

The concept of ‘Europaproof’

– The EU as structural element of subnational governance –

By Jolien Prins



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30th December 2009

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Preface

Before I came to the University of Twente, I completed the bachelor program *Public Management*, at the Thorbecke Academie, Leeuwarden. In the third year of this bachelor program I did an internship at the Province of Fryslân. While I was working on a project that aimed at reducing the number of legislation, my roommates were doing something very different. They were Europe specialists. I noticed that I was more interested in their work than in my internship. I wish I had chosen *European Studies* for my bachelor program. There was still room though, to change my focus. After graduating I decided to follow the Master *European Studies* at the University of Twente.

Even though the first year was not easy at all, at the end I passed all the courses and I was allowed to start with my master thesis. However, from my bachelor I learned that internships are great experiences to see what you do like and what you don't like. Via the person who brought me in contact with Europe in the first place (Ytsje van de Wal), I found an internship in The Hague: Kenniscentrum Europa decentraal. I'm grateful for the knowledge and network they shared with me. Special thanks to Fenna Beekmans, who had the confidence to hire me for the internship. Also special thanks to Saïda Oulhaj, who was my roommate at Europa decentraal and helped me through some difficult decisions with my Master Thesis. I would also like to thank Ernst Sleijser, Pietrik Scheffer, Huub Nijhuis and Henk Wolsink, who were willing to share their experiences on *Europaproof* with me.

From the University of Twente, I would like to thank my supervisors Ramses Wessel and Marcel Kiers. Ramses Wessel, who told me to hurry up and hand over a concept version of this Master Thesis when I thought that was not possible at all. He was right: it was possible. He also introduced Marcel Kiers and recommended him as second supervisor. I would very much thank Marcel for sparring on decisions to take in respect to this Master Thesis.

I would also like to thank my parents, who were never allowed to ask anything about the progress, but always supported me, financially and mentally. I would also like to thank my mother for checking the grammar. And finally, I would like to thank Joachim. All the times I was having a tough time, he was the one who cheered me up!

Now the time has come to send this work to the printer. I am proud of the research that is in front of you and I look forward to present and defend my research.

Jolien Prins

The Hague, December 2009

Summary

Europaproof is a contested term which is widely used in practice. Europaproof is used by the central government to make subnational governments aware of the ability to use the pros and to handle the cons offered by the EU. Subnational governments have to implement Europaproof. However, it lacks a common understanding. This research focus on whether scientific literature can be helpful in order to conceptualize an empty phrase. Additionally, policy documents and manuals by the central government fail to deliver a common conceptualisation either. This research aims at developing a concept of Europaproof applicable to subnational governments, based on scientific studies about European Integration. The research question is: *How can Europaproof be conceptualized in order to be applicable to subnational governments?*

Studies of European integration contribute to Europaproof in three ways. First, it explains why Europaproof is important to include in subnational governance. Second, it explains how subnational governments participate with the European Union and what the role of subnational governments is. Third, it explains what the impacts of the EU on local and regional governments are. Together these studies show that subnational government cannot ignore the EU any longer. Subnational governments have to integrate the EU in their organization and make the EU a structural element of subnational governance. This research benefits from earlier studies, especially on multi-level governance and Europeanization.

Multi-level governance is an interdependency approach that seeks to explain the growing interdependent relation between European institutions, national governments, subnational governments and other actors. Some scholars of multi-level governance also determine two different types of multi-level governance. One of these, the layer-cake approach, is very relevant to the European Union. It describes a cake which is build upon a variety of different pieces of the cake, which correspond to the different Member States. Together these parts make a new cake. On top of these parts an extra layer is laid down, which reflects the EU level.

Europeanization on the other hand is very relevant in explaining how European integration takes place, by focusing on the consequences of European Union policies to national and subnational authorities. There is no consensus of the exact definition of Europeanization, because it refers to all elements that could be relevant to explain why European integration takes place. This research uses Europeanization as *a set of processes that makes that the EU becomes a structural element of all political government entities of a nation state*. Europeanization differentiates between policy-adaption and policy-shaping. These two are the main interactions between subnational governments and the European Union. Some scholars argue that one could identify the degree of Europeanization, corresponding to three levels. These levels depend on whether or not and to what extend these elements are optional or obligatory. To some extent, that could fit to Europaproof. Therefore, the condition of dimensions will be part of the concept in order to explain the importance of including the dimension to subnational governance.

The literature review is the framework to look at Europaproof. Then, the research uses a set of policy documents and manuals by the central government to filter several elements that fall into the framework. These elements are clustered to three dimensions: EU law, EU funds and involvement of subnational governments in Brussels.

The opportunity structure is applied to structure the dimensions and to determine what their relative contributions are to the concept of Europaproof. The structure entails a two-tiered approach to define a specific situation. On the one side you will find the positive elements: *opportunities*. On the opposing side you will see the unwanted elements: *constraints*. EU law is considered to be a constraint, since subnational governments are obliged to maintain. The dimension EU funds is considered to be an opportunity, since it improves the opportunity to expand subnational initiatives. Involvement of subnational governments is considered to be an opportunity, since its efforts might lead to a better fit to implement EU policies.

Subnational governments have to deal with European Union law. Subnational governments have to comply to EU law and often have to maintain EU law. EU law's main objective is to promote fair competition in an open market economy. For subnational governments the application, transposition or compliance to EU law is a complex duty, mainly because its high abstract level and in some cases due to contradictory national acts. EU law is considered to be a constraint for its obligatory nature. However, mostly EU law seek to enhance efficiency and transparency. Something governments should embrace.

The EU offers money via several funds and programs. Subnational governments may benefit from these EU funds and other programs to strengthen regional or local initiatives. There are major limits to the opportunity of enhancing subnational projects. Mostly these limits require extreme inputs before subsidies are allocated. Still the choice to include EU funds remains the choice of subnational governments themselves. EU funds are optional. Therefore, EU funds are considered to be an opportunity.

The third dimensions is the involvement of subnational governments to Brussels. Subnational governments are asked by the European Union for input for European policies. On the other hand, subnational governments could upload preferences to improve their goodness of fit. The third dimensions consists of two parts: where to lobby and how to get into the heart to Brussels. Policy-shaping requires uploading policy preferences and knowing where to lobby. Studies on lobbying show only marginal benefits. Still, involvement should be considered to be an opportunity, since participation will always be optional.

The three dimensions are not isolated, but are rather interdependent. The opportunity structure might explain the necessity for subnational governments to include or exclude dimensions of Europaproof. Also the question whether the dimensions are optional or obligatory determines how subnational governments should interpret the dimensions. Table 1 shows the relation between the dimensions, the opportunity-structure and whether these are obligations or not.

Table 1: Dimensions and the opportunity-structure

| Dimension | EU law | EU funds | Involvement |
|-----------------------|-------------------|--------------------|--------------------|
| Opportunity structure | <i>Constraint</i> | <i>Opportunity</i> | <i>Opportunity</i> |
| Condition | Obligatory | Optional | Optional |

Another approach that is used in this research is the 'goodness of fit'-principle. This approach is used to show how a government's fit determines the effort to implement European directives. This research transposes the 'goodness of fit'-principle also to other dimensions of Europaproof. Based on the 'goodness of fit'-principle it should be clear how the dimensions should be interpreted by subnational governments. The 'goodness of fit'-principle shows that the will and potential of governments also

determine which dimensions are relevant to include. None of the governments are the same, and so are their situations. Therefore, the concept of Europaproof should have a non-static character.

The final concept of Europaproof cannot be the same for all governments, but the phases to go through are. Europaproof consists of four phases, which are the same for all governments:

Step 1: Europe conscious

→ This phase should focus on subnational governments' acknowledgement of the importance and the role of the EU to subnational governments. Subnational governments must be aware of the European dimension of governance.

Step 2: Cost-benefit analysis

→ The government should identify if the current state is in line with the desired state and whether or not this desired state is feasible. This phase can be seen as a cost-benefit analysis in regard to the EU.

Step 3: Implementation

→ The government should secure the constraints and develop and change the structure and organization of the subnational governments in order to act efficiently in regard to the opportunities offered by the EU (to the outcomes of step 2).

Step 4: Moving and improving

→ Governments must stay up to date and follow changes by the EU. The EU should be like the national government is to subnational governments.

The outcome of each phase may differ per government. For example the preferences and capabilities may determine the current situation and the desired situation.

The cases show that the derived concept of Europaproof can be applied to subnational governments. The cases also address that governments are still free to include more than is included in the concept derived through this research. Moreover, governments should look at least at these three dimensions. EU law must be applied by all governments. The question to include EU funds and involvement depends on the situation of governments.

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Chapter 1 Introduction

1.1 Europaproof in policy documents and manuals

Europaproof is a typical Dutch concept that is often referred to. Subnational governments have to be *Europaproof*. In the preface of the manual on Europaproof in 2008¹ the minister of Domestic and Kingdom affairs (BZK) argues that there is a growing need for knowledge about European rules and legislation, since subnational governments in the Netherlands are responsible for EU law compliance and the right application of EU law (Kenniscentrum Europa decentraal, 2008). But there is more published about *Europaproof*. Documents and manuals from governments or semi-governmental institutions have outlined and interpreted the scope of the object Europaproof. A limited number of policy document and manuals shall introduce the Dutch term '*Europaproof*'.

Code Intergovernmental Relations (Code Interbestuurlijke Verhoudingen)

The 2005 agreement between VNG, IPO and BZK² on relations between government levels in the Netherlands is the starting point for this research. One paragraph in this policy document is about the relation between national and subnational governments in regard to the EU. One principle laid down is that the central government shall involve subnational governments at a preliminary phase of the national policy preference shaping. The reason therefore is that EU policy application is often delegated to subnational governments. The input by subnational governments is important in regard to administrative and financial consequences for both subnational governments and the central government at the end.

European Dimension of Control (Europese Dimensie van Toezicht)

The *Code Intergovernmental Relations* is based on an earlier policy document which is about the correct application of EU law by subnational governments and the role for the Dutch national authority to control it (BZK, 2004). The report focuses on EU law and on what subnational governments could do in order to comply with EU law and what they could do to participate in the EU policy-making process. These two documents show that there is a relation between the central and subnational governments in regard to the EU. This is still not named *Europaproof*.

Action plan for Europe and Subnational governments (Actieplan Europa en decentrale overheden)

In 2007 the minister of BZK sent a letter³ to the parliament that pursued the matter of powerful governance in the Netherlands. The conclusions in regard to the EU were that due to a growing number of EU regulations subnational governments could not ignore the EU any longer, especially in regard to application and compliance with EU law (BZK, 2007). Also this policy document argues that early involvement is appreciated, since it may reduce implementation costs at a later stage. The 2007 report by BZK terms Europaproof as *compliance to EU law*⁴. The discussions about the 2007 report lead to a policy manual by BZK in 2008. This manual laid down actions for subnational governments to take in order to improve the European dimension (BZK, 2008).

¹ 'Handreiking Europaproof' is written and edited by Kenniscentrum Europa decentraal. Europa decentraal is an association created by the ministry of Domestic and Kingdom Affairs (BZK) and the umbrella organizations of the three Dutch subnational governments: municipalities (VNG), provinces (IPO) and water boards (UvW).

² The Dutch report is called 'Code Interbestuurlijke verhoudingen' and is a policy document that lays down principles for relations between the central government and the subnational governments in general.

³ The original title is in Dutch: "Krachtig bestuur"

⁴ In Dutch: "Binnen de Nederlandse bestuurlijke verhoudingen zijn gemeenten en provincies zelf verantwoordelijk voor de verplichting tot naleving van Europees recht (Europaproof)" (BZK, 2007, p. 2).

Government Agreements with Subnational Governments (Bestuursakkoorden)

Based on the *Code Intergovernmental Relations*, the central government has created agreements with both VNG and IPO. The content of the agreements is quite similar, except for that the one is referred to municipalities and the other is referred to provinces. The agreements are about the relations with the subnational governments and the central government in general, but they both include one paragraph in regard to the EU as fourth government layer. They set out that municipalities and provinces are responsible for being 'Europa-proof', though the central government is responsible for prior conditions to become 'Europa-proof' (BZK and VNG, 2007, p. 4) (BZK and IPO, 2008, p. 8).

All policy document summarized above are specifically addressed to the consequences of non-compliance or wrong application of EU rules. Also subnational representation and involvement in the policy preference shaping phase are used to improve the conditions for EU rules application at the subnational level at a later stage.

Policy manuals

Finally there are three manuals written by semi-governmental institutions that aim at informing subnational governments about the EU consequences for the subnational governments. First, the umbrella association of the water boards (UvW) has published a manual about Europaproof⁵. According to the UvW, *Europaproof* consist of European opportunities and constraints (Unie van Waterschappen, 2007).

The second manual is published by the VNG in cooperation with BZK in 2005. According to this manual, *Europaproof* is (a) knowing how to comply with EU law and how to apply EU law, (b) to attract money from EU programs and funds and (c) to participate in European networks, programs and more⁶ (VNG and BZK, 2005).

The third manual is published by Kenniscentrum Europa decentraal in cooperation with BZK in 2006 and is revised in 2008. According to this manual *Europaproof* is complying to EU law and making use of the opportunities the EU offers, like subsidies⁷ (Kenniscentrum Europa decentraal, 2008).

1.2 Problem definition

The documents show that the central government seeks to make subnational governments aware of the consequences the EU could have. By all the policy documents and manuals together, the government has introduced a concept: *Europaproof*. Since then, subnational governments are expected to implement Europaproof.

⁵ The UvW write in their manual about being Europe-consciousness ("Europa-bewust") instead of being Europaproof. They argue that Europaproof refers to a negative relation with the EU (proof means being resist to...). In addition, the UvW argues that Europaproof refers to a to heavy concept of dealing with the EU (Unie van Waterschappen, 2007).

⁶ The original quote is as follows in Dutch: "*Het Europa-'proof' maken van de gemeenten heft betrekking op het adequaat kunnen vergaren van kennis en informatie over lokaal relevante EU-regels, op de capaciteit om subsidies uit bestaande Europese programma's en fondsen binnen te halen, en participatie in Europese netwerken, programma's en andere activiteiten*" (VNG and BZK, 2005, p. 16).

⁷ The original quote is as follows in Dutch: "*Europaproof zijn betekent dat gemeenten voldoen aan de Europese wet- en regelgeving. En niet te vergeten: de kansen en mogelijkheden benutten die Europa biedt, onder meer door subsidies*" (Kenniscentrum Europa decentraal, 2008, p. 6)

The set of policy documents on Europaproof outlined above do not provide a clear product or definition though. They rather leave the reader with questions about content and application in practise. The documents make the reader believe that policy on Europaproof is equal to policy on the consequences of non-compliance to EU law. In manuals about Europaproof, the scope is wider. Manuals seem to focus more on opportunities offered by the EU as well.

The gap between the policy documents and the manuals raise questions. The manuals and policy documents use different definitions and refer to different contents. However, the central government still expect subnational governments to apply Europaproof. The central government failed to create a common understanding of the concept.

On principle, it is not necessary to define a concept. Sometimes a concept might better work without a strict definition to comply to. That is not the case however for *Europaproof*, because *Europaproof* is the goal to achieve. Therefore, subnational government have to know what is meant by the term *Europaproof*. In order to obtain central government's orders, subnational governments have created own definitions and operationalizations and have developed different kinds of projects. These concepts vary from applying state-aid rules to a focus on city-marketing and from twinning to improved EU policy-shaping activities.

1.3 Aim of the research

A concept without scope and definition is useless when governments are expected to apply it. This research focus on whether scientific literature can be helpful in order to conceptualize an empty phrase. The current deficit of Europaproof is that it lacks common understanding. Additionally, policy documents and manuals fail to deliver a common conceptualisation either. Therefore, this research aims at developing a concept of Europaproof, based on scientific studies about European Integration.

Europaproof is a Dutch concept and not a common concept in scientific articles. Therefore the policy documents and manuals will be the guide to dive into the literature and shall be the point of departure for this research. From these documents together a scope can be identified. This scope is still very broad and could best be summarized as *all EU elements that have influence on subnational governments or that can be influenced by subnational governments*.

