it was without precedent. Based on international experience, it can be concluded that citizens – once they have grown accustomed to certain forms of direct political participation – tend to inform themselves better and more regularly about the political process in general and about the referendum issue in particular (Benz and Stutzer 2004: 31) than in other voting situations. This means that at least some of the problems which dogged the referendum were due to a lack of familiarity with the instrument. If referenda were to happen more regularly then the public debate would eventually focus its attention more on the substance of the issue. At the same time, politicians would learn from the experience with referenda, which would eventually force them to display a

firmer sense of leadership. The experiences with referenda on Treaty amendments in Denmark and Ireland, for example, reveal that – notwithstanding the complexity of the issue – in a carefully prepared campaign both the key points of the discussion and the various arguments of proponents and opponents can become clear and understandable to the public. This would address the many criticisms of the role played by politicians in the European referendum campaign and the lack of co-ordination and leadership, especially on the part of the ‘Yes’ camp (Crum 2007b). Thus it can be convincingly argued that some of the problems with the 1 June 2005 referendum can be attributed to a lack of familiarity with the instrument.

Opponents of referenda argue that direct ballots undermine the function of politicians as representatives of the people. In a representative democracy, citizens elect representatives, whom they entrust with the power to take political decisions on their behalf. Citizens should then not have to be presented with the chore of having to make such decisions. Referenda can, in this sense, indeed be seen as a means for politicians to displace their own responsibilities on to the citizens. This argument also surfaced in discussions on the Dutch referendum on Europe. However, Elzinga (2005: 100-3) adds a little more context to this tension between indirect democracy and referenda. Not only does the representative system have what he describes as a ‘dynamic’ character, so that even in an indirect democracy, MPs are ‘directly’ influenced by citizens and interest groups; but experiences in other countries indicate that referenda may also offer remedies to problems involving the functioning of traditional representative systems. For instance, a referendum forces political parties to adopt an active profile on specific issues vis-à-vis the electorate. This can be particularly relevant for European issues, which seldom surface during mainstream political debates (see chapter 2).

Another shortcoming involves the ‘bluntness’ of the instrument: a referendum indeed reduces often complex policy issues to a single simplistic, dichotomous choice (yes/no; for/against). This polarisation of proponents and opponents can hamper the creation of a well-considered policy perspective on a theme such as Europe, which offers scope for a multifaceted and nuanced picture. In this way, a referendum can be an obstacle to the initiation of a substantive debate, which goes beyond the ‘more/less Europe’ dichotomy.

Moreover, social psychology teaches us that referenda of this type engender a natural tendency to cast a ‘No’ vote. Since a ‘Yes’ vote implies agreement with the proposed policy, there is apparently no chance to influence that policy. While ‘voice’ is very important for trust (Hirschman 1970), the

possibility of influencing policy is therefore only manifested in a 'No' vote and the way in which the government consequently responds to a negative outcome. Furthermore, if no alternatives are available, it is more attractive for voters to cast a conservative 'No' vote instead of a 'Yes' vote in favour of what can be perceived as a threatening unknown (Prast 2007: 24).

The 'blunt' nature of the referendum manifested itself in the wake of the referendum on the Constitutional Treaty. The negative outcome of the referendum plunged the government into an uncomfortable dilemma. It could, on the one hand, not ignore the referendum outcome, and would have to find some way of doing justice to it. However, on the other hand, the outcome of the referendum did not provide the government with any clear direction whatsoever. The Dutch position during the consequent Treaty review could thus not be directly deduced from the referendum's outcome. Were Dutch voters mainly voting against symbolic elements in the Constitutional treaty (flag, anthem, constitutional label), or was the 'No' vote inspired primarily by the institutional changes (such as the proposed introduction of an EU Minister of Foreign Affairs)? Or did the changes that would make the EU more democratic, not go far enough for Dutch voters? Only additional surveys of the public, in the form of electoral surveys, can provide answers to these questions.

The timing of a referendum may account for further complications, especially when it comes to the ratification of treaties. The text on which people are asked to vote leaves little room for substantial amendments when all governments, often after a difficult negotiation process, have committed themselves to the text that is being put to the vote. Moreover, a country which does not ratify a treaty can find itself diametrically opposed to those countries which have ratified the treaty and may thus end up finding themselves isolated from other member states.

The arguments concerning the weakening of the representative system and the bluntness of the referendum instrument can only be addressed by applying strict conditions. To ensure that referenda strengthen rather than weaken the representative system, it is at the very least necessary that the roles of both citizens and of politicians and policy makers are secured and clearly defined.

Citizens should not only be allowed to cast a vote, but should also be involved in the question of whether there should be a referendum at all. At the very least, there must be sufficient public support for a referendum. A citizen initiative offers the most comprehensive safeguards in this respect. This can prevent insecure politicians from using referenda as a

means of avoiding the making of important decisions. It is also important in ensuring that the citizens' votes actually count. If politicians are ultimately allowed to ignore referendum outcomes, voters would immediately notice that they are not being taken seriously and it would create only an illusion of actual participation. Thus the outcome must be politically or legally binding. However, this also means that referenda can only be held when the Dutch have managed to find a decisive voice in the European decision making process. Decisions in which the opinion of a majority of the Dutch population could be overruled by a majority in the other EU member states would thus be inappropriate.

This means that EU decisions that involve a constitutional amendment and require ratification by all member states, or those that do not necessarily need the (active) participation of all EU member states, would be eligible for referenda. This would include not only treaty amendments, but also European foreign and security policy, police and judicial co-operation initiatives and Dutch participation in forms of strengthened co-operation (cf. the Eurogroup) or international (military) missions.

In order to maximise voter influence, consideration should also be given to the notion of making referenda compulsory for certain types of decisions (most obviously, radical treaty amendments). This could have an anticipatory effect on the behaviour of politicians and the degree of interest on the part of the electorate. It would provide clarity on the types of proposals regarded as suitable for direct referenda. At the same time, it could ensure that voters are consulted only *occasionally* on particular issues which are regarded as sensitive and important. Politicians would then have to formulate a reservation in the negotiation process at the European level for the voice of the people – not just in terms of the process, but also considering the possibility of a substantive correction by the electorate. This would create a situation that would differ significantly from the European Constitution referendum, in which the decision to consult the Dutch people was taken only in the latter stages of the process. If it is clear from the start that the ultimate decision on a given topic will be decided by a referendum, it would be an incentive not only for politicians but also for the media and civil society organisations to become more involved at an earlier stage.

The responsibilities of politicians must also be clearly defined. In other words, measures are needed to soften the 'bluntness' of the referendum instrument. This means that the outcome of a referendum must deliver a clear mandate to politicians so they will have some idea of how it must be executed. A referendum couched in terms of a dichotomous choice about a long and complex text, in such a late phase of the decision making process

that the substantive scope for choice is already seriously limited, does not offer that clarity, and is therefore unsuitable for many decisions and policy proposals.

A referendum that offers citizens a number of substantive alternatives, known as a *preferendum*, is in many ways a more attractive alternative. Firstly, this choice would provide a real opportunity for citizens to influence policy, without it having to take the form of a definitive rejection by the voters. Moreover, it would encourage citizens to become more actively involved in the issue and would make palpably clear which consequences politicians would have to attach to the outcome. This could be reinforced by organising a *preferendum* at an early stage in the decision making process. The result of the *preferendum* could then provide a negotiating mandate for the government in Brussels. After completion of the decision making process, Parliament, using the regular mechanisms of ministerial accountability, could verify that the government has stuck to its mandate. At the same time, the influence that citizens will have on the decision making process is guaranteed to be more effective, as their views need not be reduced to a single 'yes/no' vote. Politicians must formulate the different substantive alternatives, assessing their feasibility, and above all in adopting clear positions on the issue concerned. However, citizen forums (which are discussed below) may also be helpful in formulating policy alternatives.

Not only national, but also *EU-wide* preferenda deserve serious attention. The latter type of preferenda could circumvent a number of the disadvantages of existing national preferenda. Firstly, member states would no longer risk becoming isolated as a result of being the lone state to either adopt or reject a certain decision. Similarly, decision making at the European level would no longer have to be frustrated by just one or two countries. Moreover, and to a much greater extent than national preferenda, *EU-preferenda* could open the way to *EU-wide* identification processes and the creation of a European public space. One disadvantage, however, might be that a majority in a single member state could easily be outvoted, though this could be accommodated by requiring not only an absolute majority of *EU* voters, but also absolute majorities in a given minimum number of *EU* countries. Another potential disadvantage may be that it might become easier for national politicians to avoid adopting positions and pursuing an active campaign, and leaving this to European and foreign politicians. This would be highly undesirable as the involvement of national politicians is indispensable for the legitimacy of *EU* policy.

Referenda provide citizens with a direct voice in fundamental policy choices. They force national politicians to adopt clear positions and debate

the relevant issues, for which there are currently not enough incentives within the regular framework of the representative system. Voter input ultimately strengthens *input* legitimacy, provided the outcome of the referendum is binding. The acceptance of the ultimate policy *output* may also increase. Moreover, referenda, especially EU-wide preferenda, can contribute to processes of identification. If preferenda are made compulsory for certain types of decisions, this could strengthen accountability mechanisms with regard to national politicians, who would then have to anticipate referenda at an early stage in the negotiating process. Finally, referenda provide strong incentives for the involvement of the media and civil society organisations.

#### **Box 4.2 Danish referendum experiences**

What do the oft-cited experiences in Denmark teach us about the pros and cons of referenda on Europe? Despite the parliamentary threshold that has been set for referenda (a referendum is only held if the required parliamentary majority of 5/6 for ratification is not achieved), to date, all European Treaty amendments have been put to the Danish people. This has resulted in referenda being held in 1972, 1986, 1992 (twice), 1998 and 2000. A referendum on the draft version of the Constitutional Treaty was postponed until further notice pending the outcome of the period of reflection.

Although the Danes are often regarded as Euro-sceptic, this is not borne out by opinion polls that have been taken since the early 1970s; support among the Danish public for the proposed treaty amendments and the integration process has remained relatively stable. However, in general, the Danes are familiar with European issues. In fact, Denmark comes in second among the 25 EU member states on this point (Eurobarometers 2000-2006). All Danish referenda on Europe have led to intense public and political debates. Political parties have expressed explicit views on the pros and cons of proposed amendments, and this has sometimes led to heated social debate in which interest groups, trade unions and NGOs have also participated actively. As an incentive for politicians to position themselves and for the public to inform themselves, the Danish experiences with referenda appear positive (Svensson 2002, 748). Finally, the Danish example shows that the more experience voters gain through their involvement with referenda, the less influence domestic politics will have on their voting behaviour. This influence is eventually filtered out in favour of specific debates on the (European) theme that is actually being voted upon.

### **4.3.3 DELIBERATIVE FORMS OF CITIZEN PARTICIPATION**

‘Deliberative’ forms of citizen participation are intended to involve citizens actively in the process of political opinion formation through debate on the



pros and cons of proposed policy. This may take place in face-to-face meetings or discussions, or via the Internet (*digital or e-democracy*). The advantages are that the preferences and views of citizens are not static, but can be adjusted and sharpened through the exchange of information and arguments. Deliberative democracy can thus reinforce the epistemic quality of political decision making and implementation (Akkerman 2004: 292). The notion of 'involved citizens' can be strengthened, as they are offered opportunities to participate actively in the decision making process, while at the same time the quality and diversity of that decision making process is enhanced by the input of a multiplicity of experiences, opinions and arguments from outside the existing political and administrative circuits (the 'wisdom of crowds'; Surowiecki 2004). These forms of deliberation may ultimately strengthen both input and output legitimacy. Deliberative forms of citizen participation thus offer politicians and policy makers an opportunity to engender wider support for decision making processes (Knight and Johnson 1994: 285; Van Stokkum 2003).

The degree of representativeness is a frequently voiced objection to deliberative forms of citizen participation. Active input demands a considerable investment of time by participants, together with a dose of eloquence and the self-confidence needed to speak in public about issues which may be complex or sensitive. The more convinced people are that they cannot meet these demands, the less keen they will be to participate (voluntarily) (Buttom and Mattson 1999). Better educated, politically aware members of the indigenous population, who are already over-represented within the representative system (Bovens 2006b), could easily end up dominating the debate (Young 1996; Sanders 1997; Bovens 2006b). Van Stokkom (2003: 156) refers to this 'participation paradox' when he argues that the more opportunities citizens have to voice their opinions in public debate, the wider the gap becomes between those citizens who exploit these opportunities to the full and those who do not. Akkerman has – quite rightly in our view – recommended that deliberative democracy be used not as a substitute but as a *supplement* to the right to vote (Akkerman 2004: 295).

The risk of reduced representativeness is smaller when the Internet is used as a medium for citizen participation. As a platform that allows for the exchange of ideas on a specific topic or theme at a time and place chosen by the participants themselves, and in which they can participate at their own pace and anonymously, the Internet has a low access threshold. The more citizens who participate, the bigger the impact they will have. The 'We the People' initiative by the daily newspaper, the *NRC Handelsblad*, in which readers wrote alternative texts for a new European Treaty in 2006, encouraged the newspaper to begin devoting weekly attention to a new European

Constitution and related themes. However, active participation in Internet forums also demands a considerable investment of time and knowledge, which not everyone will be able or willing to do. Another drawback of deliberative forms of citizen participation can arise when it is unclear what will be done with the public input. It is precisely because of the considerable efforts that are required on the part of the participants, that it is important to ensure that participation is real and does not become perceived as a sham.

In view of the above complications and the considerable efforts that are expected of participants in terms of time and input, the different modes of citizen participation discussed here should, in the view of the WRR, not be expected to contribute very much structurally to the strengthening of the legitimacy of European policy in the Netherlands. Thus they should not be regarded as a substitute for a properly functioning representative parliamentary democracy. However, this observation does not rule out the occasional use of deliberative forms of citizen participation. Positive experiences with such instruments have also been observed in other countries (see box 4.3).

#### **Box 4.3 Deliberative forums in Ireland**

In a June 2001 referendum, the Irish voted against ratification of the Treaty of Nice. This rejection came as a surprise to many; opinion polls, including the Eurobarometer, had consistently suggested broad support among the Irish population for the European integration process.