1.4 Research questions and operationalisation

The aim of this research is to create common understanding about *Europaproof*. The questions arose from practice and therefore the output of the research should be relevant to governments. The aim of this research is to give meaning to the concept Europaproof in such a way that it can be applied to subnational governments. Therefore the research question will be:

➤ *How can Europaproof be conceptualized in order to be applicable to subnational governments?*

Currently, Europaproof lacks a common understanding. This research aims at seeking a concept, based on scientific research in EU studies. A criterion for the concept is that it has to be applied to subnational governments. The research question consists of two parts:

- *How should Europaproof be conceptualized?*
- *Can the concept derived be applied to subnational governments?*

First, the research shall include an literature overview in regard to the frame for *Europaproof* identified by the policy documents and manuals above (all EU elements that have influence on subnational governments or that can be influenced by subnational governments). On the base of the theoretical findings a concept will be developed. An aim of the research is that the concept could be applied to

subnational governments. Therefore, the concept must be tested. Whether the concept is applicable to subnational governments shall be tested in a case study.

Delimitation

The scope of a master thesis makes it necessary to define and specify the content of the research question. This study shall look on the Dutch case. First, Europaproof is developed in the Netherlands and must be implemented by Dutch subnational governments. Even though the results of this study probably could be transferable to other Member States (MSs), that is not the aim of the study. Second, the research focuses on subnational governments in general. The Netherlands know three types of subnational governments: provinces, municipalities and water boards. The goal of this research is to develop just one concept that applies to all governments. The scope of a master thesis does not allow the study to differentiate between provinces, municipalities and water boards. The Dutch subnational governments are treated equally in regard to their relations to the EU.

Operationalisation

This study is built upon some core understandings that could be explained in more than one way. The concept Europaproof is new in scientific literature, therefore it is important that the conceptions used in this research are crystal clear. Below, some conceptions are explained in order to prevent double interpretations.

Concept/conception

The research assumes that it is possible to develop a concept for Europaproof that is applicable to all subnational governments in the Netherlands. For this research, it is not a question whether or not it is possible to develop such a concept. With '*concept*' and '*conception*' this research will refer to a content of the meaning. The content has to be designed in a way that the reader should understand the scope and the dimensions that belong to the concept.

Subnational governments

The Netherlands recognizes three types of subnational governments: provinces, municipalities and water boards. Provinces are regional governments. Municipalities are local governments. Water boards are regional governments which are task-specific jurisdictions and authorized to regulate water-related tasks. This study includes all three of them, but will not show the differences or similarities. All three are expected to have the same relations with the EU.

Elements

This research considers *elements* as all aspects that show a relation between the EU and subnational governments in the Netherlands. That includes aspects from the EU that have influence on subnational governments and EU aspects that can be influenced by subnational governments.

Dimensions

All elements together will show the scope of the concept Europaproof. However, there are too many elements. Therefore, this research will cluster the elements. These clusters are called *dimensions*. Dimensions are thus *sets of elements*. Ultimately, the research will identify three dimensions: EU law, EU funds and involvement by subnational governments.

Opportunities

Opportunities are those elements or dimensions that offer an opportunity to the subnational government. Opportunities are interpreted as the pros of European policies and initiatives for subnational governments⁸. They must have a positive effect on subnational governments at the end.

Constraints

Constraints are elements or dimensions that limit the subnational governments by executing regional or local duties. The constraints are interpreted as the cons of European policies and initiatives for subnational governments. Constraint can both be short term limits and long term negative effects.

1.5 Overview of chapters

This research is built upon two parts: developing a concept and subsequently testing whether the concept can be applied to subnational governments. The research paper will continue with a chapter on methods and instruments that are chosen to perform the research. Shortly the methods will be explained including the purposes they serve.

Then the research will identify the theories and approaches that corresponds most to the concept of Europaproof so far. The third chapter will explore scientific literature about European Integration. Here two streams shall be explored. The theories and approaches investigated are neo-functionalism (NF), liberal-intergovernmentalism (LIG), multi-level governance (MLG) and Europeanization. This chapter shall provide an overview of the role of subnational governments in the EU and the role the EU play at governance at subnational governments in the Netherlands. All elements that could be important to Europaproof are identified in this chapter.

On the base of policy documents and manuals the elements (from the former chapter) will be clustered into three dimensions in the fourth chapter. The fourth chapter will explain the three dimensions in depth. Also will this chapter provide a model to structure these dimensions.

The fifth chapter will look at the modelled dimensions of Europaproof and whether this can translated to a conception of Europaproof. The chapter will look how the dimensions are related to each other and whether the dimensions are opportunities or constraints. At the end of the fifth chapter a conception will be developed on the bases of theoretical findings.

The sixth chapter will test whether the concept derived in the fifth chapter is applicable to subnational governments. Three subnational governments are explored in order to check how the concept conforms the conception of subnational governments. The aim of the chapter is to show the relation between the theoretical conception and the reality.

The final chapter will answer the research question. Conclusions will be drawn whether the derived concept is applicable in reality, or perhaps only partly. The conclusion will also include an overview of questions that should be asked and decisions that should be made in order to be able to be as Europaproof as possible. Finally, the conclusion will give some recommendations for further research in regard to Europaproof.

⁸ In this research, *policies* are used to refer to policies from the European level that are directly applicable at subnational level, for example regulations and treaties. *Initiatives* are used to refer to policies from the European level that are indirect applicable to subnational governments, for example directives, decisions and directions.

Chapter 2 Method design

2.1 Methods and instruments

The research consists of two parts. First a concept should be developed. Second, the concept should be tested whether it is applicable in reality. Those parts demand different approaches. Identifying all elements that should be included in the concept shall be executed through a literature review of studies on European Integration. Thereon, a concept will be developed. The relevance of the concept will be checked through a case-study.

2.2 How to read the research

The policy documents and manuals do not offer a common understanding of *Europaproof* neither do they offer a clear definition or a frame for the concept. In addition, in scientific literature *Europaproof* is an unknown term. A literature review will be the first approach in this research. The boundaries of the research are vague due to the vague boundaries offered by the policy documents and manuals. The research will focus on European Integration (EI) theories. Two streams can be identified (Keulen, 2006). The first stream seeks to answer the question why European integration takes place. Here theories of neo-functionalism (NF) and liberal-intergovernmentalism (LIG) will be explored. The second stream seeks to answer the question how European integration takes place. Here theories of multi-level governance (MLG) and Europeanization will be explored. These four theories together cover at least the scope of the research question. As a matter of course the literature review will focus on issues relevant for answering the research question.

The literature review should make elements rise to the surface, that show the relation between subnational governments and the EU. These elements together shall show what the concept must include and thus what the scope of the concept is. In order to make the *Europaproof* useable, a model has to structure the elements. The model chosen comes from EI studies as well and will be changed a little in order to be useful for the purpose of this research. Then in theory, the modelled concept is ready for application. Whether this concept is applicable to subnational governments needs to be checked. In a case-study, three cases will be explored to see how three subnational governments have applied *Europaproof*. The case-study will check whether the concept is useful. The case-study does not aim at providing empirical data for the concept.

2.3 How to cluster elements into dimensions

The elements identified by the literature review in the third chapter will be clustered to three dimensions. This clustering is based upon information provided by the policy documents and manuals explained in chapter 1.1 on policy documents and manuals. From all policy documents and manuals outlined, three sets of elements of *Europaproof* can be distinguished. The sets of policy documents and manuals outlines the frame of the concept. Then the literature overview covers the content. And the Policy documents will cluster the content into dimensions.

2.4 How to model dimensions into a concept

This research needs a model that is able to structure the elements. One model to look at parts of the European game is the opportunity structure (Rooij de R. , 2003). The structure entails a two tiered approach to define a specific situation for an actor or institution (like a government). On the one side you will find the positive elements: *opportunities*. On the opposing side you will see the unwanted elements: *constraints*. The opportunity structure is generally used to analyse governments' situations in respect to external changes. Often, the opportunity structure is used as independent variable and the

governmental organization (either political, administrative or both) as dependent variable. The opportunity structure will be changed to become a model that can be used for this research. Then it might explain what dimensions are serviceable to the (political, administrative or both) organization of the government in order to deal with Europaproof. In this research the opportunity structure will be used to provide a neatly arranged structure to capture dimensions of Europaproof. The opportunity structure helps to distinguish between the pros and cons of the European Union to local and regional governments and helps to distinguish between necessary and sufficient conditions. Thereby the model of opportunity structure helps us to understand how Europaproof should be interpreted in order to conceptualize it in frame and form.

2.5 Case selection

Criteria case-selection

The resemblance between these cases is that all three subnational governments act upon Europaproof⁹. There have been no reasons to choose for them on the base of geographical situation, economic climate, number of inhabitants or any other possible variable. The three cases described below are picked at random. Random here signifies that when found out the subnational government had a policy on Europaproof an interview was planned. The first three that reacted positive were picked. These were the municipality of The Hague, the municipality of Hengelo and the province of Overijssel.

Limits of the case-selection

Even though the cases do not aim at generalization and, the cases will strengthen the findings of this research. They will either consolidate the preliminary premises or they will attach premises to the preliminary premises. In either way, the cases will strengthen the research. However, there are some limits.

First, the cases do not include a water board. Water boards do differ from municipalities and provinces to a great extent, because water boards are task-specific jurisdictions instead of general-purpose jurisdictions like municipalities and provinces¹⁰. However, in regard to the EU the same holds for municipalities, provinces and water boards. Therefore, the results from all cases can be transposed to other types of subnational governments as well and the inclusion of a water board is not necessary.

Second, this research is build upon three cases. One could argue that this is quite limited to draw conclusions from. However, three cases are enough to strengthen research finding. Besides, within the limited scope of a master thesis, three cases is a reasonable number. Therefore a relatively small case-selection of three cases is satisfying for this research.

Third, taking the first government that is willing to cooperate presumes a selection bias. Though for this type of research, the selection bias is not a limit to this research since only governments that have experiences will be able to show how they interpreted Europaproof and implemented policies regarding Europaproof. Again, the aim of this selection is not to generalize, but to strength the finding. Therefore, it is not necessary and relatively insignificant whether governments selected for the cases participate voluntarily or not.

⁹ Even though Europaproof can be explained differently per case, the fact is that these governments have acted upon it to strengthen EU's philosophy in the subnational government.

¹⁰ Hooghe and Marks differentiate between task-specific jurisdictions and general-purpose jurisdictions. In regard to their analysis Municipalities and provinces are general-purpose jurisdictions and waterboards are task-specific jurisdictions. For more see the theoretical framework on the layer-cake approach and the marble-cake approach.

Chapter 3 Theoretical Framework

3.1 Object of this study

This chapter shall describe the most relevant theories on European Integration (EI). There are restrictions to relevant theories and approaches in EI in regard to *Europaproof*. This chapter will seek whether and how European integration may shine light on *Europaproof* by exploring different types of EI theories. The main purpose of showing these theories in this chapter is to elaborate on different approaches and identifying several elements of the EU in relation to subnational governments.

This chapter will show scientific literature in regard to *Europaproof*. The relevancy for subnational governments will be the frame for this literature review. This chapter seeks to identify all EU elements that have influence on subnational governments or EU elements that can be influenced by subnational governments.

3.2 ‘Old’ and ‘new’ theories on European Integration

In the domain European studies many scholars have tried to explain European Integration. Roughly said, one could indicate two main movements. The first movement arises in the early sixties and focuses on explaining *why* European Integration takes place. This first EI wave entails many approaches, to which neo-functionalism (NF) and liberal intergovernmentalism (LIG)¹¹. NF and LIG can be seen as the two main theories explaining why European Integration has taken place. NF and LIG are the most consolidated interpretations of European integration and offer alternative accounts for Europeanization (Radaelli C. , 1997). Other authors go further and call NF and LIG even ‘grant theories’ since they have identified the variables that shaped the framework for understanding innovations by latter studies. (Keulen, 2006).

The main reason to include NF and LIG in this research is that they show why *Europaproof* is important to think about in the first place. A second reason is that NF and LIG laid down the base for new approaches of EI research: multi-level governance and Europeanization. The second wave seeks to explain *how* the European Union integrates. The second wave of EI studies is more important in regard to *Europaproof*. These studies show relations that exist between the EU and subnational governments. For the base of this research the framework includes theories and approaches that shine light on European integration. That includes both the ‘old’ theories on European Integration: NF and LIG, and the ‘new’ theories on European integration: multi-level governance and Europeanization.

3.3 Why integration takes place: NF versus LIG

NF and LIG look at the European Union¹² from two total different perspectives. This paragraph will shortly outline the main considerations, premises and arguments relevant for *Europaproof* of both neo-functionalism and liberal intergovernmentalism.

NF and LIG are the core theories explaining *why* European Integration takes place. Even though these two theories are the opposites, there are similarities. The similarity between NF and LIG is that they both “*expect reduction of variance and disparities in administrative arrangements towards either strengthening (LIG) [or] weakening (NF)*” (Radaelli C. , 1997, p. 3). Additionally they both fail to explain

¹¹ Other theories that will not be dealt with here, but also aimed at explaining why EI took place are for example (neo)institutionalism, realism, federalism and constructivism.

¹² NF and LIG looked at that time at the European Community and later also the European Economic Community.

how EU decision-making takes place and how domestic institutions¹³ shape EU institutions. They also fail to explain how policy-outcomes are affected by domestic institutions and how EU policy affects the domestic situation. However, more important are the differences between the two theories. The next two paragraphs shall show the main differences.

3.3.1 Neo-functionalism

From a NF point of view, EI is a natural process that could lead to a federal state for Europe, but has no intentions of reaching that situation per se. Neo-functionalists believe that MS executives are driven to transfer domestic powers and responsibilities to a higher arena because issues can be solved more effectively and efficiently over there. Therefore NF can be seen as a *supranational approach* to understand why domestic competences are transferred to higher levels. NF can also be seen as a *anti-reaction* to works of interdependence. The godfather of NF, Ernst. B. Haas, defined [European] integration as *“the process whereby political actors in several distinct national settings are persuaded to shift their loyalties, expectations and political activities toward a new centre, whose institutions possess or demand jurisdiction over the pre-existing national states”* (Haas E. , 1958, p. 16). Three elements are central in Haas’ theory of NF: *spill-over effects, plural system of policy making and supranational institutions*.

Neo-functionalists think from a pluralistic point of view in regard to policy-making. It argues that, in contrast to LIG, states are no rational actors. Governments are represented by a variety of private actors and institutions. Even though we may look at governments as a single actor, policy-making is still a process with a pluralistic character. According to neo-functionalists, policy-making is a result of successful pressure by (both public and private) groups. A single government is not capable of making EU policy. *“Neo-functionalists believe that European integration creates new opportunity structures at the EU level. Various domestic actors such as sub-national authorities and interest groups increasingly bypass the national executives accompanying a loss of executive control over them”* (Radaelli C. , 1997, p. 3). According to neo-functionalism a pluralistic view is needed to see that all actors together determine the true policy-making process in the European Union (or then: the European Community). *“[Decisions are] based on continuous compromise, constantly informed by generally respected expert bodies with constitutional powers of their own and in constant contact with supranational voluntary associations and groups”* (Haas E. B., 1961, p. 369).

Neo-functionalists argue that these interests groups, which have grouped themselves by *“issue-specific, sectoral interests”* (Keulen, 2006, p. 19), will make contact across the boundaries of a particular state to create a more powerful voice to advertise their interests. Lobby groups can also be heard by the Commission in the European Union and therefore they lobby in Brussels as well. Ministries also seek more and more often confederates across boundaries in order to create a more powerful voice in Brussels. NF is very strong in explaining why European integration has moved forward. Spill-over effects, new institutions and new powers of these institutions lead to further integration. In the EU, spill-over effects lead to increasing powers of EU institutions, created by MS themselves. *“Cross-border contacts would be enhanced by a driving force that is perhaps the most famous invention of neofunctionalism. ‘Spill-over’ would make the interests and loyalties of these groups gradually to be transferred from directed towards national governments to a higher political level, that of the EU”* (Keulen, 2006, p. 19). Spill-over effects are results of uploading tasks and loyalties to a higher level. These effects grow out to new, not necessarily intended effects. Haas wrote about spill-over effects in the EU that *“[e]arlier decisions, including the ones constituting the Communities, spill over into new*

¹³ Subnational governments could be identified as domestic institutions.

functional contexts, involve more and more people, call for more and more inter-bureaucratic contact and consultation, thereby creating their own logic in favour of later decisions, meeting, in a pro community direction, the new problems which grow out of the earlier compromises” (Haas E. B., 1961, p. 372).

After the Single European Act (SEA) however, European integration stopped. NF was not able to explain this temporarily hold. With this sudden change in the integration process, NF proved itself to be incomplete. Liberal intergovernmentalists used this stand-still to emphasize their theory on European integration.

3.3.2 Liberal intergovernmentalism

Liberal intergovernmentalists look at European Integration as a process of national preferences and interstate bargaining. Van Keulen states that Moravcsik (the main father of LIG) *“offers an explanation of European integration that actually consists of two separate theories. First, a liberal theory of national preference formation, second, a model of EU level bargaining between national governments”* (Keulen, 2006, p. 26).

LIG is actually a critique to neo-functionalism. The European Community is an international regime instead of a supranational political entity (Moravcsik, 1998). That means that states are the only really important actors in the integration process and other actors. Subnational governments, for instance, do not have any part in EU policy-making. Integration could only take place when MS are willing to transfer loyalties. LIG argues *“that member-state executives ultimately control European politics. LIG approaches also presume that member-states face uniform and exogenous economic challenges shaping their preferences”* (Radaelli C. , 1997, p. 3).

The postponed integration after the SEA confirms this liberal intergovernmental idea. Moravcsik sees the EC as an ordinary intergovernmental organization, like NATO or UN. Therefore the EC should be analysed through ordinary International Relation Theories, using three stages: (1) preference formation, (2) interstate negotiation and (3) institutional choice (Keulen, 2006). These three stages presume specific state characteristics. First, states act upon opportunities and constraints. Second, states are rational and unitary actors. Third, the outcomes depend on the relative bargaining powers of states. These three characteristics contemplate that reaching a concession or no agreement at all is one of the options. Finally, LIG recognise the usefulness of international institutions (Keulen, 2006). These may limit transaction costs and can monitor and enforce international policies.

Liberal intergovernmentalists argue that MS are still the main actors and the sole gate-keepers of European integration. Or in words by Moravcsik: *“European Integration can best be explained as a series of rational choices made by national leaders. These choices responded to constraints and opportunities stemming from the economic interests of powerful domestic constituents, the relative power of each state in the international system, and the role of international institutions in bolstering the credibility of interstate commitments”* (Moravcsik, 1998, p. 18).

Liberal intergovernmentalism shows that European integration is a rational process of rational bargaining based on economic intensions: to reduce transaction costs. It explains why the integration process has not always the same density, but goes by steps and holds. However, from a LIG point of view unintended consequences cannot occur since MS are the sole gate-keepers. There is little space for regional-EU relations, while in reality this relation has grown. Reality also shows that the force that drives European integration is no longer just the MSs. Interest-groups, all kinds of associations and

subnational government also look for further integration. LIG as a theory to show EU-regional relations is not adequate any more.

3.4 Deficits of classic integration approaches

Both NF and LIG showed why European Integration takes place in the first place. The two approaches start from the same point: reduction of transaction cost. Then they split. Where NF explains integration as an ongoing, non-stoppable process with unintended consequences, LIG focus more on the role of MS in the integration process which makes integration a result of intergovernmental bargaining. Even though both theories seek to explain integration from different angles, both fail to explain the core question of this research: how has European integration taken place.

Earlier studies are still relevant and important and necessary to outline. NF and LIG do shine light on the most basal characteristics. Van Keulen argues that *"[it] does not mean that the debate between [liberal] intergovernmentalism and neofunctionalism does not offer valuable insights for policy analysis into the relevant events actors, factors and relations in the [policy-]shaping process. The revival of the old debate in the 1990s has further elaborated, theoretically differentiated and empirically investigated how processes of preference formation at the domestic level are relevant for how states behave at the EU level, and how the role of supranational institutions can be key to understanding European outcomes"* (Keulen, 2006, p. 32). NF and LIG are both theories that try to explain why European Integration takes place. This question is of great importance in relation to Europaproof since Europaproof is an outcome of European integration. Besides, the new debate is just a reaction to the 'old' classic theories. Therefore, the old debate remains the base for studies in EI.

In the nineties scholars analysed that the classic theories that aimed at understanding European Integration (NF and LIG) were not adequate to understand *how* European integration took place. Van Keulen adds that *"it has been argued that the 'old' debate fails to capture the complexity and dynamism of what happens in the EU on an everyday basis"* (Keulen, 2006, p. 30). The old debate is still necessary though to outline in order to understand new approaches to European integration theories. NF and LIG show the underlying core assumptions to European integration (wherefrom Europaproof is an outcome). According to Harmsen and Wilson, classic integration theories are necessary to include in a research in respect to European integration, because *"one cannot point to core tenets, common to all or most usages of the term, which might serve as the basis for constructing a common, paradigmatically defined research agenda"* (Harmsen & Wilson, 2000, p. 19).

Around the nineties a new debate was needed. *"The increase in legal and administrative workload of the institutions – and thereby the volume and degree of interactions between the EU and the national level – is visible in the 'acquis communautaire'. The whole of EU rules and legislation more than doubled from 1983 to 1998"* (Keulen, 2006, p. 35). The classic theories were not able to explain the shifted powers after the 1985 reforms. Due to some major policy developments after 1985, theory had to change its focus. Then regions became more relevant to investigate in regard to EI (Hoetjes, Hoogeveen, & Rood, 2003). These major changes were formally founded by the Maastricht Treaty (Keulen, 2006). The Maastricht Treaty showed clear spill-over effects that created possibilities for pan-European cooperation on monetary and social matters. Spill-over effects were also visible in regard to regions. The Maastricht Treaty made regions more important by shifting (more) powers to regions. A new debate was born.

New scholars went beyond the *why*-question and moved towards the *how*-question of European integration. This second wave of European integration theories focus on the *"form and impact of interaction between different locations of policy-making"* (Keulen, 2006, p. 33). There are two main

approaches that focus hereon. First, multi-level governance focus on the form, role and character of all layers of governments in the European Union. Second, Europeanization focus on the impact of EU (institutions) at the national and subnational levels. In other words, MLG focus on the bottom-up relation between (sub)national governments and the EU level and Europeanization focus on the top-down relation between the EU and national and subnational governments on the other¹⁴.

3.5 Multi-Level Governance

3.5.1 Changes at the EU require changes in EI studies

Structural and Cohesion policies

Multi-level governance arose in the nineties. The approach started as an integration theory to analyse EU structural and cohesion policies (Keulen, 2006). The analysis showed that within MSs subnational governments got more and more involved by policy-formation and policy-implementation, since European policies often had to be executed at local or regional levels. Benz and Eberlein discovered that reforms lead to a change in EU policy-making in the late eighties. According to Benz and Eberlein, EU's 1988 regional policy reform showed four characteristics that induced a process of multi-levelled policy-making:

- (a) The 1988 reform needed an integrative approach for policy-making at the EU level;
- (b) The reform supposed to improve vertical co-ordination and partnerships with regional actors across the Member States;
- (c) Budgetary systems had to be vertically linked upon each other, because the projects under EU's regional policy had to be jointly financed (co-financing) by national or regional authorities;
- (d) Regional authorities are requested to include public and private actors in the decision-making process in order to achieve a broad support. (Benz & Eberlein, 1999, p. 335)

The four characteristics analysed from the 1988 reform policy show that the reform asked for an integrated system to increase the support for EU policy-making. It shows a more-layered system of policy-making and policy-coordination, with a great role for regional (and local) authorities and public and private actors. In empirical studies, scholars were able to transfer the analysis of this multi-levelled process from the regional and cohesion policies to other policy areas as well (Keulen, 2006). From there, MLG was consumed and general applied in order to show that policy-making competencies were shared across different levels: subnational, national and EU level.

Interdependency approach

The MLG-approach is an *interdependency approach*, since the theory describes the growing interdependent relation between European institutions, national governments, subnational governments and other actors (Rooij de R. , 2003). The Rooij analyses MLG as the third important European integration theory¹⁵ which aims at explaining *why* and *to what extent* states upload their competencies and loyalties. However, MLG is more than a theory that explains the *why-question*. To a much greater extent than NF and LIG, MLG has been successful in analysing relations between many actors of all layers in the European Union, both horizontally and vertically.

Both NF and LIG have been focusing primarily on the relationship between national governments and the European Union and why competencies are shared or uploaded at either an intergovernmental or

¹⁴ There is no strict division between MLG and being bottom-up and Europeanization being top-down oriented. Some Europeanization scholars focus on a bottom-up approach as well. See also part 3.6 on Europeanization. However, to get a convenient arranged division between both approaches, here is chosen for this division.

¹⁵ Next to the grand theories: NF and LIG.

supranational entity. MLG has proved to be of use at helping to explain the complex interdependency between domestic actors, the European Union and private and public interest groups around them.

Comprehension to LIG

The reforms in the late eighties are indicators that the political situation in the European Union has shifted. Marks, Hooghe and Blank adopt the LIG perspective which argues that states are still the main actors in the EU game. They add that they are accompanied by other actors. According to them, LIG and MLG are not mutually exclusive but comprehend each other. They argue that decision-making competencies are *shared* by actors at different levels (Marks, Hooghe, & Blanks, 1996). That does not imply that state executives are no longer the most important actors. *“A key thrust of multi-level governance is to demonstrate that even collectively, national governments are constrained in their ability to control supranational institutions they have created at the European level”* (Keulen, 2006, p. 47). MLG does acknowledge that state executives are formally still the main actors. If MSs wish so, they could stop the integration process. Additionally, the EU is still based upon international treaties, which have to be ratified by all MSs.

Improvements by the Maastricht Treaty

The Maastricht Treaty imposed some great changes for the policy-making process in the EU. With the Maastricht Treaty, policy-making has formally become a process of more than one government-layer. Since treaties are of greater impact than regulations and directives, the Maastricht Treaty is probably the most relevant treaty in respect to subnational governments and multi-levelled policy-making. With the Maastricht Treaty, the MSs acknowledged and agreed upon the relevance for a multi-layered policy-making process in the EU. For MLG, the Treaty of Maastricht can be seen as the formal start of a new European view on policy-making: a Europe of the regions. Powers are redistributed across actors across the EU, for example through the establishment of the Committee of the Regions, the introduction of qualified majority voting in the Council of Ministers and the upload of (more) policies to the European level. Advocates of MLG see the Maastricht Treaty as a formal call for shared powers and a shared policy-making in the European Union. Policy-making is no longer monopolised by a singular government-layer or institution. Policy-making is rather an interplay of more governments and institutions. Since then, also subnational governments are indispensable for making EU policy¹⁶ (Hoetjes, Hoogeveen, & Rood, 2003).

‘Governments’ replaced by ‘Governance’

The main contribution of MLG is already in the name: governance shared across multiple levels. According to the ‘old’ debate on EI, EU policy-making is a competency of MS executives and EU institutions. The newer MLG view on EU policy-making aims that policy-making is a result of *governance* instead of *governments*. Here, government refers to a single actor (or institution) that has decision powers (state executives of MSs). Governance, on the other hand, refers to a process of interaction between both state and non-state actors scattered over several layers cooperating to achieve agreements and develop policies for the European Union (Keulen, 2006).

MLG as spill-over effect

Even though MSs seem to be quite social by including all kinds of actors to the decision-making process, scholars of MLG argue that MSs have no other options. MSs are not sharing competences and powers

¹⁶ The original source is Dutch: *“Beleidsmaking is niet het monopolie van één bestuurslaag of instantie, maar van meerdere: ook decentrale overheden zijn onmisbare partners bij het maken van EU-beleid”* (Hoetjes, Hoogeveen, & Rood, 2003, p. 17).

from an ideological point of view, but they have to share in order to survive in the European policy-making game. According to van Keulen there are three MLG claims that are related to claims of classic integration theories. First, MSs see collective decision-making at the EU level as a loss of control. Second, the role of MSs in the decision-making process changed due to shifts of powers. New actors, like subnational governments derived powers while they used to be excluded in the process of EU policy-making. Final, EU's regionalization became formal through for example the establishment of the Committee of the Regions, by the introduction of regional policies and structural funds and through the stimulation of cross-border and transnational cooperation (Keulen, 2006, pp. 36-38).

The three claims together show that MLG actually provides a neo-functional perspective to European integration, supplied with the inclusion of extra actors and the interaction between all of them. MLG could be seen as an outcome of *spill-over effects* or *unintended effects*, which are both core characteristics of NF. The EU needed an European regional and cohesion policy in order to promote further economic integration and economic growth in the European Union¹⁷. Some regions needed stimulation in order to keep improving. These regional policies came together with structural funds to realize the aims of the regional and cohesion policies. These funds were allocated at the European level. The Commission was (and still is) the main actor in allocating these funds and thereby derived increased powers because a great amount of EU sources was spent via the structural funds¹⁸.

The contribution of the MLG approach is that these spill-over effects and unintended effects have a positive effect on other actors than central state actors. National governments have to share powers. These powers are shared with the EU and subnational governments. Making a decision requires consensus among more actors which eventually leads to a broader support of EU policies.

Two-tiered increasing with subnational governments

The main drive behind regional integration has been the European Commission (the Commission). The Commission, which had always been the core motor of EU integration, understood that faster integration was only possible to bypass national authorities. By upgrading the powers and competences of subnational authorities, the Commission was able to negotiate directly with subnational governments. MLG offers an explanation for this shift of competencies from MS level to the subnational level. The shift was impeded at the EU level. The Commission argued that a regional policy would empower economic integration and eventually economic growth. Without knowing how this focus on regions would emerge exactly, regional integration was started by approval of the MSs.

State executives have also transferred competencies to a higher level (the EU). According to the MLG approach, state executives may show two different reasons to upload tasks to the EU level. First, the supranational level could provide an efficient platform to share information and to reduce transaction costs for intergovernmental decisions¹⁹. Second, by uploading unpopular issues to the EU level, national politicians do not have to take account for it nationally. Politicians try to avoid responsibility of certain unpopular policies, such as for example environmental requirements for production. Additionally, policy

¹⁷ Here the economic integration lead to regional and cohesion policies, which show the spill-over effects by the aim for economic integration.

¹⁸ Here the allocation of structural funds lead to increased powers for the EC, which show an unintended effect by regional and cohesion policies.

¹⁹ The decisions concerned are inter-state decisions which are either a result of inter-state bargaining or bargained at a supranational institution. The costs concerned are for example costs for negotiation or implementation for MSs.

pressure makes it interesting for government leaders to upload complex tasks to the European level, for example merger control. (Marks, Hooghe, & Blanks, 1996, p. 349).

Two-level game of policy-making

EU policy-making should be looked upon as a ‘*two-level game*’ (Rooij de R. , 2003, p. 9). National authorities have to develop preferences and shape policies which are supported by domestic groups and other stakeholders. Politicians seek powers to defend policies by creating coalitions among these groups. At the EU level, national governments seek to balance the preservation of domestic preferences and achieving consensus among all MSs. Both the national and international game must be taken into account by EU policy negotiations. Neither one can be ignored. Here, national state executives are the central actors. They play chess at two boards: national chessboard and the European chessboard. Besides their considerable role, they have to deal with the mutual interdependency of both national and European actors at both chessboards (Rooij de R. , 2003).

MLG describes that due to the growing importance of the increasing number of actors at both games (national and EU negotiation-game), national governments are losing their monopoly in the EU decision-making process. Other actors, like subnational governments, demand a role in EU policy-making. Subnational governments have rewarded their formal role in the policy-making process since the establishment of the CoR and their execution of EU policies. Thereby subnational governments have a platform to negotiate, lobby or advise directly to or with EU institutions, especially the Commission.

The MLG-debate is about the frame in which subnational and national governments operate across the EU and how all actors are mutually interconnected. MLG has offered some analyses of three different categories of MS actors that are active in policy-making at the EU level (Keulen, 2006). First, EU institutions have asked subnational governments to be present at the EU level themselves, rather than being represented through the Council of Ministers. Second, public and private interest and lobby groups have found access to influential actors of policy-making institutions in Brussels²⁰. Third, both subnational governments and interest and lobby groups have associated themselves trans-national and ‘*trans-governmental*’ (Keulen, 2006, p. 51).