In response to this rejection, and on the basis of earlier positive experiences with deliberative forums ('The New Ireland Forum' and 'the Forum for Peace and Reconciliation'), the 'National Forum on Europe' (NFOE) was set up with the purpose, in the words of its chairman, of *undertak[ing] a wide-ranging analysis of what the European Union has meant to Ireland, to examine issues concerned with historic enlargement now in prospect, and to inform the Government through debate, as to how the Irish people – those at the centre of the debate – see the future development of Europe in a way which will suit Irish interests'* (NFOE no. 1, 2002, p. 6).

The introduction of the National Forum on Europe gave the Irish an opportunity, for the first time since Ireland's entry to what was then the EEC, to discuss their views on the role of Ireland in Europe in a public forum. These gatherings quickly proved to be a success; the number of citizens who actively participated increased steadily, the (local and regional) media started to devote attention to Europe as a topic, and the number of hits on the Forum's website grew progressively to around a thousand per week.

The specific features of the National Forum on Europe were the following: First and foremost, the primary issue in the public meetings was to ascertain the public's views,

with less scope for political polemic from and between interest groups and political representatives. Second, individual citizens, political parties and representatives from civil society organisations were invited to contribute on a voluntary basis (for example, in the form of a presentation) to local public meetings. Finally, the Forum had a demonstrative function: the awareness among political representatives for the value of public debate on European (policy) issues at the local level was increased.

Despite the fact that the National Forum on Europe only managed to reach a small portion of the Irish population, the initiative contributed to a dialogue between the public and politicians on the role of Ireland in the EU. There was reference to the contribution that was made to collective decision making, the activation of channels and actors other than the usual ones, and the quest for a balance between consensus and politicisation with regard to European issues in Ireland (O'Brennan 2004).

Deliberative forums and digital platforms can be used as supplementary instruments, for example, in the way that the National Convention (as a deliberation forum) actively used the Internet and launched a website for the exchange of views. In the end, however, the added value and ultimate success of these forms of deliberative democracy is determined by the willingness of politicians to (re)consider their positions on the basis of the arguments put forward by the public. The instrument then has an anticipatory function: it boosts support for the decision making process if politicians, through more regular contact with and input from citizens, are more aware of the public's preferences (Knight and Johnson 1994: 285, Van Stokkom 2003).

#### 4.3.4 CONCLUSION

Direct, deliberative or digital forms of democracy do not *by definition* conflict with the existing system of representative democracy. Countries like Switzerland and Denmark combine a parliamentary system with lively forms of direct democracy. A comparative perspective also confirms that the more experiences politicians and citizens acquire with referenda and other forms of citizen participation, the more efficient and professional the preparation, debate and decision making process will become. Side issues will increasingly be filtered out. The opportunities discussed in this chapter may also be mutually reinforcing. When a referendum is organised, the Internet may help in providing the public with the necessary information, while a citizen forum may be responsible for the formulation of substantive alternatives. In Ireland, the rejection of the Treaty of Nice in a referendum led to a series of lively meetings in which the Internet functioned as an important platform (see box 4.3).

The targeted use of certain forms of citizen participation can be a useful addition to existing political and administrative arrangements; more than that, they can also provide an incentive for addressing structural obstacles or break vicious circles in the regular representative system. This finding also offers hope for what is currently the defective bond between politicians and citizens in Dutch EU policy. As the present political and administrative structure provides too little incentive for policy makers and political parties to become involved in and to position themselves on EU policy, the use of the instruments discussed in this chapter – provided this is done with a certain regularity and level of care – would force politicians and governments to become more active in this respect. This would also provide an impulse for the activation of the media and – depending on the topic – civil society organisations as well.

The introduction of these alternative instruments of direct democracy should, however, not be considered a panacea, nor a guarantee for successful (selective) politicisation and/or an improvement of the legitimisation processes for national or European policy. If politicians who do not know what they want are ranged against uncertain citizens who do not know what is at stake (Groeneveld 2006), referenda actually lead to more rather than less frustration on both sides. The condition for the selective and occasional use of the instruments discussed here are therefore crucial. In order not to feed cynicism and disillusionment, it must be crystal clear for both participants and politicians in advance whether and to what extent that involvement actually matters. In addition to a commitment on the part of politicians, this demands clarity on the question being voted on, the design of the process and the degree to which the outcome is binding. And even if the greatest possible care is used with respect to these elements, the scale and representativeness of the initiatives discussed here still deserve attention. Generally, opening up more routes to political participation initially only leads to greater participation on the part of the very group of citizens that is already informed and participating. Taking this into account, it is still first and foremost the politicians' task to initiate discussion on issues considered sensitive, to ask the right questions and to assume their responsibilities. This reinforces the call made in chapter 3 for political decisiveness and vision when it comes to EU policy in the Netherlands.

#### 4.4 CONCLUSION

Both safeguards and forms of direct citizen participation in principle offer opportunities for improving EU policy legitimisation in the Netherlands – in principle, because in both cases the opportunities are conditional. For

example, it depends on the topic and the substantive positions taken by politicians which safeguards and forms of direct citizen participation are – or are not – suitable. Moreover, the question of whether the inherent potential of these instruments is actually exploited predominantly depends on the role and responsibility assumed by national politicians. The multi-level governance system which connects the EU to the member states and citizens via a wide range of links offers an equally rich variety of possible safeguards. In particular, the highly dynamic nature of the system creates a reason for introducing safeguards, not so much in order to block developments, but in order to allow citizens to maintain a grip on them. National politicians can introduce specific safeguards which fit in with specific views and are suitable for voicing these views. Horizontal safeguards at the national level deserve particular attention, because to date these have been neglected in the Netherlands. The debate on and formulation and application of safeguards offers opportunities to improve the *input* legitimacy of EU policy. This is also true for all forms of direct and deliberative democracy which – through the ballot box, consultation forums or the Internet – provide citizens with an insight into what is often seen as a ‘closed’ policy process. At the same time, they force politicians to present what are often seen as abstract European issues and complex decision making processes in a tangible way as well as forcing them to adopt clear positions on them. If the results of citizen participation are binding, this not only reinforces the *output* legitimacy, but it may also constitute an important accountability mechanism: a politician who is unable to persuade citizens of his or her positions can be sanctioned. Safeguards are also relevant as an accountability mechanism, as this chapter has shown.

The WRR would like to highlight two instruments in particular that are mentioned in this chapter, namely *preferenda* and constitutional safeguards. These are both radical instruments which must be used with proper care. They also imply heavy responsibilities for both politicians and administrators. However, they should be regarded as serious options because both offer possibilities for improving the legitimisation of EU policy on points where the regular opportunities offered by the regular representative system have (in any event thus far) failed. Constitutional embedding of Dutch EU membership opens the way for a public and political debate on the nature and meaning of the political community (*polity*) of which the Netherlands is part and for the establishment of the common elements that are distilled from the different viewpoints. *Preferenda* can offer a channel (or even an outlet) for the politicisation of important EU policy issues that would otherwise remain unmentioned or invisible. They force a public debate and can thus offer a counterweight to the lack of involvement by citizens – but also by national politicians and administra-

tors – in EU policy and the feeling that EU policy is just being imposed on them. Thus both instruments may not only serve to strengthen the representative and accountability dimension of legitimacy, but also, albeit in the longer term, foster processes of identification.

Moreover, preferenda and constitutional safeguards are interesting for their potential to mobilise actors outside the political and administrative circuits and thus to appeal to citizens. The extensive discussions which can be awakened by preferenda may motivate interest groups to gauge the views of their supporters and to enter into debate with their members. Civil society organisations are encouraged to step outside of their one-dimensional, specialist consultations with the government at the European or national level. Politicians who take positions and enter into debates on EU issues in the context of preferenda or constitutional debates also (precisely because of the serious nature of the instruments) generate media attention. This can give rise to a catalyst effect which culminates in a major impulse for the regular politicians and policy makers to contribute to the improvement of EU policy legitimisation in the Netherlands.

## NOTES

- 1 The CDA (Christian Democrats), PvdA (Labour), VVD (Liberal) and SP (Socialist) parliamentary parties, Lower House, session 2005-2006 24 490 no. 411.
- 2 Decision of the European Court of Justice of 13 September 2005.
- 3 With the argument that accession to the European Convention on Human Rights (ECHR) would render a separate EU charter superfluous. In this way, the 'danger' that the Court in Luxembourg might expand its powers on the basis of the Charter could be averted. This would render Part II of the Constitutional Treaty unnecessary. *NRC Handelsblad*, Europaredactie, 10 November 2006.
- 4 BBC news, 'EU constitution: British Red Lines', 25 November 2003; 'Britten dreigen met Veto-Grondwet', *NRC Handelsblad*, 25 November 2003.
- 5 Nationale Conventie, *Hart voor de publieke zaak* 2006, p.47.
- 6 The Dutch ombudsman has, in this regard, suggested that better co-ordination is called for on this point.

## 5 CIVIL SOCIETY

### 5.1 INTRODUCTION

Citizens are not just voters (or legal subjects), but participate in all manner of social relationships and structures. These relationships are important in a democracy, because they reflect the fact that democracy is not just a political phenomenon and that social problems are not just the government's concern (Putnam 1993). Social relationships have traditionally fulfilled a crucial linking function between government and citizens within democratic decision making processes (Dahl 1956, 1971; Truman 1951; Polsby 1963). Examples include the trade union movement, the environmental movement, and other old and new social movements, which have also increasingly begun to manifest themselves via the Internet (Van de Donk, Loader, Nixon and Rucht 2004). In this sense, civil society organisations offer an alternative arena for the representation of social interests. Their strength lies in the diversity of views and interests they represent, sometimes complementing but sometimes competing with the views and interests articulated by the political parties (Obradovic and Vizciano 2006). Moreover, these organisations fulfil a number of crucial democratic functions such as creating opportunities for political participation and debate, (jointly) shaping the political and social agenda and exerting an influence on policy content (Berry 1989: 6). If civil society organisations effectively fulfil these functions, from a democratic perspective, then there is 'governance *with* the people' (Schmidt 2004).

This focus on the role of civil society organisations in the legitimisation of EU policy at the national level fits in very well with the interpretation of the EU as a multi-level governance system that is at the heart of this report (see chapter 1). Based on this approach, civil society organisations fulfil crucial roles within political decision making processes at both the European and national levels (Beyers 2002). In the government's request for recommendations which form the basis for this report, it also recognised the importance of these organisations.

Civil society organisations also play a substantial role in the decision making process at the European level. Impressive transnational interest group networks have been created in Brussels (Mazey and Richardson 1993; Greenwood 1997), of which Dutch interest groups also form a part. The European Commission itself sometimes encourages the formation of interest groups and umbrella organisations in Brussels in, for example, the areas of women's and consumer rights (Schmidt 2004). However, the



organisation of civil society in Brussels has limited significance in the light of the central theme of this report because its impact on the national decision making process is limited. Research has shown that civil society organisations at the European level are well organised and deeply embedded into the Brussels decision making process, but their Dutch counterparts play only a limited role in the *national* decision making process with regard to Dutch EU policy (Van den Berg and Brandsen 2007). The involvement of Dutch interest groups with EU policy is minimal, so that key functions such as encouraging participation and placing important European issues on the agenda are fulfilled to a limited extent only. The contribution by civil society organisations in the EU policy legitimisation process in the Netherlands is therefore limited.

Moreover, the Dutch system of representing interests has traditionally been characterised as corporatist in nature (see section 5.2.1), and this has led to major differences in the degree to which 'Europe' is embedded in the different organisations. This creates problems when it comes to a level playing field for interest groups that want to exercise influence at both the national and European levels.<sup>1</sup> In the first place, there are major differences in the extent to which civil society organisations concern themselves with European policy issues. Van den Berg and Brandsen (2007), for example, have concluded that the European trade union federations are mainly concerned with national issues. By contrast, the Confederation of Netherlands Industry and Employers, VNO-NCW, and the Dutch Federation of Small and Medium-sized Enterprises, MKB Nederland, in their role as representatives of industry, are much more keyed into European issues such as market access, trade policy and competitive relations. This is less clearly the case when it comes to their other role, as employers' organisations. The degree of involvement with 'Europe' thus greatly depends on the extent to which the EU is involved in the specific sector in question. This is also true for organisations involved in areas such as human rights and development as well as environmental organisations. Moreover, even within these organisations, Europe is a separate specialism, rather than a dimension of their normal activities.

Partly because of these constraints (which are dealt with in more detail in section 5.2), the potential for Dutch civil society organisations to make a real contribution to the legitimisation of Dutch EU policy appears limited. This chapter will examine the possibilities and opportunities for overcoming those constraints, so that civil society can contribute to the legitimisation of EU policy in the Netherlands in relation to the following three aspects:

1. Representation of societal interests and views. This requires, among other things, a society which is sufficiently independent and diverse to guarantee a balanced input into Dutch EU policy; it also requires that the European dimension forms an integral part of the activities of civil society organisations and that they focus on the national actors in the European decision making process (and not purely on the European Commission, for example). The representativeness of civil society organisations is also important here.
2. Demanding accountability from politicians and government officials. This requires that civil society organisations operate at some distance from politicians and government officials. For example, are they able to force politicians and government officials to explain and defend their positions?
3. Helping to determine the content of Dutch EU policy. This requires a certain degree of openness on the part of politicians and government officials to influence the views held in civil society, but it also requires that civil society organisations make an effort not only to articulate positions but also to ensure that they are actually reflected in policy. This may mean, for example, that coalitions with other organisations are sought that share particular positions in order to ensure that their own voices are better and more often heard.

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A number of characteristics of and developments in Dutch civil society are discussed in the next section (5.2), with attention given to the relationship, firstly, with its politicians and government officials and, secondly, with its citizens. The impact these factors have on the involvement of civil society and Dutch EU policy is then discussed (section 5.3), followed by an exploration of the perspectives for politicians and government officials in the future (section 5.4). Finally, the conclusion discusses the contribution that civil society has made with regard to EU policy legitimisation in the Netherlands from the perspective of the four aspects of legitimacy adopted in this study: representation, accountability, results and identification.