National executives have to be aware of the great arena the EU offers, also to subnational governments. Once the discussion is *European* instead of *national*, national governments can be confronted with domestic stakeholders at the EU level which might undermine national shaping ambitions for EU policies. MSs must be aware of the impact subnational governments could have once they act at the EU level.

Via two changes, subnational governments have seen their possibilities to participate grow. First, subnational governments can bypass the national governments, due to regional integration and European policies. On the other hand, the national government is more declined to include subnational governments by national preference building, in order to improve domestic support.

3.5.2 Two derivatives of MLG

As showed above, studies of MLG always focus on the multi-levelled dimension of EU policy-making. All MLG approaches emphasis on the interdependency approach of actors across different levels. However, scholars have identified two derivatives of MLG. These two derivatives could be called the ‘layer cake’

²⁰ For the sake of this research, the second category is not interesting since it does not refer to subnational governments, but rather to interest groups. Therefore, this aspect shall not be included any further.

approach and the 'marble cake' approach. Both approaches in theory belong to the MLG approach, because they both focus on the involvement of more than one level to EU policy-making.

Two types or two cakes?

In the literature about multi-level governance Hooghe and Marks distinguish two types of MLG. They call these types not very innovative *Type I* and *Type II*. Type I could be seen as what is called by other scholars: the *layer-cake approach*. "*The intellectual foundation for Type I governance is federalism, which is concerned with power sharing among all limited number of governments operating at just a few levels. Federalism is concerned chiefly with the relationship between central government and a tier of nonintersecting subnational governments*" (Hooghe & Marks, 2003, p. 236). Hooghe and Marks identify four characteristics of Type I governments:

- (a) General-purpose jurisdictions → jurisdictions cover many tasks;
- (b) Nonintersecting memberships → boundaries do not overlap;
- (c) Limited number of jurisdictional levels → just a few levels, mostly a local, an intermediate and a central level;
- (d) Systemwide, durable architecture → the design of the structure is historically grown and will not change easily. (Hooghe & Marks, 2001) (Hooghe & Marks, 2003)

The other type Hooghe and Marks identify is often referred to as *task-specific jurisdictions* and is also referred to as the *marble-cake approach*. This second type of MLG is characterized by "*multiple, independent jurisdictions [which] fulfil distinct functions*" (Hooghe & Marks, 2003, p. 237). These jurisdictions are goal-oriented and often consists of functional associations. For this type of MLG Hooghe and Marks identified four characteristics as well:

- (a) Task-specific jurisdictions → jurisdictions cover only one task;
- (b) Intersecting memberships → borders may be crossed and jurisdictions will partly overlap;
- (c) Many jurisdictional levels → a large number of levels: local, regional, national, international;
- (d) Flexible design → jurisdictions come and go because it is an ad hoc respond to changing citizens' preferences (Hooghe & Marks, 2001) (Hooghe & Marks, 2003).

In this research these types of MLG are referred to as cakes instead of Type I or II. These metaphors describe the policy-making process in the EU as a cake. The metaphors are not new and allow better examples by illustrations.

European 'layer cake' approach

The layer cake refers to the patient work that is required to create a cake: layer by layer. The European layer cake differs somewhat from the original layer cake. The cake is made of a variety of different pieces of the cake, which correspond to the different MSs. Together these parts make a new cake. On top of these parts is laid an extra layer, which reflects the EU level (Hoetjes, 2001)²¹. The question is whether or not this structure is stable enough to remain in being.

The Dutch piece of the layer cake exists of three layers: the municipal, the provincial and the national level. The top level is the EU system of institutions and procedures. These layers of the cake are related to each other. The top level produces policies which have to be executed in lower layers of all pieces. The EU level includes also an indirect redistribution of money. European subsidies are given to national,

²¹ The original text is in Dutch. "*Wat eigenlijk gebeurt, is het bij elkaar zetten van een aantal taartpunten – de lidstaten – die al een eigen lagenstructuur hadden, en wel heel verschillende lagenindelingen*" (Hoetjes, 2001, p. 7)

regional or local projects. Therefore EU money has also a direct link to national, regional or local execution, observance and control (Hoetjes, 2001).

According to de Rooij, the EU level used to be a pure intergovernmental layer, but has developed into a supranational layer (Rooij de R. , 2003). The EU started as a cooperation of states to overcome international issues. Nowadays the EU lives up to a method of policy-making characterized by the reach for consensus, an over-representation of small MSs and the willingness of MSs to get overruled by other MSs as long as there are no long-term losers. All MSs must win something at the end (Hoetjes, 2001, p. 8). A typical effect of the *layer cake approach* is the similar approach by supranational institutions across all MSs. The EU institutions and regulations give the same rights and obligations to all its members. Even where the national layers differ from their neighbours (including its institutions and regulations), the EU is the only layer that cover all differences.

The layer cake approach emphasizes on the formal government situation as a *multi layered government* (Hoetjes, Hoogeveen, & Rood, 2003, p. 18). The approach is marked by:

- (a) Citizens' loyalties and ties which are always set at different levels;
- (b) Policy-problems can practically never be solved by a single government-level;
- (c) Every government-level has its own specific surplus value that has to be deployed together with other levels in order to reach an effective and legitimate policy (Hoetjes, Hoogeveen, & Rood, 2003)²².

De Rooij, Hoetjes and Rood argue that all layers are necessary to create an EU policy, but none of them are sufficient to create EU policy on their own. The levels are interdependent and need each other to make decisions. For the Netherlands EU policy-making includes national, provincial and municipal governments,²³ in order to develop feasible and observable policy objectives. According to de Rooij, Hoetjes and Rood, one of the fundamental factors for successful EU policies is a good structured interaction between all layers in the European Union. Special attention should be given to the executing-part in the policy process. Policy-makers should be aware of the problems that might arise at other levels than their own. Therefore, in the layer-cake approach subnational governments are indispensable for effective and legitimate policy-making, since subnational governments experience the practical consequences of the aimed policy in reality (Hoetjes, Hoogeveen, & Rood, 2003).

The core aspect of the layer-cake approach is its MLG view on EU policy-making. The real contribution of the layer-cake approach lies in the emphasises on the necessary condition to include all government in EU policy-making to develop efficient policies. The levels in the EU are nested within other levels, like a Russian doll (in each doll is hidden in another one, like each level is situated in another one). The layer-cake approach does not aim at describing the relation of levels vis-à-vis. It rather seek to explain the relative power of subnational governments to the EU policy-making process. Subnational governments do matter in the EU policy-making process.

²² This enumeration of layer-cake characteristics was original in Dutch: "*Uitgangspunt in the [layer-cake benadering] is*

- (a) *dat de loyaliteiten en bindingen van burgers zich altijd op meerdere niveaus bevinden,*
- (b) *dat de beleidsproblemen zich vrijwel nooit uitsluitend op één bestuurslaag laten oplossen, en*
- (c) *dat elke bestuurslaag zijn eigen specifieke meerwaarde heeft, die voor een deugdelijk beleid – dat wil zeggen effectief en legitiem – moet worden ingezet om tezamen met een of meer andere bestuurslagen, wil dit beleid hoe dan ook effectief en legitiem kunnen zijn"* (Hoetjes, Hoogeveen, & Rood, 2003, p. 18).

²³ Other Member States may have more or other governmental levels. For example Belgium exist of four layers and Germany and France both consist of even five levels (Hoetjes, 2001, p. 7).

European 'marble cake' approach

The second approach identified by Hooghe and Marks is type II, also referred to as the *European marble cake-approach* (Kohler-Koch, 2002). The main differences of this approach in regard to the layer cake approach are differences in respect to the interaction of jurisdictions. The marble-cake approach argues that jurisdictions (levels) are not nested in other levels. Rather, actors are grouped task-specific across the classic government levels (thus for example across provincial levels). The borders of these levels are blurred and may overlap each other. Actors are grouped in interest and lobby groups can be lined up to the marble-cake approach. Interest groups, especially in the EU, may operate internationally and over multiple levels. However, also subnational governments are grouped issue-specific. The EU offers a wide range of platforms, forums and networks. Here, subnational governments can by coalition-building seek to influence EU policy-making together. Especially for water boards, this approach is very relevant since they are task-specific jurisdictions.

In sum...

MLG argues that policy-making in the EU has become a complex mix of actors participating at different levels across a variety of disciplines. It focuses on the interaction between actors from the EU, MS and subnational levels. MLG has proved that policy-making has become a task of all kinds of actors, spread both horizontally and vertically. Both national and subnational governments are a part of EU policy-making, but also both formal authorities and informal networks and grouped societies may have a part in EU policy-making.

Joint policy-making in the EU consist of a number of actors that are necessary actors to develop policies. All levels of formal authorities are necessary actors. The support for policies is maximized by the number of actors included to the policy-making process. MLG is an approach that advocates the interdependence of a variety of actors to the policy-making process that corrects unwanted consequences of EU policies (Kohler-Koch, 2002).

3.6 Europeanization

The other approach in the 'new' debate of European Studies in *Europeanization*. The development of this approach can be found around the same time as the development of MLG. In contrast to MLG Europeanization aims at describing and explaining how European integration takes place in MSs. MLG focus on the interaction between the levels and how they are related to EU policy-making. Europeanization focus on the consequences of EU policies to national and subnational authorities. In EU studies this is often referred to as 'how EU hits home' (Keulen, 2006) (Börzel T. , 2003). It seeks to answer the question what the impact of the EU is to MSs and subnational governments. Europeanization is an approach that does not aim at explaining why European integration takes place and what actors are involved. It primarily focuses on the explanation of what the consequences of European integration are for national and subnational governments.

3.6.1 How to use the Europeanization approach

The many definitions of Europeanization

The framework of studies of Europeanization is wide and so are the definitions. Even though Europeanization focuses on the impact of the EU on national and subnational governments, there is not one clear definition of Europeanization. The scope of these definitions vary from the European impact on national administrations to the EU becoming a part of national and subnational governments. Europeanization is also referred to as the impact of EU policies on national and subnational policies (Keulen, 2006). At least, the focus of Europeanization is on what happens within the Member States.

In contrast to MLG, Europeanization is only interested in the outcome of the decision-making process for national and subnational levels. Europeanization focus on the “*domestic impact of the EU*” (Keulen, 2006, p. 40). The European level is the explanatory variable, in the sense that scholars try to seek answers to the effect of EU on other governments.

Three reasons to do research in the field of Europeanization

Three reasons that seek for EU's impact on national and subnational governments can be distinguished in studies of Europeanization (Radaelli C. M., 2004). First, some scholars use Europeanization as an approach to relate the impact of European policies to earlier contributions in European Integration studies. Hereby scholars try to understand the impact of governance instead of governments in respect to MSs. Other scholars use Europeanization as an approach to explain the process of institutionalisation. Radaelli illustrates: “*[the second group of scholars explain Europeanization as] processes through which formal rules and informal ways of doing things are first discovered and experienced in the EU context and then institutionalised inside the logic of behaviour of domestic actors*” (Radaelli C. M., 2004, p. 6). Finally, a third group of scholars look at Europeanization as discourse. Discourse can change for example ideas, perspectives, preferences and problems by reformulation and negotiation. Here Europeanization is seen as a movement of change; to make MSs more Europeanized. It also claims that policy-making is an interactive process with many differential actors included representing many different ideas and preferences (Radaelli C. M., 2004). Of course, these three perceptions of Europeanization are not mutual exclusive. They can be used as combinations as well.

No consensus about the definition of Europeanization

The reasons of Radaelli to do research show a broad range of issues that could be relevant in regard to Europaproof. Olsen shows that it is almost impossible to compare different studies of Europeanization due to their different scopes. He argues that Europeanization studies differ extremely in aims and content. Olsen identified five different types of definitions of Europeanization:

1. “*Europeanization as changes in external territorial boundaries*”;
2. “*Europeanization as the development of institutions of governance at the European level*”;
3. “*Europeanization as central penetration of national and sub-national systems of governance*”;
4. “*Europeanization as exporting forms of political organization and governance that are typical and distinct for Europe beyond the European territory*”; and
5. “*Europeanization as a political project aiming at a unified and political stronger Europe*” (Olsen, 2002, p. 4).

The first definition focuses on the expansion of the European Union (EU enlargement). The second definition focuses on the EU as supranational level (a refinement of NF studies). The third definition focuses on the interaction between different levels in the European Union (a refinement of MLG studies). The fourth definition focuses on how the EU participates in a globalized world (EU as power block). The fifth definition focus on the EU as a political entity (a refinement of federalism; EU as the United States of Europe).

Also Harmsen and Wilson argue that Europeanization cannot be seen as a singular dimension. Moreover, Europeanization as a concept should entail more dimensions together in order to show the wide range the process should consist of in order to explain how governments may be Europeanized. According to them, Europeanization combines the multi-levelled aspect of MLG and adds the consequences of EU policy-making for national and subnational policies and their policy-shaping capacities. “*Europeanization as a process is more explicitly about the transformation of local, regional,*

national and international structures and relations. Europeanization is about the practices involved in 'being and becoming more European, [...] or more particularly within and between organs of power and decision-making' (Harmsen & Wilson, 2000, p. 24).

Europeanization in regard to Europaproof

This research focuses Europaproof, i.d. how the EU affect subnational governments and how subnational governments may influence the EU. The second, and fifth definition by Olsen are useful to some extent. Only Olsen his third definition includes a dimension that refers to subnational governments. Therefore, for this research none of Olsen' definitions is sufficiently to apply to this research because none of them include the entire range of the study.

This research leans on another definition in EI studies. De Rooij argues that Europeanization is a set of processes that makes that the EU becomes a structural element of all political government entities of a nation state (Rooij de R. , 2003)²⁴. This definition includes some important elements that are essential. The definition...

- (a) ... includes a set of processes, which refers to a non-static situation. Europeanization here is seen as a movement instead of a description of a certain situation;
- (b) ... includes both politics and governance; and
- (c) ... refers to the MS as being the object of observance.

The definition above includes all three essential elements of Europeanization in regard to Europaproof.

3.6.2 Policy-adaption or policy-shaping?

Europeanization has two broad mainstreams: policy-adaption and policy-shaping (Keulen, 2006). There are more scholars who identify a differentiation in Europeanization. This is done though by different conceptions, which all refer to the same: *policy-adaption* versus *policy-shaping*; *downloading* versus *uploading*; *usage* versus *pressure*; and *bottom-up* versus *top-down*. Radaelli argues that Europeanization cannot be seen as just uploading or just downloading. Europeanization is rather both pressure and usage. The bottom-up approach will be able to explain whether domestic change is caused by domestic initiatives (Radaelli C. M., 2004). Pressure on the other hand is seen as direct impact from the European Union on the domestic situation. Europeanization includes both pressure and usage. Besides, those two reactions are interrelated. Pressure affects usage and usage legitimizes pressure.

Policy-adaption

The first stream of Europeanization refers to the fact that national and subnational governments adopt EU policies. When all MSs adopt the same policies, that could lead to further European integration. Studies proved that the integration process has lead to an increased scope and volume of EU policies at subnational governments (Keulen, 2006). However, more EU policies in MSs does not impede exact the same EU policies across MSs though. MSs are free to interpret EU policies to national circumstances. The goals remain the same across the entire EU.

The increased number of EU policies at the subnational level shows that the EU hits subnational governments. This make domestic governments more aware for what happens at the EU level. That still does not prove that MSs, and especially the subnational governments within them, all act identically to the increasing involvement of EU policies and legislation on the MS or subnational level (Keulen, 2006)

²⁴ The original text is in Dutch. De Rooij defines Europeanization as: "*een serie processen die tot gevolg heeft dat de Europese Unie een structureel element wordt in politiek-bestuurlijke instituties van een natiestaat*" (Rooij de R. , 2003, p. 16)

(Mastenbroek, 2007) (Knill & Lehmkuhl, 2002). Governments can still act differently in regard to policy-adaption.