## **5.2 CIVIL SOCIETY AND ITS RELATIONSHIP TO POLITICIANS, GOVERNMENT OFFICIALS AND CITIZENS**

### **5.2.1 CIVIL SOCIETY IN RELATION TO POLITICIANS AND GOVERNMENT OFFICIALS**

A number of terms and definitions are generally used to describe the social relationships and structures which are the central focus of this chapter.<sup>2</sup> Concepts such as ‘civil society’, ‘civil society organisations’ and ‘third

sector'<sup>3</sup> are terms that are used to describe more or less the same phenomenon, though sometimes with a slightly different scope or accent. For the purposes of this chapter, however, an open approach is more appropriate for exploring the possibilities for improving EU policy legitimisation in the Netherlands. This also matches the current social reality, in which it is not only more difficult to distinguish these relationships from the government, but also from 'the market' (for example through the commercialisation of civil society institutions) and the private sector (due to the blurring of the boundary between 'private' and 'public'). In this chapter, the term 'civil society' is used to describe a wide range of organisations and structures, such as trade unions, human rights and development organisations, environmental groups, consumer organisations and more informal relationships. Separate attention will be given to the media in the next chapter, in view of the specific logic of the action of the involved actors in that domain.

Some years ago the WRR, in its report on the future of the constitutional state (*De toekomst van de nationale rechtsstaat*), analysed the changes that Dutch civil society has undergone (WRR 2002). What emerged is that Dutch civil society organisations, especially since the 1960s and 70s, have focused primarily on socio-economic policy and consequently were active mainly in the various sectors of the welfare state (education, housing, welfare, etc.). This has to do with the specific structure of the Dutch political system of interest representation.<sup>4</sup> The Netherlands has traditionally been characterised by its corporatist 'polder model', in which the representation of interests and government advice in relation to socio-economic policy takes place mainly within a tripartite consultation structure involving the government and the two sides of industry (the 'social partners'). Civil society organisations operating within the policy sectors related to the welfare state are thus closely involved in the formal decision making process, and generally also play a crucial role in the implementation policy.

A key consequence of this is that civil society organisations are organised along rather strict sectoral lines which segregate them from one another. This implies that civil society in the Netherlands is not a single homogeneous entity, but rather a collection of individual civil societies in the various sectors. In this respect, the Dutch situation is unique when compared to other member states (Dekker and Brandsen 2007). Civil society organisations are consequently generally well integrated into the policy columns in their own specific sector, but generally have little or no connection with civil society organisations from other sectors. This leads to sectoral segmentation, or even *fragmentation* of civil society.

On top of this, the character of civil society has changed radically in recent decades. Under pressure from various political, economic and social developments, it has become more heterogeneous in terms of its profile, working methods and relations to the government and citizens (WRR 2002). The field of activity has expanded to policy sectors outside the welfare state. Meanwhile, civil society organisations have become increasingly professionalised and, as a result of ‘depillarisation’ (the erosion of the ideological and religious lines which traditionally divided Dutch society into a collection of ‘pillars’), a growing number of informal and ad hoc manifestations of civil society have arisen. These trends influenced the relationship between the government and civil society, leading to growing horizontalisation and interconnectedness (WRR 2002). In addition to the vertical relations between government and society (in which the government, in its regulating and ordering role, occupies a hierarchical position *above* society), a perspective has arisen in which the government and society stand side by side in their pursuit of solutions to social problems. All in all, the mutual relationships between government and civil society are not only very close but, due to the segmentation and horizontalisation of the government, simultaneously very complex.

### 5.2.2 CIVIL SOCIETY AND ITS RELATIONSHIP TO CITIZENS

Although civil society is a direct product of citizen initiatives, the question of representativeness remains relevant. Participation in collective provisions (schools, sports clubs and health care institutions) is high in the Netherlands compared to other countries (Burger and Dekker 2001) but, as observed earlier, the EU plays an insignificant role in these very domains. Other areas closer to the activities of the EU tend to be dominated by large organisations such as the Royal Dutch Touring Club (ANWB) or the Society for the Preservation of Nature Reserves (Natuurmonumenten). Within these organisations, however, the number of ‘donor members’ exceeds the number of active members many times over. Obradovic and Vizciano (2006) came to the conclusion that the criterion of ‘representativeness’ still applies for the more ‘traditional’ interest groups, but for many newer NGOs, this is no longer a consideration. Upscaling and professionalisation can also put pressure on ties with the ‘rank and file’. The internal decision making process within NGOs is highly centralised and professionalised, so that ordinary members no longer play a role in policy formulation, and are increasingly seen as ‘customers’ and consumers of services. Ordinary members are, in fact, often not even aware of the organisation’s activities, and they understand very little about them so that accountability mechanisms are out of the question (Obradovic and Vizciano 2006: 1075). This is even more the case with

European associations such as the ‘confederations’ of national organisations. All in all, there is no clear overview of ‘the organised citizen’, so that the views of citizens are increasingly becoming difficult to gauge as guidelines for government action and for these civil society organisations, especially when it comes to EU policy.

### **5.3 CIVIL SOCIETY INVOLVEMENT IN EU POLICY IN THE NETHERLANDS**

#### **5.3.1 THE LOGIC OF CIVIL SOCIETY ACTION AND THE EFFECTS OF SECTORAL ‘SEGMENTATION’**

Civil society organisations derive their validity from the representation of specific interests, by representing specific groups and opinions in society or by contributing to the solution of specific social problems. However, when it comes to the adoption of Dutch EU policy, these functions are only apparent to a limited extent. The involvement of Dutch organisations in the decision making process is minimal and the EU and EU policy are rarely an inherent motive for their actions. Recent research on the role of civil society organisations in the European decision making process at the national level has however shown that these organisations are mobilised when their specific objectives and interests are at stake (Beyers 2002). In other words, civil society organisations usually only participate in EU policy debates when they determine that it would be useful for their own objectives and activities (Van den Berg and Brandsen 2007: 31). Thus, for an accurate assessment of the potential of civil society as a link in improving the legitimisation of EU policy it is both essential to understand and to focus on the motivations and priorities of the organisations operating within it.

However, in practice civil society organisations are by no means always actually involved in national EU policy, even when there are substantive reasons for doing so. The sectoral segmentation referred to in the previous section is a complicating factor, as illustrated by the situation surrounding the European Commission initiatives in relation to Services of General Economic Interest. In 2003, the Commission published a Green Paper on these services and began a broad public consultation round in which (relevant) interested parties were able to adopt a position on the desirability and content of the topic. This was also highly relevant for Dutch civil society, because many organisations fulfil a function in the provision of public services; any market regulation by the EU in this domain would therefore have a direct influence on their position and functioning. However, the total number of responses to this consultation round was fairly low (281);

it is also striking that far more reactions came from countries such as Belgium (74), France (67), Germany (45) and Austria (25) than from the Netherlands (4).<sup>5</sup>

This small number of reactions was all the more striking in light of the increased attention being paid to the purely national aspects of the application of market regulations to public services. That attention also extended to Services of General Interest and their distinction from Services of General Economic Interest. Sectors such as telecommunications, transport and energy, as well as social housing and health care occupied a central position here. In 2002, seven private non-profit sector organisations in the fields of care, education and housing even took the initiative of joining forces on the issue of corporate social responsibility in the Network for Future Corporate Social Responsibility (NTMO). The Social and Economic Council of the Netherlands (SER) (2005), the WRR (2004) and the research institute of the Christian Democratic party (CDA) (2005) all contributed to this debate as well. It was essential then to link the European debate directly to the national debate (as was the case in Germany), but this did not happen in the Netherlands.

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Van den Berg and Brandsen (2007) attribute this lack of response to a lack of a common identity in Dutch civil society. Dutch civil society, particularly when compared to countries like France, Germany and the United Kingdom, can hardly be portrayed as organised at a central level. The policy domain in which civil society organisations operate is much more important in this regard.

Organisations are more likely to identify with related organisations and public institutions within the same sector (such as health care or housing) than with civil society as such. Another explanation for civil society's lack of involvement lies with the government, however, because the Ministry of Economic Affairs was responsible for consulting with civil society organisations, whereas, in reality, this ministry has traditionally maintained few links with many of the civil society organisations that are concerned with public services. Instead, these organisations maintain direct links with the Ministry of Housing, Welfare and Sport, for example, or the Ministry of Social Affairs. Single vertical relationships between civil society organisations and a single ministry can thus also be an obstacle. Both the sectoral segmentation of civil society itself and the associated segmentation within central government were barriers.

The situation in relation to the Green Paper on Services of General Economic Interest illustrates that if EU policy does not fit into various

sectoral 'segments', it is difficult to engage civil society organisations. This presents an additional obstacle in the stimulation of these organisations to integrate EU policy into their regular activities. The present situation, where EU policy is at best a separate specialism within civil society organisations, is thus difficult to change (Van den Berg and Brandsen 2007).

Another consequence of sectoral segmentation is that there are dramatic *differences* in the levels of involvement between different civil society organisations with regard to EU policy. As a result, the involvement of civil society in EU policy may not only be low, but extremely asymmetrical as well. This asymmetry is exacerbated by the fact that the formal involvement of organisations in policy in the Netherlands is highest in sectors related to the welfare state, where the EU is of minor significance. Conversely, the involvement of civil society organisations in national policy is considerably lower in those sectors where Europe does play a substantial role (Beyers 2002). This can give rise to a situation where civil society organisations that have little influence within the national decision making process increasingly use the new opportunities for influence offered by Europe, in order to compensate for their lack of influence at the national level (Fairbrass and Jordon 2001). However, this does have the effect of limiting their role in the *national* decision making process.

All in all, a sense of reality and a tempering of excessively high expectations is called for when considering the potential contribution of civil society to EU policy legitimisation in the Netherlands. The logic of action of civil society and its sectoral segmentation are major obstacles. Warnings that too much should not be expected in terms of participation by civil society actors geared towards EU policy legitimisation are therefore realistic (Beyers 2002; Smismans 2006; Obradovic and Vizciano 2006).

### 5.3.2 OPPORTUNITIES EVEN SO?

Are there still opportunities for a greater role for civil society in EU policy legitimisation in the Netherlands, despite these obstacles and constraints? Is it possible that relevant initiatives could emerge from civil society itself? In answering these questions, it is important to start by observing that breaking down the sectoral 'compartmentalisation' presents a major challenge. The key to change here, too, lies in civil society's logic of action and in the responses to that logic. Thus, it is important that civil society organisations be encouraged to look beyond the limits of their own individual sectors. This will only happen if those organisations see that their role in looking after specific interests is facilitated by coalition formation with other organisations or initiatives.

The Dutch debate on the Services Directive shows that it is indeed possible for civil society to take the initiative and rise above its sectoral approach. Initially, however, the government opted for a depoliticising ‘polder strategy’, in which two advisory bodies – the Social and Economic Council and the Council of State – were asked to produce recommendations on the draft directive (Pelkmans and Van Kessel 2007). However, this strategy failed to remove the growing uncertainties among various groups about the possible effects of the Services Directive. On the contrary, the criticism of the Directive grew and led to the emergence of a spontaneous coalition of different interest groups in the ‘Stop the Services Directive Platform’ (‘Platform Stop de Dienstenrichtlijn’). A broad spectrum of organisations took part in this coalition, including the Labour Party (PvdA), the Green Left party (GroenLinks), the Socialist party (SP), the FNV trade union federation, the national student union, the environmental movement (Milieu Defensie) and various organisations active in the fields of development co-operation and human rights. The Platform very effectively articulated the prevailing broader concerns and, in doing so, generated a good deal of media attention. The Platform’s activities impact on the public was substantial, and the Platform thus functioned as a suitable arena for representing society’s displeasure with the Services Directive (Pelkmans and Van Kessel 2007).

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The Platform was used to bolster direct opposition and lobby against the draft directive at both the national and European level, and several demonstrations were also organised. The Platform also contributed to a hardening of views. For example, the FNV mounted stronger opposition to the proposed directive than in earlier SER (*Sociaal-Economische Raad*, Socio-Economic Council) discussions. The Services Directive thus ultimately became a political issue in the Netherlands which led to lively and heated debate in the Dutch Parliament, where a diversity of positions were defended, in turn generating a good deal of media attention.

Thus, the establishment of the Platform first created a bridge between the individual sectors occupied by civil society organisations. In doing so, it provided an example of how civil society organisations with very different backgrounds can be united. Moreover, within these organisations, a European issue was suddenly propelled out of its technical, specialist corner and into the mainstream, where it became an important issue. These favourable parameters can probably be attributed to the appeal of the criticism aimed at the draft directive. The ‘Stop the Services Directive’ Platform was thus successful in representing a single, specific view of the Services Directive. However, it also ensured that the closed, segmented structure within which European issues are usually dealt with had broken open, thereby



giving an impulse to the accountability function of politicians. For the Platform, however, the policy result was the most important outcome of the initiative; many of the concerns were effectively addressed in the final version of the Services Directive, because criticism of the proposal was shared by many other member states.

There are few comparable other examples at this moment, but the example of the Services Directive does demonstrate that there are opportunities for civil society to contribute to the legitimisation of Dutch EU policy.

## **5.4 POLITICAL AND ADMINISTRATIVE PERSPECTIVES**

### **5.4.1 INTRODUCTION**

Civil society is not an instrument that can be simply used by national politicians and government officials for the legitimisation of EU policy in the Netherlands: civil society operates on the basis of its own motives and goals, from which it also derives its own legitimacy. Moreover, the configuration of civil society is not ideal for the legitimisation of EU policy. However, given these caveats, politicians and government officials do have a role to play in facilitating the involvement of civil society in legitimising EU policy. There are two main perspectives to be considered here: in the first place, politicians and government officials must avoid becoming an obstacle themselves to the legitimising role that civil society can play; secondly, politicians and government officials must be sufficiently open to the initiatives of civil society which contribute to the legitimisation of EU policy.