Variations in policy-adaption

According to Olsen, developments of European integration may be an important reason for administrative reforms (Olsen, 2002). However, governments have differentially responded to pressures and adapted differently EU pressures. Even more specifically, EU adaption depends on both the EU policies and the national situation. “[...] *The actual ability of the European level to penetrate domestic institutions is not perfect, universal or constant. Adaption reflects variations in European pressure as well as domestic motivations and abilities to adapt. European signals are interpreted and modified through domestic traditions, institutions, identities and resources in ways that limit the degree of convergence and homogenization*” (Olsen, 2002, p. 18).

Degree of Europeanization

Knill and Lehmkuhl have identified three mechanisms of Europeanization that show how policy-adaption might take place. These are (a) institutional compliance, (b) changing domestic opportunity structures, and (c) framing domestic beliefs and expectations (Knill & Lehmkuhl, 2002). Knill and Lehmkuhl argue that these three mechanisms all explain a particular element of the domestic impact of European policies. Therefore the concept of Europeanization (impact on domestic policies and institutions) should be cut in three pieces.

Knill and Lehmkuhl do not reject the two-tiered approach by other students of Europeanization, who differentiate Europeanization by top-down and bottom-up impacts. Rather the perspective can be seen as a comprehensive framework to identify the degree of adaption (Knill & Lehmkuhl, 2002). European policies always have an impact on the national and subnational level, only to different degrees. *“European policies might be: (a) very prescriptive and demand that Member States adopt specified measures in order to comply with EU requirements; (b) confined to changing domestic opportunity structures; or (c) in their weakest form, without any direct institutional impact at all since they primarily aim to change domestic beliefs and expectations”* (Knill & Lehmkuhl, 2002, p. 257).

The first mechanisms refers to direct institutional changes, such as for example the requirement to acknowledge the European Court of Justice as the supreme court. The second mechanism refers to EU policies that replace existing domestic policies, such as for example policies on consumer protection. The third and final mechanism refers to the exclusion of domestic policies, such as for example the European rules on state aid exclude conflicting domestic legislation. In addition to this differentiation, one should see that it is based on analytical rather than empirical findings. Therefore policies may fit into more than one (description of a) mechanism. These mechanisms are not mutual exclusive. They may very well affect other mechanisms both positively or negatively. They may reinforce or weaken other mechanisms.

A distinction between these mechanisms is very relevant since they explain different types of impact and thereby actually advocates different degrees of Europeanization. A differentiation of mechanisms to identify the impact of the EU is very useful when one is interested in different types of impacts. Ordering impacts of European policies or European rules enable researches to make distinctions between them in terms of different degrees of an impact, different stages of impacts or perhaps different classes of impacts.

Optional or obligated impacts

According to Knill and Lehmkuhl European impacts can be expected under two sets of conditions. First, MS preferences are in line with European beliefs and therefore EU objectives only marginally reform domestic policies. Second, core actors are affected by EU beliefs and thereby they affect the domestic policy-making (Knill & Lehmkuhl, 2002).

By identifying two conditions in regard to policy-adaption, one looks solely at the convergent aspect of European policy-making. Here the impact assessment ignores the obligated part of European impacts, which is of great importance when looking at the impact of the EU on subnational governments. Some part of impacts are obligatory and some are not. The two sets of conditions belong to the optional impacts from the EU. Within the optional domain of EU impact, Knill and Lehmkuhl argue that EU impact can only take place when MSs allow it. *“European policies can [...] hardly be expected to have a substantial impact if the initial level of domestic support is very low [...]. The domestic impact of European framing in any particular area [...] varies greatly according to the nature of the dominant national belief system and the existing institutional opportunities for and constraints on reform”* (Knill & Lehmkuhl, 2002, p. 263). Again, this point of view on adapting EU policies is only partly in line with reality. For subnational governments it is quite unreal since they just must follow agreements made by national governments. Arguing that policy adoption depends on beliefs and institutional structures is not the main reality for subnational governments.

Even though also subnational governments may participate in the policy-shaping process, most agreements are still made by state executives at the national level and therefore subnational governments are obliged to adapt nationally adapted EU policies.

Policy-shaping

The second stream of Europeanization scholars is related to policy-shaping capacities of governments (both national and subnational). Policy-shaping is less clear and self-evident than policy-adaption. Studies in this stream do not focus on the question why MSs are willing to transpose and implement EU rules and policies but how they upload their preferences and how they participate before a decision is reached.

This second stream, the bottom-up aspect of Europeanization, consists of two dimensions which are interdependent (Keulen, 2006). First, actors try to upload preferences to the European level, and second, actors try to seek participation in any form of representation at a higher level (in this case: European level). The reason for subnational governments is to use their shaping capacity in order to bypass the national government at EU policy-making. Subnational governments might look for all kinds of channels to upload preferences. Once active at the European level, subnational governments seek to maintain their achieved position.

By focusing on the bottom-up approach of Europeanization, it is no longer the question of *how EU hits MSs*, it rather questions *how the EU is hit by MSs* (or subnational governments) (Beyers & Trondal, 2003). Beyers and Trondal argue that domestic representation settles for a great extent the policy-implementation at a later stage. Thus policy-shaping activities affect policy-adaption as mentioned earlier.

MSs differ in the way and degree they are able to affect EU policy-making. To a great extent this is related to the type of state (federal or not) and how they are formally organized (Beyers & Trondal, 2003). The form of representation determines the real impact of MSs on EU policy-making. Beyers and

Trondal argue that unitary states like the Netherlands produce more representatives than federal states, because they are horizontally and vertically separated and consist of autonomous agencies (Beyers & Trondal, 2003).

Second-image-reversed: relation policy-adaption and policy-shaping

The bottom-up approach of Europeanization is also called the '*second-image-reversed*' (Keulen, 2006). With this concept scholars seek to describe that the process of an international system consists of two mutual interdependent parts. First, the international system is always a consequence of domestic preferences, and second, the international system will lead to new domestic preferences as well.

The principle of second-image-reversed includes neo-functionalist characteristics, like the need to upload tasks to a supranational level, path-dependency and unintended consequences. Van Keulen defines this second-image-reverse as a *feedback-loop* and argues that Europeanization is a two tiered approach of examining the impact of the EU on MSs (Keulen, 2006). "[One] *key reason for national governments to adjust politico-administrative structures and actor behaviour to the EU is to enhance their ability to influence common decision-making*" (Keulen, 2006, p. 45). EU hitting home and home hitting EU are interweaved. The one affects the other and vice versa.

The first dimension of Europeanization, policy-adaption, will lead to a more active position to represent subnational preferences at the EU level, which is the second dimension of Europeanization. "[T]he need to adapt domestically to European pressures may have significant return effects at the European level, where Member States seek to reduce the 'misfit' between European and domestic arrangements by shaping EU decisions" (Börzel T. , 2003, p. 3). Policy-adaption and policy-shaping are interweaved and always lead to different preferences or abilities.

Advantages of policy-shaping activities

According to van Keulen, the shaping capacity is "*understudied*" (Keulen, 2006, p. 59). Only few scholars have tried to find answers to how MSs shape EU policies²⁵. Uploading subnational preferences for EU-policies to the EU level is an effective strategy to minimize the costs and maximize the benefits. There are advantages for policy-shaping activities by MSs or subnational governments. First, it reduces the adaption costs, because there is no need to change existing policies drastically when the subnational policies are adapted at the EU level. Second, acting actively in the policy-shaping process enables domestic governments to address problems that cannot be solved regional or nationally (Börzel T. , 2003).

Pace-setting, foot-dragging and fence-sitting

Policy-shaping is central in researches by Börzel. She argues that there are three ways for governments to take part in the policy-making process²⁶: pace-setting, foot-dragging and fence-sitting. Each way refers to a strategy for governments to behave in regard to policy-making at the EU level. "[Pace-setting is a strategy of] actively pushing policies at the European level, which reflect a Member State's policy preference and minimize implementation costs, [foot-dragging is a strategy of] blocking or delaying costly policies in order to prevent them altogether or achieve at least some compensation for implementation costs and [fence-sitting is a strategy of] neither systematically pushing policies nor trying

²⁵ Like for instance (Beyers & Trondal, 2003) and (Börzel T. , 2002)

²⁶ Börzel relies on the premises that MSs shape EU policies. She does not refer to subnational governments particular. The distinction between types of representation made by Börzel is very well defined and could therefore easily be translated to subnational governments as well.

to block them at the European level but building tactical coalitions with both pace-setters and foot-draggers” (Börzel T. , 2002, p. 194).

Between the three strategies one could identify a rising scale of positive integration. MSs that are most willing to create EU policies are the pace-setters. Their incentive is to make other members live up to their standards. The second best pursuer of European integration are the fence-sitters. Their aim is to set boundaries to European integration. They are willing to cooperate with others to achieve a solution as near as possible to their preferences. The group that is least European integration-minded are the foot-draggers. They try to stop all activities that lead to further integration, using all possible methods.

Even though the differentiation in types of representation are entitled to national governments, the same incentives might be visible when looking at the representation of subnational governments. Subnational governments may have the same type of intentions as MSs to change or create EU policies. Like MSs, subnational governments could have incentives to create common standards on industry (regions with a main port for example). Here a region could very well use a pace-setting strategy to make other regions live like their most wanted standards. Competing regions hypothetically could be in disadvantage with these policy standards and shall try to create coalitions remain status quo. Subnational governments have no power to block decisions though. Therefore the foot-dragger strategy cannot be applied to subnational governments.

Common strategies for Dutch subnational governments

For subnational government in the Netherlands two strategies are relevant in order to participate in the European policy-making process: pace-setting and fence-sitting. High-regulating states, like the Netherlands²⁷, use mostly pace-setting as strategy. High-regulatory states are in favour of more stringent standards in order to develop and improve rather fast in relation to low-regulatory states. High-regulation states share a common interest in harmonizing high standards. For example on environmental and health issues (Börzel T. , 2002).

Within the strategy of pace-setting Börzel follows other scholars that distinguish between three types of pace-setters: forerunners, pushers and pushers-by-example (Börzel T. , 2002). *Forerunners* seek to keep their domestic high standards. EU policies are only positive received when they *add* to domestic goals (or here: subnational goals). Pushers are aware of their domestic limits to fight certain issues. *Pushers* emphasize on co-operation and a mutual approach to deal with international problems. The Dutch governments belongs most of the time to the so called *pushers*. *Pushers-by-example* combine the earlier two approaches. They see their domestic solutions as answers to pan-European questions. For subnational governments all three types of pace-setters could be useful and effective.

The other strategy for subnational governments to participate in the European arena to shape EU policies is *fence-sitting*. Fence-sitting is a less direct strategy. Here the approach depends on the issue and on the other's preferences. Fence-sitters tend to be relatively neutral and indifferent. They try to build coalitions with either pace-setters or foot-draggers, depending on the issue (Börzel T. , 2002). Fence-sitters try to reach the best possible outcome without wasting any efforts on policy-shaping in the complex and time consuming process of policy-making. Fence-sitters lean on other's efforts and try to minimize the costs for adaption.

²⁷ According to Börzel, the Netherlands belong to so called high-regulation states (Börzel T. , 2002, p. 197).

Both strategies may be useful for Dutch subnational governments. First, pace-setting can be effective for regions or municipalities that are based on high-regulated oriented industries. Also water boards can probably make great use of pace-setting strategies, since water boards are known for their expertise on water management. Other subnational governments may be more interested in fence-sitting. For example because they are less EU oriented or because they depend less on high-regulated industries. Then there is no need to upload a specific preference to the EU level.

3.6.3 'Goodness of fit'-principle

One way to explain the degree of success to policy-adaption is the 'goodness of fit'-principle. The 'goodness of fit'-principle is understood as the implementation performances of subnational governments linked to the degree of congruence with the new legislative situation (Keulen, 2006). The size or number of similarities between the old national policy and the new European policy that has to be implemented defines the willingness and ability to implement changes to the subnational situation. The more similar the old and new situation, the easier to change and the better the government adaption-performance.

According to Mastenbroek, students of Europeanization argue that the 'goodness of fit'-principle is even the key function of Europeanization. According to her, Europeanization seeks to *"explain the differential impact of the EU on member states [whereby] successful compliance depends on the fit between European policy requirements and existing policies and institutions at the national level"* (Mastenbroek, 2007, p. 6). The three major key concepts to the 'goodness of fit'-principle are *the degree of misfit, the minimization of adaption costs and the shaping behaviour or the uploading of efforts* (Keulen, 2006).

EU policy implementation or transposition of EU directives to national policies or legislation is related to the degree of similarities and the costs of changes due to implementation. A possibility to minimize costs is to upload subnational (or national) policies to the EU level. Then EU policies are very similar to the subnational (or national) policies so that the adaption is economical, because no complex changes have to be made to the current policy or legislative situation.

Sufficient condition to policy-adaption

Even though the hypothesis of the 'goodness of fit'-principle sounds promising, empirical results are rather disappointing (Keulen, 2006) (Mastenbroek, 2007). The principle is not entirely written off though. In European studies, the 'goodness of fit'-principle is still alive by stating that a good fit is a necessary condition for smooth adaption. Here the 'goodness of fit'-principle is a sufficient condition instead of a necessary condition for change. (Mastenbroek, 2007). *"[I]f member states do not succeed in uploading their policies, they will not happily adjust to the resulting decision-making outcome, because of the high costs of compliance"* (Mastenbroek, 2007, p. 60).

'Goodness of fit'-principle in regard to policy-shaping

Not just the current domestic policies define the degree of fit, also policy preferences are important. Some students of Europeanization argue that domestic actors may use links with Brussels to upload national political preferences to the EU in order to bypass the national politics (Keulen, 2006). Also Mastenbroek argues that also preferences may define the likelihood of compliance to EU-policies (Mastenbroek, 2007).

Some authors argue that the 'goodness of fit'-principle is not sufficient to identify if and to what extent MSs will comply with EU policies or EU legislation while only looking at the degree of similarity between the current and new situation. Knill and Lehmkuhl argue that the 'goodness of fit'-principle should be

amplified with institutional compatibility (Knill & Lehmkuhl, 2002). Compliance is not just a question of *being willing* to adapt, but also a question of *being able* to adapt EU policies and legislation.

3.6.4 Deficits of Europeanization

Studies on Europeanization show some limits. One of the deficits is that all studies focus either on reporting a comprehensive framework of Europeanization or they focus on just one dimension of Europeanization (Radaelli C. M., 2004). Thereby the studies of Europeanization ignore the interaction between all dimensions that will lead to the actual Europeanization of domestic institutions, policies and politics. Especially these linkages show how important the European Union is for subnational governments and what the results will be of no participation in the adaption and shaping phases.

Although Europeanization has to meet its limits and may not be a theory as such, the approach suites in this research very well. The best reason is its provision of a valuable focus on the impact of the fourth level, the European level, on domestic governance. It seeks to explain the changing reality in subnational governance today.

3.7 Theories about EI in summary

The theories above create insights to three questions. First, it answers the question *why* Europaproof is in question. Both NF and LIG shine light on the background of European integration, both from a different point of view. Thereby these classic theories lay down why Europe is necessary for subnational governments in the first place, and why research about Europaproof is relevant at all.

Second, the study from above has shown how regions and the EU are related to each other. Especially MLG described how subnational governments participate in the arena of the European Union and what their role is to the EU policy-making process.

The next part showed that the Europeanization approach is able to elaborate on the role of subnational levels in the European Union. Europeanization also emphasizes on the impact the EU has on the policy shaping capacities of subnational governments.

Together these studies show that subnational governments cannot ignore the EU any longer. Besides, it would be wise for subnational governments to acknowledge the importance of the EU and its policies for subnational governments. Subnational governments just must integrate the EU in their organization and make the EU a structural element of subnational governance.

To some extent these insight can teach us how to look at Europaproof in the subnational organization. The theories and approaches on EI show the background for Europaproof:

- (a) why must subnational governments integrate EU matters in the subnational organization?;
- (b) why does governments have to keep adapting?; and
- (c) how are the EU and subnational governments closely interweaved.

These insights affirm the idea that looking closer to Europaproof is necessary. It is important to know exactly what particular parts of EU governance is or should be a part of local and regional governments.

Chapter 4 How to develop Europaproof as a concept

The introduction of this research explained the need for an investigation in Europaproof based on a number of policy document and manuals. The former chapter looked at previous studies in the field of European integration studies. The knowledge from both show the existing framework to conceptualize Europaproof. The policy documents and manuals covered in the introduction and the literature review from chapter three together are the base for the analysis, which will be performed in this chapter.

First, the scope of Europaproof will be outlined. Here, the same policy documents and manuals from the first chapter shall show that there are three dimensions to distinguish. The dimension are labelled: EU law, EU funds and involvement by subnational governments. The second part of the chapter will look at all the three dimensions in depth. Logically, the focus is on subnational governments.

4.1 Scope of Europaproof

The introduction of this research introduced already some policy documents and manuals that together was the motive for this research. These documents serve another purpose as well. They also show some kind of differentiation of elements that are relevant to conceptualize Europaproof. Therefore, this paragraph will look at the same policy documents and manuals again. This time in order to distinguish dimensions that are relevant for the conceptualisation of Europaproof.

4.1.1 Europaproof in policy documents and manuals

The starting point for this research is the 2005 agreement between VNG, IPO and BZK on relations between government levels in the Netherlands: “*Code Interbestuurlijke verhoudingen*”. The report says about the relation between the EU and the Netherlands that the central government shall involve subnational governments at a preliminary phase to shape the national policy-preferences for EU policies (BZK, VNG and IPO, 2005). Application of EU policy is often delegated to subnational governments. Therefore, subnational input is important in regard to administrative and financial consequences for both national and subnational governments. This 2005 policy document is based on an earlier policy document which is about the correct application of EU law by subnational governments and the role for the Dutch national authority to control (BZK, 2004). The report focuses on EU law and the actions subnational governments could take in order to comply with EU law and what they could do to participate at the EU policy-making process.

These two documents show a relation between the EU, the national government and subnational governments. They argue that policy-shaping activities and policy-adaption are related. Policy-adaption and policy-shaping are two elements that fit in the framework of Europaproof. The 2004 and 2005 documents identified two possible elements:

- ✓ Policy-shaping
- ✓ Policy-adaption

In 2007 the minister of BZK send a letter to the parliament which pursued the matter of powerful governance²⁸ in the Netherlands. Their conclusions were that due to a growing number of EU regulations subnational governments could not ignore the EU any longer, especially in regard to application and compliance with EU law (BZK, 2007). Also this policy document states that early involvement is appreciated, since that may reduce implementation costs for subnational governments at

²⁸ The original report is in Dutch, called “*Beleidsvisie Binnenlandse Bestuurskracht Europa*” (BZK, 2007). Powerfull government is translated from the Dutch label “*krachtig bestuur*”.

a later stage. The 2007 report by BZK refers to Europaproof as *compliance to EU law*²⁹. From there all other European elements could be traced to EU law. For example, subnational representation at the EU level aims at reducing implementation costs for EU law; EU regulations stimulate transnational cooperation; and also EU funds are based on EU law.

In 2008 a national policy action plan was developed which laid down actions that had to be taken in order to improve the European dimension of subnational governments³⁰. This plan for action referred for example to national forums for subnational governments in regard to EU issues. It also advised for the final establishment of the national information centre for EU law³¹ and for better facilities to represent subnational interests at the EU level (BZK, 2008).

The 2007 and 2008 policy documents show that subnational governments are necessary actors to make EU policy work. The documents outline the necessity to involve subnational governments both to national preference-shaping on EU policies and to represent subnational interests at the EU level. The 2007 and 2008 identified the possible elements:

- ✓ Application of EU law
- ✓ Compliance to EU law
- ✓ EU law in general
- ✓ Representation of subnational interests at the EU level
- ✓ Involvement of subnational governments to shape national preferences

Based on the 2005 agreement, the central government created separate agreements with VNG and IPO. Both the agreements with VNG and with IPO also focus shortly on the relation between the subnational governments and the EU. These policy documents argue that the Netherlands aim at involving municipalities and provinces in an early phase in order to make better decisions at the EU level. Both documents also argue that municipalities and provinces are responsible for being 'Europa-proof'. However, the central government remains responsible for prior conditions to become 'Europa-proof' (BZK and VNG, 2007, p. 4) (BZK and IPO, 2008, p. 8).

The agreements specifically address the consequences of non-compliance or wrong application of EU rules to subnational governments. Also subnational representation and involvement in the policy preference shaping phase are used to improve the conditions for EU rules application at the subnational level at a later stage. From the two government agreements from 2007 and 2008, four elements could be identified:

- ✓ Representation of subnational interests at the EU level
- ✓ Involvement of subnational governments to shape national preferences
- ✓ Application of EU law
- ✓ Compliance to EU law

Finally there are at least three manuals that aim at informing subnational governments about the EU consequences for the subnational governments. The first relevant manual on the relation between subnational governments and the EU is composed by the umbrella association of the water boards

²⁹ In Dutch: "*Binnen de Nederlandse bestuurlijke verhoudingen zijn gemeenten en provincies zelf verantwoordelijk voor de verplichting tot naleving van Europees recht (Europaproof)*" (BZK, 2007, p. 2).

³⁰ "Actieplan Europa en Decentrale Overheden" by the ministry of Domestic and Kingdom affairs (2008)

³¹ Kenniscentrum Europa decentraal is established by IPO, VNG, UvW and BZK in order to assist subnational governments with questions in regard to EU law.

(UvW). In 2007 it published a manual on Europaproof³². According to the UvW, Europaproof consist of two dimensions: opportunities and constraints. They argue that opportunities consist of (a) policy shaping and (b) EU funds and the constraints consist of (i) public tendering, (ii) water- and environmental directives, (iii) state aid and (iv) the services directive (Unie van Waterschappen, 2007).

The second manual is published by the umbrella association of the municipalities (VNG) in cooperation with BZK in 2005. According to this manual, Europaproof consist of three components. Firstly governments have to know how they have to apply relevant EU law and how to comply to EU law that is relevant to local governance. Secondly, governments should be able to attract money from EU programs and funds. Third, subnational governments should participate in European networks, programs and more in order to exchange knowledge and to improve their lobby-position³³ (VNG and BZK, 2005). These three components also returns in the manual by VNG, BZK and Kenniscentrum Europa decentraal which is published in 2008 (Kenniscentrum Europa decentraal, 2008). This third manual is focused on EU law and includes five elements: four freedoms, EU procurement rules, EU state aid rules, EU environmental rules and EU subsidies.

The manuals show some similarities on what elements are relevant to subnational governments. They agree that EU law, EU funds and participation at the EU level in order to change or shape EU policy should be included in the definition of Europaproof. From the 2005, 2007 and 2008 manuals the following dimensions could be identified:

- ✓ Policy-shaping
- ✓ EU funds and programs/ EU subsidies
- ✓ Public tendering
- ✓ EU rules on water and environmental issues
- ✓ EU rules on state aid
- ✓ EU services directive/ Four freedoms
- ✓ EU law in general
- ✓ Participation at EU networks and so in order to improve a lobby-position at the EU level
- ✓ Application of EU law
- ✓ Compliance to EU law

4.1.2 Introduction to the dimensions

From all policy documents and manuals outlined above, many elements are visible that could lead to dimensions (see table 2). To keep a concept workable, these elements should be clustered to less dimensions. From all elements enumerated, three elements of Europaproof will be distinguished.

³² The UvW speaks in their manual about Europe-consciousness ("Europa-bewust" in Dutch) instead of Europaproof. They argue that Europaproof refers to a negative relation with the EU (proof refers to being resistant to...). In addition, the UvW argues that Europaproof refers to a too heavy concept of dealing with the EU (Unie van Waterschappen, 2007).

³³ The original quote is as follows in Dutch: "*Het Europa-'proof' maken van de gemeenten heeft betrekking op het adequaat kunnen vergaren van kennis en informatie over lokaal relevante EU-regels, op de capaciteit om subsidies uit bestaande Europese programma's en fondsen binnen te halen, en participatie in Europese netwerken, programma's en andere activiteiten*" (VNG and BZK, 2005, p. 16).

Table 2: Elements and dimensions of Europaproof

| | Elements from 4.1.1 Europaproof in policy documents and manuals | Dimension |
|---|--|------------------|
| 2004/2005 documents ³⁴ | Policy-shaping | Involvement |
| | Policy-adaption | EU law |
| 2007/ 2008 documents ³⁵ | Application of EU law | EU law |
| | Compliance to EU law | EU law |
| | EU law in general | EU law |
| | Representation of subnational interests at the EU level | Involvement |
| | Involvement of subnational governments to shape national preferences | Involvement |
| Government agreements 2007/2008 ³⁶ | Representation of subnational interests at the EU level | Involvement |
| | Involvement of subnational governments to shape national preferences | Involvement |
| | Application of EU law | EU law |
| | Compliance to EU law | EU law |
| Manuals on Europaproof ³⁷ | Policy-shaping | Involvement |
| | EU funds and programs/ EU subsidies | EU funds |
| | Public tendering | EU law |
| | EU rules on water and environment | EU law |
| | EU rules on state aid | EU law |
| | EU services directive/ Four freedoms | EU law |
| | EU law in general | EU law |
| | Participation at EU networks and so in order to improve a lobby-position at the EU level | Involvement |
| | Apply EU law | EU law |
| | Comply to EU law | EU law |

First, EU law is an impact to subnational governments. European legislation often has to be executed and maintained at the subnational level. In a few cases, subnational governments even have to adapt EU policies and translate them to subnational legislation. The Netherlands is a decentralized unitary state. That means that the Netherlands are a unitary state that has delegated competences to the subnational governments. Therefore, most directives are transposed by the central government. However, the central government in the Netherlands may decide that the transposition must be done at the regional

³⁴ 2004 document = (BZK, 2004)

2005 document = (BZK, VNG and IPO, 2005)

³⁵ 2007 document = (BZK, 2007)

2008 document = (BZK, 2008)

³⁶ 2007 government agreement = (BZK and VNG, 2007)

2008 government agreement = (BZK and IPO, 2008)

³⁷ These manuals are: (Unie van Waterschappen, 2007), (VNG and BZK, 2005) and (Kenniscentrum Europa decentraal, 2008)

or local level. For example, the European Services Directive, which will be explained in the next paragraph, asks for large participation of subnational governments. Additionally, when transposition is not taken care of (either incorrect application or no application at all) by the central government, subnational governments still must apply the related EU rules. Finally, subnational governments must live up to European rules. The second paragraph of this chapter will go into detail and outline the affects of EU law for Dutch subnational governments.

Second, the policy documents and manuals show that all EU funds and programs together are an impact to subnational governments. EU funds are instruments to make MSs adopt EU objectives. Over time, this instrument has grown to EU's greatest expenditure. More funds are established and for different objectives. Also in the Netherlands EU funds are used to improve regional projects. Even though EU funds are a great opportunity to expand the scope of projects, there are some limits to the opportunity. The third paragraph of this chapter will describe EU funds and will explain both the pros and contras of this opportunity provided by the EU.

Third, the involvement of subnational governments at the European arena has lead to an increased empowerment of subnational governments. All policy documents and manuals refer to some extent to this dimension, even though from different points of view. The third dimension is hard to operationalize since the scope from the documents and manuals is extremely broad, from only passive memberships of networks to active policy-shaping activities. Subnational governments are impeded to create coalitions across national borders, to participate in interregional associations and the formal regional advisory body of the EU the Committee of the Regions. There are many forums to join that are heard and appreciated by the European Commission. Representation is a complex mix of building coalitions, seeking partners and uploading preferences. Representation also refers to policy-adaption, since incentives to upload preferences are related to policy-implementation and policy compliance (Keulen, 2006). Even though representing subnational interests is quite an opportunity for subnational governments, it is not really an impact due to European integration. The impact related to the grown representation is *the possible involvement* of subnational governments in the European arena. Due integration-minded EU institutions, subnational governments are asked to represent subnational views. Therefore, the paragraph about representation is not just about representation. The third impact is *involvement of subnational governments by the European Union to the European policy-making process*. The part on involvement is separated in two parts: political involvement and transnational involvement by networking.

4.2 Dimension 1: EU law

Three sources of EU law

EU law varies from non binding to binding legislation and from direct to indirect applicable law. European Community law exists of three sources: primary law, secondary law and general principles of Community law (Mastenbroek, 2007). For subnational governments all three sources are relevant.

Primary law consist of all the founding treaties and is the highest source of Community law (Mastenbroek, 2007). EU treaties are the base for all other sources of Community law.

Secondary law are all legal instruments adopted by EU institutions. The formal base for these legislation-making competences is laid down in art. 288 TFEU (Mastenbroek, 2007). These instruments of secondary law differ quite from each other. Secondary law may have different effects on the national legal orders. Secondary law is addressed to different types of actors and it may differ in regard to binding forces. (Mastenbroek, 2007). Art. 188 TFEU provides five instruments under secondary law.

These instruments are regulations, directives, decisions, recommendations and opinions. Regulations are legal instruments that are directly applicable in all MSs. Directives are legal instruments that are also addressed to all MSs, but only the intended result is binding. MSs may decide themselves how to reach the objectives. Decisions are addressed to specific MSs or private actors and are binding in its entirety. Opinions and Recommendations are instruments that can be used to express EU institutions' view on execution or implementation, but have no binding effects (Mastenbroek, 2007). Secondary law is based on provisions in treaties, therefore secondary law may never repeal, amend or alter the scope of treaty provisions. In regard to secondary law, this research will focus on directives and regulations, because they have most effect on subnational governments in the Netherlands.

The third source of Community law, General principles of EU law, are mostly unwritten principles that secure basic interests of EU citizens like the four freedoms (goods, services, persons and capital) and principles of a public legal nature (Mastenbroek, 2007). Especially for the implementation and transposition of EU directives and regulations, the latter principles are very important. Those principles posit the obligation to acknowledge the EU as highest order³⁸.

Supremacy

In general, all legal authorities in the EU have to comply to EU law. Local, regional and national law may never be in contrast with EU law, since EU law is supreme³⁹. So at the base, subnational governments always must take notice of EU law when creating local or regional law. This general principle applies for *all subjects* regulated by EU law and regulated through *all types* of EU law. For subnational governments, EU law is relevant to the subnational governments and *hit* them through four ways: EU treaties, EU regulations, EU directives and ECJ judgements (Kenniscentrum Europa decentraal, 2008).

Subnational governments have to deal with all subjects regulated by and types of EU law. Three elements of them are of major importance to subnational governments, since they come around on a regular base. These three are (a) EU state aid rules, (b) EU tender rules and (c) EU environmental regulations⁴⁰. These shall be explored more in depth below, together with the Services Directive, a currently hot issue in the Netherlands which is relevant for subnational governments.

4.2.1 EU rules on state aid

Rules on state aid are instruments of EU's competition policy. State aid is allowed in order to correct market failure and to provide goods and services for public interest. In all other cases state aid is forbidden by the EU. State aid is allowed when costs are too high from an idealistic point of view⁴¹ or when aid is used to create goods that shall not be created in a perfect market economy⁴². The

³⁸ General provisions have to be obeyed by subnational governments, but are not relevant for this study and therefore general provisions are not included in this research. However, in some cases general provisions lead to directives or regulations and then they are relevant of course.

³⁹ The ECJ judgement in the case Costa/ENEL (case 6/64) laid down that no national legal provisions may be added to EC law and if national law is inconsistent with EU law, national courts have to give precedence to EU law.

⁴⁰ These choice for these three aspects is adopted from the Europaproof manuals by Europa decentraal and by the UvW and by earlier studies by B. Hessel. Europa decentraal focus on in respect to EU law to the four freedoms, tendering, state aid and environment. UvW focus on tendering, water and environmental directives, state aid and the services directive. In three works, Hessel uses state aid, tendering and the four freedoms to outline the importance of EU law for subnational governments in the Netherlands (Hessel, 2000) (Hessel, 2005) (Hessel, 2006).

⁴¹ For example cultural events.

⁴² For example infrastructure.