### **5.4.2 REMOVING INHERENT OBSTACLES**

The previous analysis shows that politicians and government officials themselves can sometimes be the obstacles to civil society's legitimising role. In the case of the Green Paper on Services of General Economic Interest, for example, the segregation between ministries led to what was possibly an unnecessary narrowing of civil society's contribution. These sorts of obstacles must be avoided or eliminated.

The tendency of Dutch politicians and government officials to treat policy issues as mainly technical matters is one such obstacle which can hinder the contribution of civil society to the legitimisation of EU policy. The role of civil society in the introduction of the euro offers an interesting example in this regard. The national preparations for the introduction of the single European currency in the Netherlands were delegated to the 'National Plat-

form for the Introduction of the Euro' ('Nationaal platform voor de introductie van de Euro) – hereafter referred to as 'the Platform' – which was installed by the Ministry of Finance in February 1996. The Platform was comprised of senior representatives from a large number of different civil society organisations, not just obvious organisations such as the three largest trade unions (FNV, CNV and MHP), the Dutch employers' organisation VNO-NCW, the Dutch Central Bank, the Netherlands' Bankers' Association and the Dutch Federation of Small and Medium-sized Enterprises (MKB Nederland), but also interest groups such as the Dutch Consumer Association, the Dutch retail association RND, the pensions and insurance regulator Pensioen- & Verzekeringskamer and the Dutch Federation of Agricultural and Horticultural Associations (LTO). However, the Ministry of Finance's central role implied that the agenda was being dominated by financial experts, so that the input of non-financial interest organisations was greatly reduced. This was exacerbated by the underlying idea that the introduction of the euro was a purely technical, logistical operation in which ideological oppositions and political legitimacy were not relevant. The broad representation of civil society organisations was therefore directed mainly towards generating as much information as possible from 'the field' and resolving any problems which might arise with the introduction of the euro as effectively as possible. Thus the Platform did not function as a forum where a wide range of social interests were articulated or where opposing views could be resolved. Moreover, the Platform was dominated by monetary and financial experts, so that the other Platform participants were forced more into the role of information providers than equal decision makers.

The Platform accordingly began its campaign activities fairly late, in 1998 – when the European Commission gave the official green light to the second phase of the project (Mak 2001: 153). Mak (2001: 155) cites the lack of controversy in the Netherlands with regard to the monetary policy in general as an explanation for this late start, but also believes it was a deliberate strategy by the Ministry of Finance designed to confront Dutch citizens with a political *fait accompli*.

All in all, the Platform was a typical example of the technical embedding of policy issues, ultimately aimed at ensuring the legitimacy of the policy outcomes. There was no place for the representation of different community interests or of voices critical of the government. As such, the Platform fit into the Dutch corporatist system very well, with its strong tendency towards depoliticisation. The scope for civil society contribution to EU policy legitimisation in the area of representation and accountability was thus smothered at birth. The possibility cannot be ruled out that the prob-

lems with the acceptance of the euro from 2002 onwards can in part be traced back to this. As a result, even the legitimacy of the policy outcomes, on which all of the efforts had been focused, was put in jeopardy.

An important lesson from the introduction of the euro is that politicians and government officials must not reduce the potential contribution of civil society to only one of the legitimacy dimensions, namely results. Many issues are no longer purely technical in nature, but require a decision between different, sometimes conflicting interests. This leads to politicisation. By representing a diversity of interests, civil society can effectively make a valuable contribution. The Platform could also have fulfilled an important role in another respect, by critically monitoring the political decision making process in relation to the various aspects of the introduction of the euro and thus offering a form of organised counterweight. This contribution to the accountability function of the political decision making process could have improved the quality of those decisions. However, because the Platform was ‘poldered’ into the decision making procedure, this became another important missed opportunity. This example is not an isolated one: the technical embedding of the decision making process surrounding the Habitats Directive also shows virtually no civil society involvement, which in this case also led to substantial negative implications for the ultimate implementation of the Directive (Van Keulen 2007).

#### 5.4.3 OPENNESS TO INITIATIVES FROM CIVIL SOCIETY

The ‘Stop the Services Directive’ Platform discussed in section 5.3.2 was a spontaneous initiative involving a diversity of organisations. In fact, it was a reaction against the ‘embedding’ of the Services Directive in the regular advisory structure. By representing a voice that had until then remained virtually unheard via the normal channels and institutions, the Platform contributed to the quality of the decision making process. It is therefore logical for politicians and government officials to recognise the value of such spontaneous initiatives and to show that they are open to them. However, caution is needed in providing (financial) support for such initiatives, and these initiatives must also not be too readily assigned to official ‘platforms’ created by the government. This could smother spontaneity, which is the strength of such initiatives. A certain distance can also help prevent the old technocratic reflexes from dominating. This would prevent civil society initiatives from becoming swallowed up in the prevailing ‘polder culture’.

Civil society initiatives do however deserve greater openness on the part of politicians and government officials, in the form of granting access to and allowing input into the decision making processes. This means that

government officials and politicians would have to focus less exclusively on 'polder institutions' and the forms of co-operation associated with them, which may increase the chance of 'technocratisation' and depoliticisation. The rigidity can be broken down by employing broader, more easily accessible platforms, which offer the advantage of being able to represent the voices of larger groups of citizens and a wider diversity of interests. This offers opportunities for articulating other, non-technical interests and concerns. Moreover, this kind of platform would fit in with the logic of action of civil society organisations, which could join in at the instant that they see this as being important for the furtherance of their aims.

Adopting this kind of approach, in which the rigidity of the relationships between Dutch politicians and government officials, on the one hand, and civil society, on the other, would also be in line with developments taking place at the European level, where single-issue coalitions of diverse organisations are also being formed. One example is the continuation of the debate on Services of General Economic Interest (Dekker and Brandsen 2007). Although the European Commission's Green Paper elicited few reactions from Dutch civil society, that situation later changed – partly under the influence of the controversy surrounding the Services Directive. The relationship with Services of General Interest was one of the main focus areas. Several organisations and groups of organisations formulated their own proposals on this subject, and some organisations lobbied actively in a bid to mobilise other organisations.

First, these initiatives offer a counterweight to the positions and proposals of the European Commission and the European Council. The social democratic PSE party in the European Parliament even went so far as to formulate it explicitly in terms of 'confrontation' (PSE 2006). Secondly, a number of these proposals assign a specific role to (national) civil society organisations in the implementation and evaluation of the directives.

Civil society organisation input in the decision making process is also becoming less and less an exclusively national or 'Brussels' affair, as more and more cross-border coalitions are formed and initiatives launched focusing on specific issues. The result is what Bartolini (2005) called the new '*stratarchic imprint*' in the political system of the EU – a system that is increasingly open and which adopts a positive attitude to such transnational coalitions. This fits in with the reality of the EU as a multi-layered system within which there are many different internal relationships. This again supports the call for a greater openness on the part of Dutch politicians and government officials not to remain trapped in the rigidity of the traditional 'polder structures'.

## 5.5 CONCLUSION

In its present form, civil society does not offer any ready-made opportunities for contributing to the legitimisation of EU policy in the Netherlands: civil society organisations are too closely intertwined with the segmented state apparatus, and EU policy is too much a marginal rather than a central part of their activities. Moreover, those organisations which do concern themselves with EU policy are less focused on the national political and administrative systems because they are not very concerned with issues of accountability and representativeness. The configuration of Dutch civil society is corporatist in nature, which means that a central role is accorded to sectors that are relatively immune to influence from EU policy. On top of this, as a result of this corporatist system, ties between the Dutch government and civil society organisations are often so strong that there is little incentive for them to function as a counterweight to the government; the traditional organisations, especially, tend to follow the government line.

However, there are opportunities and possibilities for civil society's contributions to EU policy legitimisation. A number of examples have been discussed in this chapter in which civil society played, or *could* have played, a bigger role in that legitimisation process. These were mainly *incidental* contributions and experiences of civil society organisations which could serve as an example for a more structural involvement in the future. The way in which these perspectives might contribute to the four legitimisation dimensions is discussed below.

### **Output**

Civil society's contribution to the implementation of policy is the most important factor for the government when it comes to EU policy. The input of civil society organisations, which often have a wealth of knowledge and expertise, can improve the substantive quality of policy. The legitimacy of policy outcomes is however also closely related to the other legitimacy dimensions. Citizens will be more willing to accept new policy if civil society organisations have taken part in the decision making process and different social interests have therefore been represented in that process. Moreover, a sufficiently varied input from civil society would open the way for new directions in EU policy and could avoid problems in the implementation of that policy (see, for an example, the Habitats Directive).

### **Input**

Civil society is important as a means of articulating and promoting the interests, objectives and values of the community. Civil society organisations will be encouraged to assume this role when dealing with EU policies

that are relevant to their causes. However, the asymmetry between the activities of (especially traditional) civil society organisations in the Netherlands and the domains in which EU policy is relevant begs the question of whether the diversity of civil society and thus its representativeness is sufficiently guaranteed. If the government wishes to assure the input of civil society in the formulation of national EU policy, it is vital that attention not be limited to the traditional, institutionalised organisations. Given this asymmetry, it is important that attention be paid to ad hoc initiatives, single-issue coalitions and other less rigidly organised or institutionalised forms of civil society. A second requirement is that the government shows itself to be open to input from civil society in all its forms. The example of the platform set up for the introduction of the euro shows that the government considers civil society relevant mainly for its contribution to the implementation of policy. If it also recognises the importance of the representation of community interests, it will have to assign this function its proper value.

### ***Accountability***

Openness to organisations which do not form part of the traditional, institutionalised structure is of indisputable importance in the activating of the accountability function of civil society. It is, after all, more logical that these organisations should fulfil the role of 'thorn in the side' than organisations which have themselves become part of the system. Civil society organisations have two ways of shaping this function and demanding political accountability: via the specific interests they represent and via their involvement in policy implementation.

### ***Identification***

Because civil society organisations act on the basis of their own interests, 'Europe' as such is usually of little interest to them (Van den Berg and Brandsen 2007: 31). These organisations are more concerned with specific, relevant policies. This means that a substantial contribution to the development of views on Europe as a political community should not be expected from civil society. If civil society has a contribution to make to identification processes, then this is above all a question of identification 'by doing' (Schmidt 2006). This means that civil society can acquire significance among Dutch citizens mainly as a link that contributes to the identification of citizens with Europe by being permanently recognisable in their European role. The contribution to identification processes is an extension of the role of civil society in representing community interests, demanding accountability in respect to Dutch EU policy and being involved in the content of that policy. It will thus become clear that achieving this is a process that will take some time.

Given the findings in this chapter, the WRR recommends that the rigidity in the administrative approach to civil society organisations be relaxed and that greater openness be created towards other civil society organisations, initiatives, coalitions and platforms, each of which in their own way – and often related to different dimensions of legitimacy – can make a valuable contribution to EU policy legitimacy in the Netherlands.

This would create favourable conditions for civil society to play a role in the legitimisation of Dutch EU policy.

## NOTES

- 1 For argumentation, see Schmidt 1997; 2003; 2004.
- 2 Van den Berg and Brandsen 2007 observe that the definition issue is ‘notoriously difficult’. It involves: ‘a rich diversity of organisations and groups that includes co-operatives, associations, foundations and various informal social groups’ (Dekker and Burger, 2001). Kendall and Knapp, meanwhile, quote Henry James, to characterise the sector as a ‘loose and baggy monster’ (Kendall and Knapp, 1995). There have been many attempts to capture the monster in definitions and taxonomies, with varying levels of success.
- 3 For the latter, see Van de Donk (2001), who explicitly distinguishes this sector from (1) the government, (2) the market and (3) informal relationships.
- 4 In the scientific literature, a distinction is generally drawn between pluralistic, corporatist and estatistic political systems of interest representation (cf. Lijphart 1999; Falkner 1999). In pluralistic systems, many different civil society organisations operate alongside each other, all having equal access to the formal decision making process. In corporatist systems, by contrast, a small number of unelected and privileged organisations are included in the formal decision making process, and, moreover, function as key advisory bodies to the government. In estatistic systems, finally, civil society organisations play virtually no role in the political decision making process.
- 5 Report on the public consultation on the Green Paper on services of general interests, Commission Staff Working Paper, SEC (2004) 326, 15.03.2004: [http://eur-lex.europa.eu/LexUriServ/site/en/com/2004/com2004\\_0374en01.pdf](http://eur-lex.europa.eu/LexUriServ/site/en/com/2004/com2004_0374en01.pdf).





## 6 NEWS MEDIA

### 6.1 INTRODUCTION

Free and open communication on political and social issues is a precondition for the creation of a 'public space' (Habermas 1990). Both traditional and contemporary media are important when it comes to communicating with the public in modern democracies. Ideally their communicative function is threefold: to offer foras for public opinion formation and consultation; to mobilise public and political participation; and to be a 'watchdog' *vis-à-vis* the political powers (Habermas 1990; Norris 2000). Necessary elements therefore include the provision of (impartial) information, clarifying different views, critically monitoring political and social trends and influencing the political and social agenda (Kleinnijenhuis, Oegema and De Ridder 1995; Gurevitch and Blumler 1990; WRR 2005). Since the emergence of commercial broadcasting (which took place relatively late in the Netherlands), both the traditional public broadcasters and their more commercial counterparts help define the media landscape. However, the written press still has a special position in this respect (De Vreese 2007: 17). The media are thus important intermediaries in the triangular relationship between politicians and citizens, and as such are indispensable links in the democratic process (Risse and Van der Steeg 2003).

However, as a result of broad socio-political trends such as functional differentiation, individualisation and the rise of the Information Society, the relationship between the media, politics and administration and the public has dramatically changed (chapters 2 and 3). In addition, Dutch society has been 'depillarised' (which means that the denominational segregation into vertical 'segments' or 'pillars' each with their own specific political and religious loyalties has come to an end) and the 'floating voter' has also emerged in the Netherlands as an important political factor. This has resulted in politicians becoming more focused on publicity and on managing their public image through the media. More recently, however, they too have become increasingly inclined to using new media (Internet) in order to be less dependent on the traditional news media. In spite of this, however, the use of old and new media are still strongly correlated (WRR 2005). Media services are in turn increasingly driven by market forces. Journalists have to devote more time and energy to obtaining (political) scoops and to fast, accessible reporting to reach a wider public than before (WRR 2005; ROB 2003). This has made politicians and the media increasingly interdependent. EU policy, which has in any case always had to fight for the attention of politicians and the media, suffers even more from the

‘communication gap’ by which it is separated from the public (Meyer 1999). As a result, the pressure on the role of the media as a link in the legitimisation of European policy is rising.

The central question addressed in this chapter is how the media might contribute to a better legitimisation of Dutch EU policy. The chapter starts by outlining the influence of the various changes in the media landscape, which threaten the triangular relationship described above between politics, media and citizens (section 6.2). It then goes on to explore the involvement of the media with EU policy. Reporting on the EU is constrained partly by the media’s own interests and logic and partly by the nature of European decision-making processes and the way in which politicians and administrators position themselves in those processes. Nonetheless, there are certainly opportunities for increased media attention with regard to Europe, which would thus contribute indirectly to a stronger legitimacy of Dutch EU policy (section 6.3). To achieve this, however, political actors will themselves have to take the lead by anticipating the inherent media logic more effectively. Section 6.4 discusses the tools that are available for removing the existing obstacles and providing politicians and officials with adequate incentives.

## **6.2 A TRIANGULAR RELATIONSHIP BETWEEN THE MEDIA, POLITICIANS, AND POLICY MAKERS AND CITIZENS**

The relationship between politicians, the media and citizens has undergone a number of changes in the past few decades, which has had drastic effects on reporting on Europe in the national media and the way in which this is done. Since the 1990s, rapid internationalisation, commercialisation and digitalisation have radically altered the Dutch media landscape. Public broadcasters have to compete with commercial broadcasters, while newspapers are faced with declining circulation. A small group of foreign companies owns most of the Dutch media and competes fiercely for sales, viewer figures and advertising income (WRR 2005: 23-24). In the battle with commercial broadcasters and media, the written press and public broadcasters have largely lost their former political or ideological orientations. Not only did the media lose many of its typical Dutch characteristics, but also its commercial interests have become increasingly important (WRR 2005; Broeders, Huysmans and Verhoeven 2006).

This new, commercial logic is at odds with the public functions of the media, as well as with values such as *independence*, *pluralism* and *accessibility* (WRR 2005). News selection and content is increasingly determined by the question of whether items can be ‘sold’ to a large public. This is

measured on the basis of *news value* (De Vreese 2003; Kleinnijenhuis 2003; Tiemeijer 2006: 258). The news value depends, e.g., on the degree to which news items are *familiar* and *directly relevant* to the public consumers of news. Unexpected, contentious news, focused on incidents, personalised and framed in negative terms is more appealing than one-off, predictable and purely informative reporting (Galtung and Ruge 1965; McQuail 2002; Severin and Tankard 2000).

The relation between the media and politicians has also changed. Depillarisation, loss of ideology and the declining relevance of political parties result in politicians increasingly competing for the backing of a 'floating' electorate, which in its turn acquires its information on political affairs indirectly through the media. Politicians thus depend heavily on the media when it comes to communicating with its constituents. Moreover, in order to reach beyond the well-educated audiences, politicians have become dependent on the commercial media and most of all, on television itself. Conversely, journalists have become ever more dependent on the accommodation and co-operation of politicians, press officers and political spokespersons for rapid news gathering and scoops (Kleinnijenhuis 2003; Prenger and Van Vree 2004).

## 6.3 THE DUTCH MEDIA'S INVOLVEMENT WITH EU POLICY

### 6.3.1 STATE OF AFFAIRS

The attitude of Dutch politicians towards Europe may account for many of the current problems of the media's involvement with EU policy. Basically, three problems can be distinguished: Europe is too often invisible in Dutch politics and thus in the Dutch media as well. Europe is for editors at the various media outlets, not unlike with politicians, a matter for small groups of specialists and finally: the rare items of EU news are often framed in a negative way.

#### ***The EU's invisibility in politics and the news***

Due to the technocratic, lengthy and complex nature of the European decision-making process, the depoliticised character of Dutch EU policy and the insufficient embedding of Europe in day-to-day political practice, European issues only sporadically meet the aforementioned criteria for news value. As a result, newsmakers tend to think that the EU rarely generates interesting news (De Vreese 2007). Consequently, European issues attract less media attention than purely 'national' issues. This applies even more to the ever more popular commercial TV broadcasters (De Vreese 2003).<sup>1</sup> News reports about the EU is accordingly mainly 'cyclical' in nature

in the Netherlands, with a brief peaking of media attention during major events such as EP elections and referenda, only to vanish again afterwards (Norris 2000; De Vreese 2001, 2007).

The referendum on the European Constitution offers a good example of this. Research by the Amsterdam School of Communication Research (ASCOR) indicated that media attention for the EU in the Netherlands increased considerably in the run-up to and during the referendum on the Constitutional Treaty. However, Eurobarometer opinion surveys by the European Commission also suggest that more than 50 per cent of Dutch citizens who did *not* vote in the referendum felt they had been inadequately informed about the issue (European Commission 2005, Flash Eurobarometer 172: 5). According to the same surveys, more than 30 per cent of the 'No' voters based their vote on this perceived lack of information (Flash Eurobarometer 172: 15). The Netherlands also scores below the EU average when it comes to the visibility of the EU in media reporting. Research by ASCOR on media reporting shows that the amount of attention given to the European Parliament elections of 1999 and 2004 in Dutch television broadcasting was below the EU average. Moreover, the lower exposure relates not only to major events such as European elections, but also to regular European news (Peter, Semetko and De Vreese 2003).

### ***A matter for EU specialists***

Within the various editorial teams, only a small group of specialists actually deal with topics related to Europe. They, in their turn, acquire their information from the relatively small group of policy elites within the EU 'cocoon' in Brussels and at the national level (including spokespersons on Europe in the European Parliament, Brussels officials, academics, lobbyists and trade union leaders). EU items appear only in the international pages and special international sections. In its White Paper on a European Communication Policy, published in February 2006, the European Commission put forward specific proposals to tackle this one-sided attention by these specialists. Most of the White Paper focuses on the EU level, such as investments in communication and information by EU institutions and the setting up of a European training program for public communication. Meanwhile, the Commission also proposes that more attention be paid to the 'human face' of politics and administrative branch in the EU (European Commission 2006a). These kinds of proposals are, however, not sufficient to tackle structural problems at the national level.

A number of newspapers in the Netherlands have responded to the growing need for knowledge on Europe by producing special Europe-related editorials and sections dedicated to coverage of Europe. Though praiseworthy,

thy in their own right, such initiatives confirm yet again the notion that 'Europe' and EU policy are not considered integral elements of the regular political and public arena.

### ***Negative framing***

When EU issues are indeed covered by the Dutch media, they tend to be framed in negative terms. De Vreese (2003: 21-22) identifies five frameworks in which news is generally couched. They involve a focus on:

1. controversy and conflict between individuals, groups, institutions and countries;
2. personal, human and emotional aspects of a story;
3. responsibilities and causes;
4. moral or religious aspects;
5. economic consequences.

Research has shown that news items on European politics are often framed as conflicts between EU institutions, member states and political parties (De Vreese 2003, 2007). This provides a clear news angle, making it easier to portray European politics in a lively and appealing way. This kind of negative, conflict-based approach is exacerbated by the specific way in which Dutch politicians position themselves vis-à-vis EU policy. As in other member states, European issues sometimes conflict with traditional party ideologies, which may lead to political parties becoming internally divided (Hooghe and Marks 2005a). Dutch political elites lack explicitly articulated views on Europe, a lack which is particularly felt when it comes to well-substantiated and clearly worded arguments in favour of European integration. Those who approach Europe in a negative way, e.g., by engaging in the game of 'blaming and shaming' Brussels, thus end up having much to gain: they meet very little resistance and can count on substantial media exposure. Since many citizens' views on Europe are not deeply rooted, public opinion is highly susceptible to the views of these politicians. This may also explain why – despite a relatively high level of public support for the EU – a fairly short but intense flow of negative statements by a small group of politicians in the news media concerning the size of the Dutch contribution to the European budget was able to twice affect (in 1997 and around 2002-2003) a fairly rapid and major reversal in the perception of the benefits of Dutch EU membership (Petter and Griffiths 2005).

The tendency to focus on the (perceived) negative aspects of European cooperation and on contentious news is particularly strong in the Netherlands (De Vreese 2007). According to ASCOR research, the Netherlands is one of the top five countries (together with Finland, Great Britain, Portugal and Greece) when it comes to negative coverage of EU issues.<sup>2</sup> Attention

often focuses one-sidedly on (alleged) fraud, improper use of funds and the negative aspects of the Brussels bureaucracy.

In short, many Dutch politicians and journalists regard Europe as an unmarketable product. Dutch politicians have little to gain from positioning themselves on European issues in the media, and journalists in general show little interest. The result is a vicious circle: because Europe is insufficiently embedded in Dutch politics and society, the media show no interest in addressing European issues. The lack of media coverage in turn makes it more difficult to embed EU policy in the Dutch political system, as information on EU issues fails to reach citizens.

This vicious circle has negative effects on the legitimacy of Dutch EU policy (Baetens and Bursens 2005). Firstly, inadequate communication on EU issues exacerbates the lack of public knowledge and participation and undermines the *input* legitimacy of Dutch EU policy. Secondly, the lack of information increases the perceived complexity and lack of transparency of the EU, which complicates the satisfactory functioning of accountability mechanisms even further. Thirdly, if the scope, the content and the effects of EU policies are made insufficiently clear to the public, output legitimacy is also jeopardised. Finally, if media coverage on EU issues remains structurally defective, the gap between national politicians and citizens on European issues will only tend to widen and this will create an obstacle for longer-term processes of identification with the EU as a political community.

### 6.3.2 OPPORTUNITIES

What opportunities might be pursued to overcome these structural problems? It is precisely because the Dutch public are relatively poorly and one-sidedly informed about Europe that they are highly dependent upon the national media for information and opinion formation. Moreover, as the Dutch appear to exhibit a genuine need for information on European issues, more and better media coverage could have a major influence on public opinion (Page and Shapiro 1992; De Vreese 2003: 1). Opinion polls even suggest that a majority of the Dutch population feel that the Dutch media currently devote too little attention to the EU (European Commission 2006b, Standard Eurobarometer 65). In principle, therefore, the media might already have enough incentives to meet this demand and thus contribute to reducing the lack of knowledge and understanding of the EU (Baetens and Bursens 2005: 4).

As observed before, the news media are indispensable in linking politicians and citizens in the national and European democratic process. On the one

hand they have a clearly defined responsibility to provide the public with impartial information on European issues, and their relationship with professional politicians is even of a somewhat ‘symbiotic’ nature. On the other hand, however, they also have their own specific interests and considerations which are increasingly market-oriented (Pels 2007: 19-20; De Vreese 2007). In the face of this ambiguous position, it would be both unproductive and undesirable to make the news media directly responsible for the improvement of both the quantitative and qualitative media coverage of EU issues. The requisite incentives should indeed come from Dutch politicians themselves. As Kleinnijenhuis states: ‘The *political logic* requires politicians to anticipate the *media logic*’ (Kleinnijenhuis 2003: 177). If politicians provide the right incentives by responding more actively to the logic of action, opportunities and possibilities of the media, European issues will become a part of everyday journalistic practice. However, this will require considerable changes in the way in which politicians and administrators have dealt with European issues up until now.

## 6.4 PERSPECTIVES FOR POLITICIANS AND POLICY MAKERS

In chapters 3 and 4, the WRR proposed several measures which might encourage politicians and policy makers to increase the visibility and substantive profile of European issues in the national political system. Two of these proposals, namely the shifting of the overall political responsibility for EU policy to the Prime Minister and the preferendum instrument, could, in the view of the WRR, significantly increase the newsworthiness of EU issues.

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### 6.4.1 STRATEGIC ROLE FOR THE PRIME MINISTER

A more visible strategic role for the Prime Minister on general government policy concerning European issues may offer interesting opportunities for increased and improved media coverage on Dutch EU policy. Firstly, it is a way to *personalise* and to *‘nationalise’* European issues, by literally providing Dutch EU policy with a ‘face’. Secondly, it offers an opportunity to link ‘Brussels’ directly with ‘The Hague’ via the Prime Minister, making it easier for the media to provide insight into the specific Dutch input at the European level and into the impact of EU policy on Dutch politics and society. In short, it would make it easier to cover European issues as newsworthy, in turn making them more interesting and appealing to the public. Thirdly, the proposed role for the Prime Minister offers a way to open up the European decision-making process to the media and the public. Journalists would thus have a single point of access via the Prime Minister, to reduce the risk of them becoming entangled in what is often perceived as an impenetrable



decision-making process. This would also make it easier for the media to highlight political responsibilities and to critically monitor politicians.

This would enable the media to fulfil their public functions with respect to European issues more effectively and to make an indirect contribution to the improved legitimisation of Dutch EU policy. Increased media coverage as a result of the Dutch Prime Minister taking the lead on EU issues might open up existing as well as new channels for political representation, provide the media with better opportunities to control politicians which in turn may also increase the acceptability of European policies. Increased quantitative media attention for EU policy would in turn challenge the Prime Minister to develop a communicative discourse on Europe which is appealing and persuasive to citizens and much less coloured by the specifics of individual European policy dossiers. It would also encourage the Prime Minister – and his Cabinet – to position themselves more substantively on European issues, on what is at stake (for the Netherlands), on the goals they are seeking to achieve and on the appropriate strategies.

#### 6.4.2 **PREFERENDA**

What are the expected effects of the proposed referendum instrument on media coverage? The newsworthiness of European issues put to the vote would increase tremendously as well as media attention. It is precisely because preferenda involve citizens directly in European issues that journalists would have stronger incentives to cover these issues. Preferenda could thus contribute directly to increasing the quantity of EU news. Just as important, however, are the indirect benefits: preferenda would force national politicians to position themselves in referendum campaigns. This would offer an excellent opportunity to cover European issues in terms of the conflict between individuals and political parties on concrete grounds. By thus personalising and framing EU issues in terms of conflict, opportunities would be created to nationalise the European debate and to explicitly link national politicians to ‘Brussels’. This in turn would make European issues more interesting for the national media and contribute to a quantitative increase of EU news.