Commission mentioned that state aid is allowed when it correct market failures: *“State aid measures can sometimes be effective tools for achieving objectives of common interest. They can correct market failures, thereby improving the functioning of markets and enhancing European competitiveness”* (European Commission, 2005, p. 4). There are restrictions to state aid in order to prevent governments to interfere in the market when there is no need to or when it will damage the market. The other reason to add restrictions is to improve transparency and prevent governments from benefiting local undertakings.

Legal provisions

State aid is very important to subnational governments in the Netherlands, because also subnational governments have to comply with treaty provisions about state aid. The article on state aid (article 107 TFEU) consists of three parts, which together explain the scope of state aid and the exceptions for state aids. State aid is not forbidden in the nature of things. But even when the proposed state aid falls under the scope of article 107 TFEU and state aid is forbidden, the Commission may at all times declare the proposed aid measure compatible⁴³.

For all proposed state aid measures, the European Commission must be consulted. Also when treaty provisions define the aid compatible. State aid may only be addressed when the European Commission has decided that the state aid is not in contrast with the treaty provisions (Hessel, 2000). State aid is not allowed when public authorities (that includes subnational governments) benefit specific undertakings or associations when this would not be the case in a market setting. Also when competition is ought to be disturbed or when state aid disadvantages foreign (EU) undertakings, state aid is not allowed.

The treaty provision on state aid also lays down some limits on state aid. State aid is allowed when it complies to ‘de-minimis’ rule. This exception allows state aid below a certain amount of money. Governments should be aware that the European Commission must be consulted though. Other exceptions are in regard to some environmental, education, research, development and small and medium enterprises (SME) objectives. This research is limited in time and scope. Besides many is already written about detailed information of state aid rules and its exceptions. Therefore the exact application of state aid rules shall not be included here⁴⁴.

Penalties

The great effect of state aid rules for subnational governments are the penalties related to misuse or misinterpretation of state aid. The strict rules must prevent governments from disturbing the market. Governments that benefit specific undertakings or governments that fail to report the European Commission can be punished by the Commission. The Commission will make governments claim back the aid from the undertaking. In addition the Commission may impose a fine on the government itself. These penalties can be of great impact. First because the fines are relatively high, and second, because the government’s image of a reliable partner will be harmed.

⁴³ For example, the state aid measures to the Fortis, ABN ANMRO and ING banks earlier this year were allowed by the European Commission because they were presumed to be of great public interest.

⁴⁴ For more specific information on state aid rules see (Kenniscentrum Europa decentraal, 2008), (European Commission, 2005) and the website of Europa decentraal on state aid: <http://europadecentraal.nl/menu/113/Voorpagina.html>.

NErpe

The EU will punish the national government for penalties made by subnational governments. Up to now, national legislation in the Netherlands was very weak in order to pass on the costs to the corresponding subnational government. Since a few weeks a new act is ready⁴⁵. This act, NErpe⁴⁶, is a complementary instrument to the existing instruments and gives the national government more powers to make subnational governments pay for the damage. That makes it even more relevant for subnational governments to correctly apply EU rules, like EU state aid rules.

State aid in regard to funds

One great pitfall for subnational governments in regard to restrictions of state aid are EU's structural programs and funds (Hessel, 2000). When the European Commission assigns money from an EU fund to a specific project, the money still are public means. Therefore, subnational governments still have to comply with EU state aid rules and thereby have to consult the Commission. Not addressing aid measures could result in reclaims by the European Commission, even though the fund was allocated by the EU in the first place.

State aid in regard to the Lisbon Strategy

In the roadmap 2005-2009 on state aid, the Commission argues that state aid should be used in order to achieve objectives from the Lisbon Strategy⁴⁷. Especially subnational governments should focus more on the aim of the aid. Besides, the Commission argued that governments should use more often instruments that are less harmful to the market (European Commission, 2005). For example by calling for public tenders.

Jurisprudence on state aid

Also ECJ rulings show that (subnational) governments should empower transparent governance. The ECJ determines more often how state aid rules should be interpreted. Therefore, subnational governments have to keep up with jurisprudence as well. For example in the Altmark-case (case 280/00) the ECJ ruled that executors of services of general economic interest (SGEI), like subnational governments, must be seen as undertakings. Therefore they must comply to EU competition rules, just like national governments must. That means that subnational governments have to apply state aid rules and call for tenders in cases of SGEI as well (Ranner, 2006-1).

4.2.2 EU procurement rules

Legal provisions

Transparency is also the main aim of rules in regard to public tendering. Procurement aims at making governments more efficient and more transparent. Governments are obliged to provide an open and transparent market for all projects financed with public money. The restrictions to use public money are regulated in two European directives⁴⁸. The directives aim to provide an open and transparent market

⁴⁵ NErpe was officially adopted on November 11th 2009, source: <http://www.dienstenrichtlijn.ez.nl/actueel/458-dienstenwet-aangenomen-door-eerste-kamer>.

⁴⁶ NErpe is short for the Dutch 'Naleving Europese regelgeving publieke entiteiten' and aims at regulating compliance to European law by public entities.

⁴⁷ The Lisbon Strategy is an action plan which aims at becoming the world's competitive and innovative market by 2010. At the moment, the MSs are negotiating for new goals after 2010.

⁴⁸ Directive 2004/18/EC regulate procurement for works, supplies and services; Directive 2004/17/EC regulate the procurement for public entities (water, energy, transport and postal service sectors)

for supplies, services and works across MSs. The Netherlands have implemented these directives in two resolutions⁴⁹.

Advantages

Rules on tendering also apply to subnational governments. Rules on tendering have two positive effects. First, tendering make subnational governments more efficient purchasers. They now must think about the services, supplies or works they need and the price they are willing to pay. Additionally, the procurement will make governments more effective and less corruptible. Second, tendering opens the internal market and makes it more transparent. Additionally, the market will become more European oriented instead of national, regional or local, since large projects must be tendered EU wide.

Disadvantages

Even though transparency and efficiency sound as promising effects, in reality the rules not always lead to the desired outcome. Rules on tendering are experienced to be complex and hard to apply. Hoetjes et. al argue that one of the reasons is caused by the implementation of the directives by the Dutch national authority. The directives are implemented via a so called legislative framework. The act refers to the directive, without any national norms and interpretations. The Dutch act is not aggravated to the Dutch situation which is confusing to the civil servants. They do not know how to apply the rules in specific situations (Hoetjes, Hoogeveen, & Rood, 2003).

Even though rules on tendering are confusing, they still have to be applied though. The result is that subnational governments have to change their administrative organization in order to maintain and apply the directives and national laws. The organization has to implement a new norm to purchase goods and services. Eventually it will make the organization more efficient and transparent. On the short time though it shall requires lots of energy, flexibility and adaptability even though the rules on tendering were already introduced some decades ago⁵⁰.

In general tendering makes governments think about the requirements for services or goods. The process to purchase goods or services might be longer, but the costs of the purchased service or good will be probably less. Already lots is published on how subnational governments are expected to apply rules on EU tendering⁵¹. Time and scope of this research does not allow to go into further detail of procurement rules for subnational governments.

4.2.3 EU Environmental rules

The third relevant element of EU law for subnational governments in the Netherlands are European environmental (and water) regulations. Subnational governments are for a great extent responsible for the enforcement of environmental policies in the Netherlands (Hessel, 2000). In the Netherlands, subnational governments are authorized to regulate environmental and water issues. In the Netherlands, many EU rules on environment have to be executed by subnational governments. They have to apply European regulations and directives, like EU rules for air, water, external safety and also, but to a smaller extent EU rules on noises.

⁴⁹ The directive 2004/18/EC is transposed to 'Besluit Aanbestedingsregels voor overheidsopdrachten' (bao); and the directive 2004/17/EC is transposed to 'Besluit Aanbestedingen Speciale Sectoren' (bass).

⁵⁰ The first EU rules on tendering existed already in 1971.

⁵¹ For more detailed information on EU rules on tendering, see for example (Kenniscentrum Europa decentraal, 2008) and the website of Europa decentraal about tendering <http://europadecentraal.nl/menu/100/Voorpagina.html>

Subnational responsibilities

According to Hessel, the transposition of environmental directives in the Netherlands is often too late or insufficient (Hessel, 2000). Directives have direct application, therefore no of incorrect transposition to national law means that directives must be applied directly. For subnational governments that may impose large consequences in order to keep up with chances, implementations et cetera.

Formally, subnational governments are even responsible for wrong application in case the national government transposed a wrong interpretation. Then the European Commission may impose a fine on the application of a wrong interpreted EU directive. Then subnational governments are formally responsible.

Unpredictable course

Especially in the case of environmental directives, rules have to fit the changing environment. Therefore EU environmental rules shall change quickly and more than once. Subnational governments have to stay up to date with EU rules and jurisprudence in regard to environmental directives, because most of them have to be executed at the subnational level. In principle, subnational governments remain responsible for correct application of and compliance to EU law.

4.2.4 Hot issue: the Services Directive

A currently hot issue for subnational governments in regard to EU law is the European Services Directive, which was agreed upon in 2006 by the MSs⁵². The Services Directive aims at completing the single market by reducing inequalities in the services sector. All MSs were given three years to implement all objectives of the directive in national legislation.

Services law

The Netherlands have developed the 'Services law'. This law is similar to the EU services Directive, with two exceptions. First, the '*point for single contact*' (*Dienstenloket*)⁵³ will be applicable to both foreign (EU) service providers and Dutch service providers. Second, the Dutch Services act entails a 'Lex Silentio Positivo', which means that the license a service providers needs in order to provide its service will be assigned automatically when the deadline has passed. Since many licenses are permitted by subnational governments, they have to transform the government institutional design. Additionally the 'Lex Silentio Positivo' will be used for broader than what is regulated under the European Services Directives. Instead, all licenses shall be regulated with the Lex Silentio Positivo.

Consequences to subnational governments

The EU Services Directive shows that Dutch subnational governments have to implement EU legislation at the subnational level. Subnational governments have to look carefully at the national government in regard to the transposition of the European directive. If the national government fails to transpose all elements of the Services Directive or a fault transposition, the subnational government remain responsible.

The implementation and application of the consequences of the EU Services Directive and the Dutch

⁵² The EU Services Directive is regulated in Directive 2006/123/EC on services in the internal market. The Directive has to be implemented by all MSs by 28th December 2009.

⁵³ Through the 'point for single contact' all services providers should be able to admit the service and to request licenses.

Services law are applied by all subnational governments in the Netherlands. All water boards, municipalities and provinces just must adapt the new situation.

Non-compliance

When subnational governments fail to correctly execute the EU services directive or the Dutch services act, subnational governments remain responsible. The European Commission can start an infringement procedure. Also service providers that are disadvantaged by slow granting permission for license may go to court and start an infringement procedure. For subnational governments the consequences for non-compliance or not complete compliance can be large when their institutional design appears to be insufficient.

4.3 Dimension 2: EU funds

One of the instrument to drive EU's objectives are EU funds. In some cases, MSs cannot agree on common legislation, then they can decide on broad objectives. Especially in the case of social and innovative issues, MSs have given up little sovereignty. In these cases, a financial stimulus might drive these objectives forward (Rooij de R. , 2003). Also for subnational governments, EU funds are extra opportunities to realize existing projects faster or to a greater extent.

Development of EU funds and programs

EU funds have been available since the early sixties, starting with the European Social Fund (ESF) aiming at social cohesion and the predecessor of the current European Regional and Development Fund (ERDF) which aimed at regional development (then with a focus on agriculture). Nowadays, the EU distributes money via several funds and programs. These funds and programs aim at a variety of objectives and they require varies conditions.

Scope of EU funding in regard to subnational governments in the Netherlands

There are three structural funds, two funds in relation to agriculture and rural development and several additional programs. The cohesion fund, one of the structural funds, is not relevant for the Netherlands since it aims at cohesion in the European Union and is only distributed to projects in MSs which perform under EU's average. Since the Netherlands perform above average, the cohesion fund is not included in this research.

4.3.1 Structural Funds

Aims for funding

Structural funds are based upon three principles. First, the funds promote equality objectives. Structural funds are focused on regions which are economically behind and regions facing a high unemployment rate. Second, structural funds are complementary to national, regional or local funding. They need a so called co-financer⁵⁴. Third, the European Commission plays a key role. MSs have to introduce a program plan to the European Commission. Then the Commission has to approve the proposed project.

The Commission is entitled to claim back the rewarded money when it turns out that the money is not spend on the promised project (Rooij de R. , 2003). Like EU law infringements, the national governments will claim back the money from the targeted subnational government when the European Commission claims back money from the Netherlands⁵⁵. These principles are complex and it is often hard to comply to all objects in order to achieve money from EU funds.

⁵⁴ A co-financer does not have to be a public entity, it also may be a private investor.

⁵⁵ The new law (NERpe) will make the claiming even less difficult. See also Chapter 4.2.

European Social Fund

ESF is one of the structural funds and aims at reducing differences between living standards across regions by promoting economic and social cohesion⁵⁶. ESF is based on EU's *Cohesion Policy* which aims at a more coherent Europe. The ESF is one of the key instruments to reach objectives from the Lisbon Strategy for Growth and Jobs.

For the period 2007-2013 a budget of €75 billion is reserved for projects that reduce social and economic differences. €740 million of this is intended for projects in the Netherlands. The national government is responsible for all project executed in the Netherlands. Also for the projects executed by regional or local administrations (Roos de R. , 2003). In the Netherlands, the agency for social and employment affairs⁵⁷ is responsible for maintenance and control of ESF in the Netherlands.

European Regional and Development Fund

ERDF⁵⁸ is the second structural fund and is based upon EU's *Regional Policy*. The objectives of the ERDF are in line with the Regional Policy objectives: Convergence, Regional competitiveness and employment and European territorial cooperation. From the ERDF €830 is million available for projects in the Netherlands. Like ESF, ERDF is a key instrument to achieve objectives set out by the Lisbon Strategy. Control over ERDF programs and correct application is accommodated at the ministry of Economic affairs.

4.3.2 Additional funds and programs

Additional funds

In regard to natural resources, the EU has set up three funds: the European Agriculture Guarantee Fund (EAGF), the European Agricultural Fund for Rural Development (EAFRD)⁵⁹ and the European Fishery Fund (EFF)⁶⁰. Natural resources, especially policy on agriculture, are important to the EU since 90% of its territory is rural area and approximately 50% the European population lives in these rural areas⁶¹. The base for EAGF and EAFRD is the Common Agriculture Policy (CAP). The EFF is set up to grant financial support to objectives from the Common Fisheries Policy (CFP). The Dutch control agency over EAGF, the EAFRD and EFF is the Service for Regulations^{62,63}.

Community programs

In addition to funds, the EU provides financial assistance through community programmes too. These programs are designed to cover many fields and are addressed to both governmental and non-

⁵⁶ ESF is regulated in art. 162 TFEU and further explained and regulated in Regulation 1080/2006 EC. Regulation 1083/2006 EC lays down the general provisions for ESF (and ERDF).

⁵⁷ The agency is a management authority that falls under the jurisdiction of the ministry of Social Affairs. In Dutch: Agentschap Sociale Zaken en Werkgelegenheid

⁵⁸ ERDF is regulated in art. 176 TFEU and further explained in Regulation 1080/2006 EC. Regulation 1083/2006 EC lays down the general provisions for ERDF (and ESF).

⁵⁹ Both the EAGF and the EAFRD are regulated by a Council regulation on the common agriculture policy in Regulation 1290/2005 EC

⁶⁰ EFF is regulated in Council Regulation 1198/2006 EC.

⁶¹ These numbers come from the Directorate on Agriculture and Rural development

http://ec.europa.eu/agriculture/lisbon/index_en.htm visited 11-09-2009

⁶² The Service for Regulations fall under the Ministry of Agriculture Nature and Food Quality.

⁶³ See for more information the websites of the Service for Regulations (Dienst Regelingen)
http://www.minInv.nl/portal/page?_pageid=116,1641262&_dad=portal&_schema=PORTAL

governmental organizations from both MSs and non-MSs. Examples of these programmes for the current period are LIFE+, Seventh Framework Programme, Progress, Erasmus Mundus, Youth in Action, Culture Programme⁶⁴. These programmes are measures that aim at achieving EU objectives, including objectives from the Lisbon Strategy. The budgets for the Community Programs come from the general EU budget.