Referendum experiences regarding the Constitutional Treaty confirm that a quantitative increase in media coverage did indeed occur (De Vreese 2007; Kleinnijenhuis, Takens and Van Atteveldt 2005). The *quality* did not noticeably improve, however. A substantive analysis of referendum campaign media coverage reveals that news reporting was not focussed on substantive debates concerning the contents of the Treaty. Instead, the quarrels in the ‘Yes’ camp and the failure to promote a uniform, clear and

consistent view on the usefulness of and need for the Constitutional Treaty dominated (Kleinnijenhuis, Takens and Van Atteveldt 2005: 124).

If, however, Dutch politicians learn the necessary lessons from these experiences, referenda on specific European themes may very well in the future contribute to Dutch EU policy legitimacy. However, this would require politicians to position themselves by expressing clear views on the issues to be voted on, as well as a willingness to enter into timely, regular and in-depth lengthy debate on these issues (Schmidt 2006). This would mobilise the news media as intermediaries between politicians and citizens in the process of policy legitimisation. The media could contribute to the increase in knowledge, participation and involvement of citizens, and encourage politicians to account for their EU positions and views, but most of all to those groups of citizens that do not belong to the European and national political elites (Bovens 2006b: 215). Furthermore, preferenda would provide direct moments of contact between politicians and citizens (Pels 2007: 27). In time, this would ideally give rise to a communicative discourse on European issues among Dutch politicians and in the media, which would reinforce a structural improvement in the legitimisation of policy. This could eventually supersede the traditional, persistently inaccessible co-ordination discourse.

#### 6.4.3 INTERNET

Another option for politicians would be to make more active use of the new communication possibilities offered by the Internet. This would allow citizens to exchange views and seek information, at any moment, on any number of topics. One advantage for politicians is that the Internet gives politicians the ability to learn the opinions and views of the public. They may exchange views with them on European issues and gauge their opinions, worries and wishes with regard to Europe without the usual time and place constraints of the traditional media (De Vreese 2007: 20). Internet forums such as [www.nederlandineuropa.nl](http://www.nederlandineuropa.nl), but also 'blogs' offer opportunities for structural communication between national – and European – politicians and Dutch citizens. Politicians may thus fulfil their representative role more effectively, while giving citizens additional opportunities for direct participation. In the longer term, these new media may undoubtedly contribute to the creation of broader support for EU policies and the ultimate acceptability of EU policy, but may, conversely, also lead to politicians changing the content thereof.

Expectations regarding the contribution of the Internet should not, however, be set too high. Firstly, only a small portion of the electorate are

willing to dedicate any time to political and social objectives (Dahlgren 2003: 163). Secondly, those who are politically and socially active on the Internet are often the same people who are assertive and politically committed in other 'arenas'. As Margolis and Resnick (2000: 14) observe: 'There is an extensive political life on the Net, but this is mostly an extension of political life off the Net'. The perceived complexity of the European policy process moreover acts as a barrier to involvement, especially as long as politicians still have difficulty in developing an appealing communicative discourse on Europe.

## 6.5 CONCLUSION

Compared to other member states, media coverage of EU issues is relatively low in the Netherlands, although the attention for Europe on television has increased slightly, especially in recent years (De Vreese 2001, 2007). Politicians in the Netherlands approach EU policies in a way that does not encourage the media to extend their coverage. Thus, Dutch EU policy is barely visible to the public and will remain highly unfamiliar to most citizens as long as politicians continue to depoliticise EU issues and allow them to be dominated by a small group of specialists from the Brussels and national policy 'cocoons'. EU issues seldom meet the criteria for newsworthiness. Moreover, the scarce coverage that does find its way into the media is often one-sidedly focused on negative aspects such as fraud and bureaucracy. News editors also tend to regard Europe as a specialism, which therefore does not warrant integral journalistic treatment. As Europe is insufficiently embedded in the Dutch political and social system, it does not make for interesting news and the public are consequently provided with virtually no information. This makes for a vicious circle that is difficult to break.

Nevertheless, opportunities for the media to contribute to the legitimacy of EU policy do exist. The Dutch public are relatively poorly and one-sidedly informed on Europe, but they seem to increasingly feel the need for more and better information. In principle, therefore, there is indeed a demand for news on European issues. The media is expected to respond to that need, provided they are able to frame EU issues to fit relevant frameworks of responsibilities, the direct relevance to citizens, the focus on individuals, etc. Politicians are crucial in this respect. They are the ones that can make Dutch EU policy more visible, create a certain degree of familiarity with it and provide adequate incentives for the media to be a forum for public opinion formation and to be a watchdog in the Dutch-European policy process. Politicians and media have become more and more dependent on each other. Politicians and political parties increasingly compete via

the media for the support of the floating voters, while newsmakers for their part have become increasingly dependent on politicians and their press officers for rapid news gathering and scoops. Therefore, the key issue is who or what will activate politicians so that the news media will be activated and European issues will consequently become newsworthy?

The WRR calls for a more visible strategic role for the Prime Minister regarding EU issues as a measure to boost media interest. It would provide EU issues with a (national) 'face' and create a fixed point of contact. EU issues, for example, would figure regularly on the agenda of the Prime Minister's weekly Friday afternoon press conferences. Moreover, it would force the Prime Minister and members of the Cabinet to engage in communicative discourses on Europe that are linked to the world in which ordinary citizens live. These discourses would more readily find their way into the media.

Preferenda could also force politicians and the media to pay more attention to European issues, because they link EU issues directly to the public and they would encourage politicians to position themselves on these issues as well as expressing their views on the position of the Netherlands in the European political community.

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If these changes were to be introduced in the Dutch political system, the Dutch media could become an important legitimising link between Dutch EU policy and citizens. The possible contribution of the media to input and output legitimacy, to the improvement of accountability mechanisms and identification processes with Europe as a political community, is discussed below.

### **Output**

News media offer politicians an effective channel to clarify the costs and benefits of EU policies to the public but also to address defective EU policies. In the longer term, this would increase the chances that the Dutch public would no longer just passively support the EU, but also accept it in a broader sense even if they do not always agree with specific policy choices. The acceptability of EU policies would be enhanced if politicians were more responsive to the desires and needs of those sections of the population that do not directly enjoy the fruits of specific European measures and policy choices.

### **Input**

News media are crucial for providing political information, for highlighting different opinions and views, and for influencing the political and

social agenda of voters and elected officials (Kleinnijenhuis, Oegema and De Ridder 1995; Gurevitch and Blumler 1990; WRR 2005). Increased knowledge about Europe and Dutch EU policy will ensure that the public are offered adequate means to deliberate on and participate in the Dutch-European decision-making process. New media such as the Internet may also provide interesting opportunities. Thus, the link between citizens and Dutch EU policy and also between Dutch politicians and Europe may be strengthened.

### ***Accountability***

Media coverage should offer insight into the Dutch and European decision-making processes, but the news media should also be allowed to fulfil their watchdog function properly. These are necessary conditions for the improvement of Dutch EU policy legitimacy via mechanisms of political accountability. The media must thus be able to monitor Dutch policy on Europe critically and must have the means to investigate political responsibilities. The proposed role for the Prime Minister would provide a direct impulse in this direction. This would indeed reduce impulses to blame unwelcome developments on 'Brussels' (the well-known practice of 'blaming and shaming') and citizens would be offered a chance to better inform themselves on political responsibilities for EU policy.

### ***Identification***

Finally, and in the somewhat longer term, a quantitative, qualitative and organisational embedding of Europe in the day-to-day journalistic practice may increase public awareness of 'Europe' and Dutch EU policy. The media can contribute to this process by offering forums where competing views on Europe and the Dutch interests in Europe can be developed. This media role first surfaced during the referendum campaign on the Constitutional Treaty, when the strongly media-driven campaign really did bring Europe into Dutch living rooms (Pels 2007: 2).

## NOTES

- 1 According to opinion polls, 72 per cent of the Dutch population regard television as by far the most important source of information on EU policy. Other information sources are newspapers (62 per cent), the internet (48 per cent) and radio (34 per cent) (Eurobarometer 64: 95).
- 2 De Vreese observes that a negative tone in the news is in fact inherent in Dutch reporting in general, and is not limited to European issues in particular (De Vreese 2007: 8).



## 7 STRENGTHENING THE LEGITIMACY OF DUTCH EU POLICY: CONCLUSIONS AND RECOMMENDATIONS

### 7.1 BACKGROUND AND URGENCY

#### 7.1.1 BACKGROUND

The rejection of the European Constitutional Treaty by the Dutch electorate in the referendum of June 2005 was seen by many as an expression of a deeper level of discontentment among the Dutch public regarding European integration and as a sign of the gap that existed between Dutch citizens and the EU policy pursued by their political and bureaucratic elites. In light of the referendum's outcome, the government asked the WRR to advise it on ways it could strengthen the political and social embedding of EU policy in the Netherlands (see annex 1). To meet this request, the WRR addressed the following two questions in this report:

1. *Is there a problem of dwindling legitimacy of EU policy in the Netherlands?*
2. *If so, how can the political and social legitimisation processes for EU policy in the Netherlands be improved?*

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The WRR has sought first and foremost to diagnose the problems associated with EU policy in the Netherlands, and explore the question of whether an even more serious issue regarding the legitimacy or acceptability of EU policy may emerge in the longer term. Is support for the EU declining, or is the trend chiefly one of general discontent with politics? If so, is this dwindling support an isolated phenomenon or is it structural in nature? The WRR then explored remedies *within the Dutch context*, in the domestic links which connect Dutch citizens to EU policy. Those links were not only sought among political actors and officials (such as government, Parliament, political parties and political and administrative elites), but also among the actors who operate in civil society and in the news media.

The diagnosis of the problem and the structuring of the analysis and the search for remedies were carried out on the basis of four dimensions of legitimacy, which the WRR regards to be relevant to this problem area based on theoretical and empirical studies. The four dimensions are *output (results)*, *input (representation)*, *accountability* and *identification*. The *output* dimension is concerned with whether EU policy objectives in the Netherlands are clear, acceptable and indeed sufficiently realised. Whether



the desires and views of the Dutch public are reflected in the decision-making process is relevant to *input* legitimacy, whereas *accountability* concerns the availability of sufficient information, debate and sanction mechanisms of those responsible for policy. And finally, the *identification* dimension, focuses on the connection that Dutch citizens have to the European political system of which they are a part. Both individually and in their mutual interrelationship, these four dimensions of legitimacy may contribute to improving the legitimisation of EU policy in the Netherlands.

### 7.1.2 THE URGENCY OF A BETTER LEGITIMISED EU POLICY IN THE NETHERLANDS

The process of European integration still largely derives its legitimacy from the economic performance of the internal market, the guarantees of continuing macroeconomic stability within this large internal market and the benefits of a situation of internal peace and stability stretching back more than 50 years. Thanks to that economic performance, plus the fairly limited impact of European integration on the day-to-day lives of Europe's citizens, the policy process was until recently left in the hands of experts from the political, administrative and functional elites in Brussels and the EU member states, who operated on the basis of tacit consent and the general indifference of the electorate. These elites did not have to overly concern themselves with the legitimisation of EU policy via the formal European and national political lines of representation and accountability. Since the 1990s, however, this permissive consensus on the part of Europe's citizens for European integration has come under pressure in many EU member states. Rapid internationalisation, the processes of continual broadening, deepening and enlargement of the EU and the emergence of constitutional debates have contributed to a growing politicisation of European issues. Not only has joint EU decision making become more controversial, but it has also begun attracting the attention of more – and often more assertive – citizens and social groups with a variety of views and opinions. These citizens are concerned with issues such as the future of the welfare state, employment, the democratic deficit and national identity in a rapidly changing Europe. As a result, a growing need has arisen both in the Netherlands and other EU member states for legitimisation via processes of representation, accountability and identification, along with the traditional legitimisation via output. Naturally, this also applies to the legitimisation of EU policy *within* national states, especially as European and national policy setting become more and more intertwined.

By and large, national politicians and policy makers in the EU member states may find it difficult to deal with this new reality and its inherent

tensions. In particular it is the EU member states with a fairly fragmented and decentralised political system (such as the Netherlands, Germany and Belgium), where politicians and administrators have invested a great deal of energy since the 1990s in optimising EU policy co-ordination at the internal, national level in the ever-more complex and multi-level EU governance system. They have proved to be much less willing to develop a communicative discourse which informs the national news media and national citizens in accessible terms about the *why* and *how* of specific policy choices, let alone involving them in the drafting or assessing of possible alternatives. Many of them talk and act as if they are still in full possession of the traditional competences of their national states and as if national channels of political legitimisation are barely relevant in the EU system. In doing so, they wrongly support the idea among many citizens that the EU is more of a threat – or a utopia – than a political reality which has been connecting democratic channels of representation and accountability for several decades.

In the Dutch context, the traditional orientation towards legitimisation via output has been accompanied by strong preferences for economic rather than political integration and for the classical ‘Community method’ of decision making in the EU. This orientation is also reflected in a distrust of ideological and constitutional debates which regard differences of opinion on the substance of policy as the key issue. Dutch policymakers prefer to tackle political issues as if they were technical and apolitical, and to deal with them in closed networks of elites and experts, especially when dealing with EU affairs. Those civil society organisations that *are* indeed consulted are moreover often absorbed into the inner cocoon of EU policy themselves. Their involvement in decision making is therefore typically supportive and solution-oriented and often contributes little to the generation of new perspectives or different positions with regard to the legitimisation of EU policy. Civil society actors and the news media which do not have access to these networks generally have little to contribute and little influence, either on the process of setting policy (input) or on its implementation (output).

Against this background, one can understand how Dutch politicians have had some difficulty with the growing politicisation of the enlarged EU. EU policy in the Netherlands continues to lack overall direction, control and robustness. Calls for improved EU policy legitimisation in the Netherlands have accordingly gotten through to the Dutch political elites relatively late in the day. The occasional attempt to create a more lively political debate on Europe in the recent past have always bog down, the traditional approach based on a diplomatic union of ‘the European interest is the

Dutch interest' coming to loggerheads, with an approach which is at least as unsubtle along the lines of 'more Europe means less Netherlands'. Dutch citizens have thus been unjustly confronted time and again with an all too limited 'all or nothing' range of options. Furthermore, the legitimising political channels have been notable for their absence and there have been virtually no serious attempts at information, let alone communication. It was only after the 'No' vote on the Constitutional Treaty that it seems to have dawned on the involved that, although the Netherlands still broadly supports European integration, a future-proof EU policy can no longer be based on a virtually exclusive focus on output legitimacy. More is needed.

*The central message of this report is that a future-proof and legitimate EU policy in the Netherlands urgently requires supplementary mechanisms of input, accountability and identification along with the already existing tradition of legitimising through output. Moreover, this policy demands the setting of clear substantive priorities and goals.*

This is explored in more detail in the following sections.

## 7.2 OPTING FOR VITAL POLICY

The existing method of legitimisation via policy results continues to be of crucial importance. Will the EU still be able to generate relevant policy results in the future? What type of results will these be? And what will this require of Dutch politicians and the Dutch administration? Different answers will be needed to these questions in the future (see section 7.3). This also places legitimisation via policy achievements in a different context and demands new incentives in order to achieve a vital policy output.

In a recent letter to the Dutch House of Representatives on the current Treaty reform process, the Dutch government cites a number of issues on which it believes that more European co-operation will be needed.<sup>1</sup> These include 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 policy; these are all current and urgent issues where a 'subsidiarity test' quickly points in the direction of a more active EU because of the inescapable need for a common response to deal with these issues.

It is, however, not immediately clear from the letter *which objectives* the government wishes to pursue in these areas, which choices it has made and which concessions it is willing to make. To cite a few examples: combating

terrorism and cross-border crime requires a vision on the effects of measures in terms of democratic values and fundamental rights. Meanwhile, combined EU action in the areas of asylum and immigration requires that choices be made between the different levels and forms of cross-border solidarity. Tackling cross-border environmental problems has consequences for the competitiveness of industry and the transport sector, while a common climate and energy policy is expensive. How high can the costs be permitted to rise, and above all, who should bear them? Choices also have to be made between integration and diversity, between administration by experts or democratically elected representatives. The issue of whether and how the EU should promote common values on the world stage, and where the boundaries of a common, shared identity lie, is also becoming more complex (Tsoukalis 2005).

The political choices which have to be made in these relatively new areas of EU policy are also becoming increasingly urgent in the established domains of EU policy. With reference to the internal market, for example, the more relevant focus has become what constitutes an 'appropriate' balance between increasing globalisation, the liberalisation of the services sector in the internal market (which can provide a long-term boost for European economies) and the preservation of distinct national, social arrangements. The effectiveness and efficiency of measures are no longer the only things that count: the parameters of policies, and even the policy objectives themselves, are becoming increasingly controversial.

Moreover, choices such as these always impinge on the relationship between the EU as a collective and the individual member states. For example, a robust European asylum and immigration policy in an EU of 27 member states is difficult to imagine as long as individual member states retain national vetoes. Combating terrorism and tackling cross-border crime at the European level will affect national sovereignty in the area of criminal law. It is therefore important to link specific policy ambitions to visions of the direction and nature of European co-operation. Otherwise the risk arises that policy expectations are assigned to the EU which it cannot meet. This connection is also necessary in order to prevent views of the EU as a political system from becoming bogged down in elevated abstractions ('the federal union') or in unrealistic doomsday scenarios ('the European superstate'), while the ambitions on concrete policy issues lead to a feeling of 'creeping' integration which appears to mostly ignore those views. The lack of fixed anchor points also underlines the need to link specific policy ambitions to visions of the EU as a political system. Since there is as yet no suitable terminology for discussing the EU as a political system, the public debate tends to fall back on a 'state-like' vocabulary.

This generates public suspicion of the ‘constitutional’ terminology and reinforces fears of a European ‘superstate’.

A wide range of options also presents itself in how these stated objectives may be realised. International organisations other than the EU are relevant such as the role of the UN, which is indispensable when tackling the issue of climate change, while bilateral and multilateral co-operation offers opportunities for the achievement of immigration policy objectives. These options could exist parallel to, instead of or in addition to EU actions (WRR 2006). Moreover, the EU does not offer just one mode of governance, but a wide range of possibilities for shaping collective action (WRR 2003). Other relevant questions include: Within which policy domains should specific policy ambitions be shaped? At what stages in the decision-making process should interventions be made and by whom?

The EU currently does not have an overarching ambition or ‘project’ which can serve as a framework for all of its various concrete policy ambitions. In the past, peace, stability and prosperity and the internal market were Archimedean points for all of the EU’s concrete policies. They provided a functional (rather than a constitutional) interpretation of the EU as a political system. These kinds of all-embracing themes are less obvious nowadays. Obviously, peace and prosperity are still important elements of European integration, as is the internal market, but the EU today encompasses much more. Choices with respect to EU policy objectives (and how they are to be realised) can thus no longer be made against a background of an all-embracing European project. This again leads to a need for new impulses to boost the vitality of policy within the EU.

Against this backdrop, the legitimacy of EU policy outcomes will be more important than ever. The benefits of the EU can no longer be reduced to technical solutions which can be uniformly and objectively measured and which benefit all citizens to an equal degree. More frequently, EU policy is created in the context of diverging interests and conflicting policy aims. Therefore, legitimisation via policy outcome can no longer be the exclusive domain of specialists embedded in a technical process. Moreover, EU policy output in the Netherlands is dependent on alternative sources of legitimacy, which require that societal interests and views are represented in the formulation of policy objectives; the adequate functioning of accountability mechanisms; and that the significance of concrete policy results and ambitions for the political system of the EU is taken into account. Thus a first step requires that impulses designed to strengthen the vitality of the EU will have to activate these alternative sources of legitimacy.

Therefore, politicians and policy makers can no longer allow the content of EU policy to be determined exclusively by specialists. By the same token, however, they cannot absolve themselves of their responsibilities by hiding behind the views of the Dutch public. Citizens' views on EU policy cannot be inferred directly from opinion polls or focus groups (Tiemeijer 2006). As in the case of the Constitutional Treaty, these views are often superficial and vague. Above all, however, they cannot simply be translated into concrete policy programs just like that. This is all the more the case when it comes to complex issues of EU policy which are often distant from daily life and experience. The Treaty revision process is – again – illustrative in this respect. Citizens did not have a prepared concrete action plan when it came to the review of the basic EU treaties. Although they might desire a 'better' Europe which is not a 'superstate', what that means or how that should be shaped is up to politicians. In short, in an EU that is becoming increasingly political, politicians have a greater responsibility to take the political lead, but they must shape that responsibility within the mandate of the electorate. And yet it is precisely that mandate which they appear to have lost.

National politicians and policy makers must therefore tap the different sources of legitimisation. However, there is a lack of adequate mechanisms for this in the Netherlands. The WRR has therefore formulated a number of proposals which offer a portfolio of options for mobilising and reinforcing the legitimising role of national politicians and policy makers. This should ensure that the Netherlands can continue to contribute to vital EU policy outcomes in the future. Of particular importance is the potential of these proposals to reach beyond the mere institutional and to genuinely involve citizens in Dutch EU policies. The most important of these proposals are discussed in the following sections.

## **7.3 BETTER LEGITIMISATION AT THE LEVEL OF THE POLITICAL SYSTEM**

### **7.3.1 INTRODUCTION**

Improved legitimisation of EU policy in the Netherlands will require a significant overhaul of the communication strategies employed by the ministers directly involved, the Prime Minister and political spokespersons as well as of discussions and deliberations in Parliament, within the various political parties and in the media. Only then can politicians and policy makers genuinely incorporate the interests and desires of citizens in the decision-making process (representation), and be held accountable for those actions in Parliament or the media. To date, these sorts of debates

have largely been absent in the Netherlands and, when they have indeed taken place, these discussions have been too focused on institutional or abstract issues such as ‘the’ European integration or ‘the’ functioning of ‘the’ institutions. For most politicians, media and citizens, the EU only becomes interesting when the discourse is focused on the ‘grand issues’ in a manner that is familiar to them. In the opinion of the WRR, the proposals set out below at the level of the political system offer a means of mobilising these issues and debates in the short term.

### 7.3.2 CENTRALISED STRATEGY ON EU POLICY

Substantive choices on common European challenges and public representation and accountability for those choices have become essential in a political union which impinges more directly on the vital interests of its citizens. What does the Dutch government consider to be the key issues for the Netherlands in areas such as asylum and immigration, the environment and the social impact of the internal market policy? What ambitions does the government propose to pursue? What is at stake and which strategies are the most appropriate? To prevent government efforts at the European level being dictated by the specific ‘logic’ of individual issues and lagging behind the rapid pace of European developments, it will be necessary to strengthen the prioritisation of European issues, and to come up with a more robust political steering.

Substantive prioritisation means that the government will be able to identify the European issues that are crucial for Dutch politics, to assess those issues and to adopt a position on them. This will push the technical and expertise-based approach into the background and bring the democratic legitimisation of political choices to the fore. This will also make the European political process of representation and accountability much more accessible to Parliament, the news media and the public. Within the constraints of an EU in which the Netherlands is just one of 27 member states, substantive prioritisation is obviously also intended to influence the development and outcome of EU policy and thus to reinforce the output legitimacy.

Prioritisation also requires effective political steering on the main strategic lines of EU policy. The ability to make broader political judgements that go beyond individual policy issues requires a clear allocation of political responsibilities. The complex division of tasks within the Cabinet, which in addition to the line ministers also assigns responsibilities to the Minister of Foreign Affairs, the Junior Minister for European Affairs and the Prime Minister, is at odds with this approach. It has accordingly been regularly

proposed (most recently by the Council of State) that the political primacy for Dutch EU policy be transferred from the Ministry of Foreign Affairs to a position closer to the Prime Minister, namely the Ministry of General Affairs. Undoubtedly there are all manner of practical objections to such a suggestion which deserve serious attention, but the underlying message is crucial: EU policy is an integral part of general government policy and therefore fits in with the special responsibilities of the Prime Minister. However, this would do little to undermine the responsibility of *individual* ministers and junior ministers regarding the European dimension of their specific policy domains.

Steps in this direction could be taken relatively quickly by allowing the Prime Minister to take on a greater strategic role in the present Cabinet subcommittee currently responsible for European affairs (known as the REIZ-EA). In the longer term, a reconfiguration of Cabinet responsibilities could be introduced that would be more in harmony with the preparation, implementation and monitoring of the consistency of the main strategic lines of government policy in relation to the EU. As chairman of the Cabinet, the Prime Minister could then focus on the effective and energetic promotion of the main lines of EU policy in the Netherlands. The government would then be giving a clear signal to citizens, civil society organisations and the news media that the EU no longer belongs to foreign affairs but to the internal affairs of the Netherlands, and derives its legitimacy in part from *Dutch* political channels of representation and accountability.

### 7.3.3 PREFERENDA

Plebiscites in which citizens have more options than a simple 'yes' or 'no' vote ('preferenda') on EU issues may improve the political legitimisation process. There is no instrument more powerful for turning the legitimisation of EU policy into a public matter than a plebiscite. Given the persistence of the problems, an instrument as drastic as a plebiscite may therefore be justified. Moreover, plebiscites in the form of preferenda so that citizens can choose between a number of alternative proposals may circumvent some of the disadvantages of referenda.

Both citizens and politicians could be stimulated to position themselves on a European issue, and as a result, both could end up having an influence on the decision-making process. If this instrument is categorically rejected, there is a real risk that the legitimisation of EU policy will remain trapped in a technical process, managed by specialists, in which there is no role for either politicians or Dutch citizens. Moreover, the public has 'tasted' this form of direct participation during the referendum on the Constitutional



treaty. The issue is thus no longer just whether it should be possible to use referenda, but also whether their use – either across the board or specifically for European treaty reforms – can reasonably be ignored in the future.

The specific disadvantages of referenda are, however, substantial so that the question may justifiably be posed whether the cure is not worse than the disease. To some extent these disadvantages can be reduced if politicians and voters begin to get used to referenda. For the most part, however, they will have to be addressed by setting strict procedural conditions. These conditions must be designed to ensure that the mutual responsibilities of politicians and the public are guaranteed. Moreover, the parameters used must reflect the European context. This means that the contribution of citizens must be assured not only in relation to the available options, but also in relation to the question of whether there should be a referendum at all (e.g., through a civil initiative) and in the formulation of the options (e.g., through a citizens' forum). Citizen input must also be guaranteed with regard to the *effects* of a referendum. This means that the outcome of referenda must be politically or legally binding, thus ruling out the possibility of 'cosmetic' participation.

Politicians have a responsibility to provide information, to study the feasibility and effects of the various alternatives, but above all to position themselves clearly. The outcome of a referendum must also give politicians and policy makers clear guidance as to what strategies to pursue in the European decision-making process.

An illustration of this are the plebiscites on Treaty revisions. A key disadvantage of a referendum is that it reduces an extremely complex issue to a simplistic 'Yes' or 'No' choice. Moreover, the outcome of a referendum does not come with an 'explanatory memorandum' from the voter, and is therefore difficult to interpret. Consequently, politicians often lack the direction needed to translate the outcome into appropriate action. The uncertain position of the Dutch government in the present Treaty revision round (what changes did they promote?) made this painfully clear. Moreover, within the European decision-making context, the moment at which a referendum is held is crucial. If a referendum allowing voters to say 'yes' or 'no' to a treaty text is ultimately only held during the ratification phase (as was the case in most countries, including the Netherlands) citizens have little to contribute to the actual content of the text. A preferendum, which presents a number of substantive alternatives at an earlier stage in the decision-making process, does indeed provide citizens with that possibility, in the sense that the outcome will then constitute the government's negotiating mandate.

In the view of the WRR, referenda in the form of preferenda can contribute to the legitimisation of EU policy in the Netherlands. Even then, however, it comes down to a matter of reconciling different (and sometimes opposing) conditions (see chapter 4). Moreover, constitutional embedding of this type of referendum, if not strictly necessary, is at least desirable.

What can be expected from public consultation along the lines sketched out above? A preferendum will mobilise political actors, news media and civil society organisations to form a link between citizens and EU policy. It forces politicians and political parties to take clear standpoints, something which happens too infrequently in the regular political arena. At the same time, it forces direct and powerful forms of accountability. As a result, a preferendum – or even the possibility of holding one – can 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’ (rather than ‘what kind of Europe’) and the fear of being engulfed by an unstoppable tide of European rules and policy.

#### 7.3.4 CONSTITUTIONAL SAFEGUARDS

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The broadening, deepening and enlargement of the EU has sown doubts and uncertainty among many citizens about what the EU is or should be. In spite of this, a large majority of the Dutch public are in favour of European integration, and their objections are often connected to specific aspects of the EU and its policies. However, there is virtually no tradition of public debate about the EU as a political system in the Netherlands. Against this background, the WRR has recommended that two safeguards be inserted into the Dutch Constitution: a clear but *general* formulation of the values and key objectives which the Netherlands will pursue through its EU membership, and a formulation of the key elements of national identity that the Netherlands will seek to promote and protect within the EU. Incorporating such safeguards in the Constitution, first of all, requires a fundamental political debate on the desired nature and direction of the EU and the role of the Netherlands therein. Furthermore, laying these safeguards down in the Dutch Constitution would mean that citizens would not have to only rely on safeguards at the EU level, as has traditionally been the case in the Netherlands. This would create a new form of checks and balances. Finally, suitable constitutional provisions could help to reduce uncertainty and insecurity, by offering citizens anchor points and thereby enabling them to identify to a certain degree with Europe as a political community.

The WRR supports the proposal of the National Convention to set up an independent Constitutional Court charged with reviewing the constitutionality of legislation. A Constitutional Court could also apply the safeguards referred to above. That would create a new mechanism of accountability which, given experiences in other EU member states, could take its own part in the legitimisation of EU policy in the Netherlands. This accountability mechanism would not only be relevant in an EU context, but would also focus on the responsibilities of the national legislature and politicians ('does the national legislator comply with constitutional norms?').

A frequently heard objection to the introduction of national constitutional safeguards is that they are too static, and could impede the dynamics of European integration. For many citizens, however, that dynamic is part of the problem and thus the need to control and contain it to at least some degree has emerged. Moreover, Germany has shown that constitutional review is perfectly possible without unnecessarily impeding the dynamics of European integration, provided the formulation of the provisions in the Constitution are sufficiently general and 'open'. A major advantage of constitutional review is that the political and legal debate which precedes the formulation of safeguards in the Constitution (and thus constitutional review) generates a great deal of media attention and may thus contribute to the political legitimisation of EU policy when citizens see that guarantees are being carefully protected. Moreover, the symbolic significance of such safeguards should not be underestimated. On the one hand, to some extent, they thwart the cheap populism which plays on the fears of an autonomy 'sell-out', while, on the other hand, forcing politicians to meet these kinds of sell-out accusations head on at an early stage.

Formulating what the EU should and should not (continue to) do also deserves a political debate in the shorter term. This would not necessarily require constitutional safeguards. In the case of major decisions such as treaty reforms or a highly controversial theme, political safeguards may be of help. Although such safeguards have powerful effects in the shorter term, they can also move in line with changes, priorities and challenges in the long term. An effective example of these political safeguards are 'red lines': political lines that the government and/or political parties draw in the negotiating sand with regard to the content of EU policy. They provide clear public statements about what powers a member state is definitely not prepared to transfer to the EU and which ones the media and the public regard as hard political guarantees. Concessions on red lines thus exact a political price, for which the government must render account in the subsequent political debate. Red lines are by definition concerned with

political sensitivities and need not per se fit into a functional subsidiarity test. However, they have a defensive and deterrent character if political clarity is not simultaneously provided regarding what a country is prepared to achieve in partnership with the EU and why ('green lines'). Therefore, a balance between these red and green lines is crucial.

## **7.4 IMPROVED LEGITIMISATION AT THE EU POLICY DOMAIN LEVEL**

### **7.4.1 INTRODUCTION**

Political and civil society actors may also contribute to a greater extent than they at present do to the democratic legitimisation of EU policy in the Netherlands on concrete policy issues. Two recommendations from the report which are particularly well suited to that end will be highlighted below, namely the establishment of a prioritisation committee in Parliament and the attempt to generate greater openness with regard to the contributions of (non-conventional) civil society organisations.

### **7.4.2 PRIORITISATION AND PARLIAMENTARY SCRUTINY RESERVATION**

Direct elections provide Members of Parliament with a mandate from the electorate to articulate the desires, concerns, views and expectations of the public with regard to the content and outcome of policies. This also applies to EU policy. Many European policy domains do not, however, lend themselves to extensive political discussion and debate, as they may be virtually without political controversy and/or exceptionally technical in nature. Other EU policy domains may, however, be better suited to this political dialogue because of their political importance and political sensitivity for larger or more specific groups in society. The choice of which category policy issues belong in and, related to this, whether and how parliamentary discussion of such issues should take place, cannot be determined using objective criteria, however. It is a choice which Parliament itself has to make. This is also what prompted the WRR to endorse the call by the National Convention for the establishment of a parliamentary prioritisation committee (or to transform the recently installed Temporary Committee on Subsidiarity Testing for this purpose) to sift through the proposals of the European Commission on the basis of political and legal criteria. Comparable committees are active in other EU member states. This committee could select relevant issues which warrant further discussion in specific parliamentary subcommittees or which are considered to be of such importance that they deserve plenary discussion in Parliament. In this way, the prioritisation committee could contribute to input legitimacy. The

added value of a prioritisation committee compared to the existing Subsidiarity Committee is that it would not only enable views on the desired level of governance (European or national) to be expressed, but would also create an explicit mandate for the discussion of all other aspects that may be politically relevant. This would add a great deal to the *representation* or input legitimacy.

The WRR recommends that the activities of such a prioritisation committee be linked to a parliamentary scrutiny reserve stipulating that the government may only collaborate on definitive decision making in 'Brussels' after Parliament has had an opportunity to express its views. This would explicitly link parliamentary activities to the position taken by Cabinet ministers and would serve as an *ex ante* accountability mechanism. The WRR prefers such an arrangement to a binding mandate (like in Denmark), as such a mandate is so rigid that it could constrain the Dutch negotiating position. The selection mechanism enables the government to adopt a functional approach in the discussion of non-controversial issues in Brussels. However, in matters which *are* politically controversial, Parliament may take a stand at an appropriate moment in the decision-making process, without the government putting Parliament under pressure by playing the negotiating card. Moreover, Parliament could also apply the regular *ex post* accountability mechanisms. This would allow Parliament to be involved more intensively in actual EU policy and to exert an influence on it in a way that is appropriate to a system of multi-level governance. The transformation of the Subsidiarity Committee to a prioritisation committee would require an adaptation of the internal structure and working procedures of Parliament. However, it is an adaptation that could be realised in the relatively short term.

#### 7.4.3 OPENNESS TO CONTRIBUTIONS FROM CIVIL SOCIETY

Civil society cannot offer instant solutions for improving the democratic legitimisation of EU policy in the Netherlands. Civil society organisations are either too fragmented, or the EU simply does not constitute a substantial part of their regular activities, and those organisations which do concern themselves with 'Europe' are not involved sufficiently in national politics and the administration. Moreover, the often close links between the Dutch government and the more traditional civil society organisations that are present in the closed policy fora generate few incentives to challenge government. Accordingly, the key lies in changing this closely interwoven relationship and in increasing the involvement of civil society in EU policy.

This requires that policy makers open up the system to (new) civil society organisations that are not part of the sectoral policy columns. These organisations may thus adopt critical attitudes, generate new perspectives and have better chances to involve the media, and thus keep the public authorities ‘on their toes’. Policy makers would therefore need to assess the contribution of these organisations not only on the grounds of their expertise, their problem-solving ability and their output legitimacy, but also on the grounds of the variety of interests and positions represented. For their part, civil society organisations may address the problem of fragmentation by pooling their strengths and creating broad coalitions or forums. Their contribution to the national decision-making process could in time be broadened through participation in policy consultations – including via the Internet – hearings or focus groups with a low access threshold. The open character of such instruments could also (in contrast to the closed chambers of typical ‘polder institutions’) strengthen the public ability to government accountable vis-à-vis the community.

In the longer term, civil society could thus contribute to the legitimisation of EU policy in the Netherlands, provided that the policy makers are willing. The WRR recommends that the current administrative relationship with civil society be opened up to other organisations, initiatives and coalitions beyond the conventional civil society organisations.

## 7.5 CONCLUSION: OVER TO POLITICIANS AND POLICY MAKERS

The negative referendum result prompted the Dutch government to seek the advice of the WRR on the question of whether (and how), through improved embedding of European decision making in the Dutch political process, politicising European issues could contribute to bridging the perceived gap between citizens and the EU policies of the political and bureaucratic elites. The government also asked the WRR to investigate how the social embedding of Europe in the Netherlands could be promoted. In that regard, the government, among other things, asked for more insight into the structural and cultural variables and constants that are relevant to this embedding process; and how the different actors in the Netherlands can strengthen their European role and increase their level of social commitment to Europe.

The WRR has extended the perspective of the government’s request by studying whether this gap is indicative of a deeper problem concerning the legitimisation of EU policy in the Netherlands. In itself, the existence of a certain distance between citizens and Europe is not problematic, as long as

the political choices made by politicians and policy makers are not constantly and systematically at odds with the views and desires of the majority of the Dutch population. If that is the case, declining political support could lead to a shortfall in the legitimacy of EU policy in the Netherlands, which over time undermines the legitimacy of both European and Dutch politics, given that the two are inextricably linked together.

Treating European issues in a more political way, i.e., ‘politicising’ them, is already taking place in a number of European policy domains. European issues have become increasingly sensitive and controversial, draw more stakeholders to the European and national political arena and elicit more contrasting visions and debates among politicians, civil society organisations and in the media. In the Netherlands, this *de facto* politicisation has surfaced only in recent years, as borne out by the discussions on the net contributor status of the Netherlands, the introduction of the euro, the enlargement of the EU to include countries from Central and Eastern Europe, the Services Directive and, obviously, the Constitutional Treaty. Dutch politicians and policy makers have, however, thus far found it difficult to adapt to this unfolding political union and in taking the lead in European political and constitutional discussions. They only realised relatively late in the day that the conventional national inclination towards de-politicisation, ‘poldering’ and technical embedding of EU issues in the familiar policy frameworks, advisory bodies and civil society organisations is running up against the limits of democratic acceptability. In a political union, legitimacy based on actual policy results alone is no longer adequate as a means of sustaining political support among the populace. Acceptance of – politically sensitive – EU policy by citizens increasingly demands processes of political representation and accountability by politicians and policy makers *within the national political arena*. This will ensure that the contribution and interests of the public are taken into account explicitly and visibly *ex ante* and the way this is done may be assessed *ex post* through well-informed debates.

The preceding chapters have shown that the way that politicians and policy makers address European issues is currently out of line with the typical logic of interests of the news media and civil society. The de-politicised and specialist nature of the discussion on EU issues in Dutch political circles does not give appropriate incentives to the media to cover such issues. It is a vicious circle: because Europe is insufficiently embedded in Dutch politics and society, it is not an appealing theme for the news media and the public therefore receive virtually no information, and this makes it even harder to embed Europe in politics and society. In a comparable way, civil society organisations cannot be expected to contribute directly and of

their own accord to the embedding of Europe in the Netherlands; EU policy is often too marginal a part of their regular activities, and those organisations that *are* concerned with Europe are currently not sufficiently focused on the national political arena. Consequently, politicians and policy makers are crucial when it comes to leading the political and social embedding of the EU at the national level. It is only if they take on this role themselves, that the news media and civil society will subsequently become mobilised. And only then will things take a turn for the better so that the media and civil society organisations will provide more effective links between policy makers and citizens, so that EU policy can become more firmly embedded in Dutch society.

The proposals for strengthening the social embedding and legitimacy of EU policy in the Netherlands put forward in this report offer a portfolio of instruments from which politicians and policy makers may select as they deem fit. Some, like the use of red and green lines as political safeguards, transforming the Subsidiarity Committee into a prioritisation committee and strengthening the strategic role of the Prime Minister in the REIZ-EA (Subcommittee currently responsible for European affairs), could be realised within a relatively short period of time. Other instruments, such as the introduction of preferenda and the creation of constitutional safeguards, are more radical in nature and require extensive political consideration and debate, partly in light of possible reforms at the EU level. Whichever combination is chosen and whichever (supplementary) sources of legitimacy are addressed, it has to be acknowledged that there are no simple remedies or quick fixes. 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.



## NOTE

1. 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, no. 344.

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Following the negative 2005 referendum outcome on the EU Constitution, the authors analyse the decreasing legitimacy of the European Union in the Netherlands. The analysis shows that national politicians and policy makers are crucial links for the future legitimacy of EU policies in an ever closer political Union. They may no longer focus exclusively on output legitimacy, but must allow for citizens' input, accountability mechanisms and identification processes. Suggestions are made to improve the functioning of the Dutch representative democracy in this respect, but also to allow for 'preferenda' to be held on EU issues and to develop national, including constitutional checks and balances. Lastly, the role of civil society and the news media is analysed.

*"... one of the most extensive analysis to date of the relationship between a European country and the EU. As such, it unpacks both the long term reasons for the 2005 'no' and broader political context which led one of the most EU-friendly member states to turn against the draft Constitution. The report also presents thoughtful, innovative and even provocative recommendations for better embedding Europe in Dutch politics... it promotes what we can call a 'preferenda culture' whereby citizens would be involved early on in major EU-related political decisions, are encouraged to debate with the political class on specific discrete issues and are presented with meaningful alternative options when consulted. Other EU member states could do well to ponder the lessons of this Dutch story..."*

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