4.3.3 Relevance for subnational governments

Subsidies provided through European Funds and programs could be very interesting to subnational governments. Most projects that meet the requirement for EU funding are regional and local projects. Therefore, subnational governments are the best governments to apply for EU funding. The amounts of money provided through EU funds can be enormous.

There are restrictions to draw money from EU funds though. First, the funded project must comply to EU objectives set out in the legal provisions of the fund or program. For example the project must comply to Community aims or the government must be socially or economically be in need for EU support. Second, the government must co-finance at least half of the project and often even more. Third, the subnational government must submit a proposal to the European Commission. The European Commission must approve the proposal before the subsidy is official. Fourth, even after approval by the Commission, the subsidy can be claimed back when the subnational government is not able to prove correct spending of the subsidy. This could also be the case in case of wrong application of European state aid rules.

4.4 Dimension 3: Involvement by subnational governments

All governments, including subnational governments, have to flare their focus to European policy-making. The national arena remains important, because national governments are responsible for the main part of EU policy-making. The changed focus is not a shift to the EU level, but rather an extra complementary arena for policy-making.

There are plenty ways to represent subnational interests for EU policies. There are many influential (European) actors to lobby and there is a variety of networks and co-operations that seek to represent subnational interests. Studies of MLG show a focus on the network character of EU policy-making (Keulen, 2006). There are both formal and informal ways to represent subnational governments.

Gap between subnational and European policies

The EU (especially the European Commission) has asked for greater involvement of subnational governments in the EU policy-making process. Besides, the EU stimulates governments by several community incentives to participate. For subnational governments, representing interests and contribute to the policy-shaping process is difficult. First, a wide range of actors are involved in the policy-making process. It is difficult to identify exactly where to lobby. It is important to investigate where the chances are best. Second, the EU holds over almost 95.000 territorial governments (Committee of the Regions, 2009). Therefore, subnational governments must be competitive and create coalitions if it wants to be heard at the European arena.

Often, EU's long-term thinking does not comply with the short-term problems of subnational governments. In the Netherlands, elections for subnational government are once every four years. In the EU, most issues take longer: the EP is elected for five years; budgetary programs, like programs to

⁶⁴ For an comprehensive overview see http://ec.europa.eu/grants/index_en.htm#policy (visited 15-09-2009)

allocate funds cover seven years; and objective programs like the Lisbon Strategy cover at least ten years. Subnational governments have to come in line with these long-term perspectives and have to understand EU's hot issues. They also should know how these will affect local or regional governance eventually. They need to be *in time* in order to be *on time* for lobbying and representation.

Two parts

The third dimension about involvement of subnational governments covers two parts. The first part will look at involvement and representation through (party) politics, which will look at the possible institutions to represent subnational preferences. The second part will focus on transnational networking and informal representation and coalition-building by subnational governments, which is a pure bottom-up approach from subnational governments to represent interests.

4.4.1 Where to represent interests

Policy-making in the EU is a complex business. Especially for subnational governments it is difficult to participate. Problems occur due to the inclusion of many EU institutions and its long-term perspective. Some EU institutions are more important to policy-making than others. Therefore those institutions are important for subnational governments to lobby at. There are four European institutions that could be a relevant arena to represent subnational interests.

Council of Ministers

The Council of Ministers is represent the MSs in the EU. The Council decides upon issues which are most important for MSs, like social security. Legally, MSs are allowed to represent specific subnational interests at the council. The Netherlands do not use this possibility however, because the Netherlands are a unitary state instead of a federation⁶⁵. Hooghe et al argue that the domestic interrelation between levels of governments determines the greatness of subnational influence in the Council. That could explain why the Netherlands do not make use of this possibility (Marks, Hooghe, & Blanks, 1996). Since recently, the Netherlands are trying to improve the inclusion of subnational interests while carrying out the national preference for EU policy⁶⁶.

There are two main reasons to lobby at national state executives in order to make the national government represent subnational interests at the Council of Ministers. First, the Council decides upon a large range of issues, mostly domestically very important issues. Second, the route to national politicians and civil servants are more common and often shorter and thereby easier than the route to Brussels. The main disadvantage of lobbying at the Council via the state-executives is that the Council consist of twenty-seven members, therefore a desired outcome often only can be reached through coalitions-building across MSs.

European Commission

The Commission is the second EU institution relevant to lobby. The Commission is responsible for the execution of objectives set out by the MSs. The Commission is entitled to publish directions, communications and recommendations and thereby the Commission is able to contribute to the interpretation of EU policies. The Commission is also entitled with agenda-setting powers and to publish

⁶⁵ Germany and Austria for example, do make use of this feature.

⁶⁶ The government agreements with both the provinces and the municipalities both aim at including subnational governments in an early stage (BZK and IPO, 2008) (BZK and VNG, 2007). The agreement shows only its intention and does not prove any real changes to inclusion of subnational preferences.

so called white papers and green papers⁶⁷. Especially green papers are great opportunities to upload subnational preferences. The Commission is desperate for input for new or better European policies.

Subnational governments are very important stakeholders, since they maintain almost 70% of all community law (Committee of the Regions, 2009). The Commission is very much open for subnational involvement, like ideas for better policies or better execution of existing policies. Additionally, the Commission promotes subnational involvement by subsidizing networks and allocating money to local or regional projects that aim at cooperation and harmonization across borders.

European Parliament

The third EU institutions which is relevant in a study on representation by subnational governments is the European Parliament (EP). Since the Single European Act (SEA) in 1986, MSs have gradually empowered European Parliament's legislative and thus its policy-making powers (Auel & Rittberger, 2006). However, the EP is still fighting to strength their place in the EU decision-making process.

The advantage of lobbying at the EP is that the Dutch representatives are members of Dutch political parties as well. That shortens the ties and makes direct contact easier. Second, like the Commission the EP has agenda setting-powers. That improves the reason for subnational governments to show their opinions and preferences about current, new or desired policies. Third, the EP seeks for legitimacy and might find it by representing also subnational preferences, since subnational governments are the main executers of EU policies.

Committee of the Regions

The fourth institution to lobby is the Committee of the Regions (CoR). The 1992's Treaty of Maastricht established a formal institution for local and regional interests. Its powers are limited, but increases again with the ratification of the Lisbon Treaty⁶⁸. With the ratification the CoR receives powers to go to the European Court of Justices when it believes that the principle of subsidiarity is breached. Up till recently, the CoR was just an advisory body that had to be consulted on issues regarding regional policy or other policies that affect regions or municipalities. However, its real powers were contested. Additionally, the CoR is allowed to draw initiatives on any issue where it finds that regional interests are at issue.

The CoR also has some limits and it still is proving other institutions its relevance to the EU decision-making (Farrow & McCarthy, 1997). Many argue that the CoR lacks uniformity in members (regional and local representatives), in politics (left versus right-wing politics), in type of regions (urban and industrial regions versus rural regions) and more (Farrow & McCarthy, 1997). And even though the Committee of the Regions have formal powers, which are regulated in Treaty provisions, the real influence is questionable. Farrows and McCarthy for example question: *"the Committee of the Regions has a lot to say, but is anyone listening and are its suggestions acted upon?"* (Farrow & McCarthy, 1997, p. 38).

Taking all limits into account⁶⁹, the CoR still is a place to represent subnational interests. Firstly, because EU institutions have to consult the CoR; and second, because if they reach consensus the Commission is

⁶⁷ White papers are policy proposals by the European Commission. They can be followed up by a green paper, which refers to a discussion with all types of organizations, like subnational governments.

⁶⁸ The Treaty is ratified by all MSs in 2009.

⁶⁹ Limited time do not allow this research to go into much detail about neither the democratic deficit nor the actual or informal influence of the CoR in the decision-making process. For more detailed information about

very interested. In the case of the Netherlands, the CoR can be important to provinces and larger cities, even though in theory representatives from all cities may apply⁷⁰.

4.4.2 Informal networks and transnational cooperation

The second part about subnational involvement is about where subnational governments can represent interests. Mostly, subnational governments that aim at European policy-making should look for coalitions. Therefore subnational governments participate at EU forums, networks and other arenas to build coalitions. The first way to participate in the EU policy-making process is via the CoR. Besides the CoR, the Commission is very much in favour of all types of networks for subnational governments. The question remains what their relative contributions are. Due to limits of time, these questions are not included in this research⁷¹.

Council of European Municipalities and Regions

The Council of European Municipalities and Regions (CEMR) is EU's largest council that seeks to represent subnational interests. Even though the CEMR is broader than just EU subnational governments, the EU subsidizes 15% of the CEMR budget, since its goal is in line with Community objectives. The CEMR aims at securing, strengthening and protecting the autonomy of local and regional authorities and that is in line with the community objectives. The CEMR often cooperates with the CoR in order to be more powerful and carrying a broader support. For the Netherlands, the VNG and the IPO (the umbrella associations for the municipalities and the provinces) have a seat in the council. The board is represented by seven mayors or other principles from subnational governments across Europe. That means that for direct shaping capacity for specific subnational governments, this council has limited added value. One of the products the CEMR network offers and which is promoted by the EU, is Town Twinning. Town Twinning is which a concept to close partnerships between municipalities⁷², and promotes sharing experiences and knowledge.

Eurocities, HNP and G4

Besides the CoR and CEMR, there is a long list of networks across the EU⁷³. Also for water boards there are a few pan-European networks to join⁷⁴. Due to time limits only three networks will be shortly explored for their usefulness for Dutch subnational governments.

deficits in regard to the CoR, one could have a look at (Millan, 1997) (Farrow & McCarthy, 1997) (Loughlin, 1996) (Christiansen, 1997).

⁷⁰ For a full list of Dutch members see:

<http://cormembers.cor.europa.eu/?critName=&critCountry=NL&critFunction=MEM|ALT&critGroup=&critDossier=&iaction=Search> (visited 12-09-2009)

⁷¹ Many networks are included and explained in (VNG, year of publication unknown)

⁷² Town Twinning is a partnership between two municipalities in order to become more familiar with other parts of Europe and to exchange knowledge about politics and all kinds of policy issues.

⁷³ For example: United Cities and Local Governments (UCLG), Assembly of European Regions (AER), Peripheral Maritime Regions of Europe (CPMR), Association of European Border Regions (AEBR), Conference of European regions with legislative power (REGLEG), Conference of European regional legislative assemblies (CALRE) and many more.

⁷⁴ In the European arena, the umbrella association of the Dutch water boards (UvW) participates in EUREAU, which is a European network organization for drinking water and water waste service operators and the European Union of Water Management Associations (EUWMA) which aims at increasing cooperation in order to be more efficient in tackling water problems across Europe.

First, *Eurocities* is a network for cities with a population over 250,000. Cities can only become full member when they are member of the EU⁷⁵. The network consists over 130 cities, among them six from the Netherlands⁷⁶. Eurocities is focused on EU governance and EU policies that have a regional character. Eurocities has a clear link to Dutch cities: Rotterdam was one of the founders in 1986 and at the moment the mayor of The Hague is president. Eurocities is very important for lobby activities and for the exchange of knowledge. The major restriction is that only nine Dutch cities fulfil the requirements for full or associate membership.

The second network is the *House of the Dutch Provinces*⁷⁷ (HDP). HDP represents the Dutch provinces in Brussels. Via this lobby oriented association the provinces are grouped in order to provide a stronger lobby towards Brussels. Next, the four largest cities are grouped in G4 and is also lobby-oriented. They are quartered in Brussels too, next to the HNP.

In general, cities that are not a member of any network from above, are represented by the VNG. Water boards are most of the times represented through the UvW.

Interreg to promote transnational cooperation

As mentioned earlier, the Commission is in favour of cooperation among subnational governments across the EU. In order to promote transnational and cross-border cooperation, there is a budget to subsidize such projects. The Community initiative Interreg lead to an increased cooperation between border regions (Perkman, 2003). Interreg was started as a five year program in 1990 and currently, governments can apply for the fourth Interreg program (Interreg IV).

Interreg is financed from the ERDF budget and consists of three parts: cross-border cooperation (A), transnational cooperation (B) and interregional cooperation (C). The Netherlands mainly participate in A-projects and B-projects. A-projects are for example Euregio's. An example of a B-project is the North-Sea region. Interreg C is meant for interregional cooperation and sharing experiences and knowledge, for example funding the CEMR.

Euregio's

Euregio's are one of the Community initiatives that may receive EU subsidy. Dutch subnational governments participate in seven Euregio's with either German or Belgium neighbours. These border regions cooperate in order to fight problems that occur in border regions, to strengthen both regions' economies or to develop common activities and shape policy-preferences in order to set up a common lobby towards Brussels. The first Euregio in the EU is the semi-Dutch region Enschede-Gronau and still is referred to as *the Euregio*.

⁷⁵ Cities from outside the EU can become associate members.

⁷⁶ The Hague, Rotterdam, Amsterdam, Utrecht, Eindhoven and Parkstad Limburg are full members. Besides, Netwerkstad Twente, Leeuwarden and Brabantstad are associate members.

⁷⁷ The original Dutch name: Huis van de Nederlandse Provincies

Chapter 5 The concept of Europaproof

This chapter will deliver a concept for Europaproof based on the literature review and the analysis from the former chapters. This chapter needs a model to structure the three dimensions. The model will be the opportunity-structure. This chapter will start with a description of this model. Then the chapter will continue on the interrelation between these three dimensions and the signification of it for Europaproof. The third part of this chapter will elaborate on the interplay of the dimensions and their effect on subnational governments. The chapter will conclude with a concept for Europaproof based on the literature review and the analysis.

5.1 Opportunity structure

Opportunity structure in European Studies

Before going into detail about Europaproof, this research needs a model to structure the three dimensions. One model to look at these parts of the European game is called the opportunity structure (Rooij de R. , 2003). The structure entails a two-tiered approach to define a specific situation of a certain actor. On the one side you will find the positive elements: *opportunities*. On the opposing side you will see the unwanted elements: *constraints*.

The opportunity structure is often used to analyse governments' situations in respect to external changes. A change in the opportunity structure might explain a change in the administrative organization of the investigated subnational government. De Rooij argues that regions and localities may show different opportunity structures across the EU, but also within a MS different opportunity structures can occur (Rooij de R. , 2003).

According to both de Rooij and Harmsen & Wilson the opportunity structure of subnational governments may change due to changes at the European level (Rooij de R. , 2003) (Harmsen & Wilson, 2000) and that is exactly how Europaproof should be examined. The subnational changes due to changes with a European context⁷⁸ are placed in the opportunity structure in order to see a convenient structure that helps to understand Europaproof and how subnational authorities should deal with Europaproof. The ability of making use of the opportunities and coping with constraints could show the degree of *Europeanization* of subnational governments (Rooij de R. , 2003). The structure is used to determine the different elements of Europaproof and the way the concept can be interpreted.

The opportunity structure to model Europaproof

This research will use the opportunity structure differently than other scholars have used the structure. The opportunity structure will be employed for another purpose than explaining changes in the structure of (sub)national governments. The opportunity structure will be used to structure the dimensions of Europaproof in order to provide a neatly arranged structure. Then it will be more clear how these dimensions have to be interpreted and how they interact with each other. The opportunity structure helps to distinguish between the pros and cons of the European Union to local and regional governments and might help to distinguish between necessary and sufficient conditions. Thereby the

⁷⁸ Changes at the subnational government due to European issues, dimensions, origins et cetera do not necessarily have to come from the European level. For a great part of European policies the main goals are set at the European level, but the fine details are designed at the national level. Partly national policies with components at the EU level are still relevant to the research of Europaproof. The subnational governments are still obliged to implement or execute the (partly) European policies.

model of opportunity structure helps to understand how Europaproof should be conceptualized in frame and form.

If Europaproof consist of opportunities and constraints, then it might explain why subnational governments should pay more attention to one dimension the to the other.

Operationalisation

In the study on Europaproof, *opportunities* are interpreted as the pros of European policies and initiatives⁷⁹ for subnational governments. They have to have a positive effect on subnational governments eventually⁸⁰. *Constraints* are interpreted as the cons of European policies and initiatives for subnational governments. Also national transitions or interpretations of the European initiatives that are unfavourable for subnational governments are considered to be constraints here.

Limits of the opportunity-structure

One note must be made in regard to the usage of the opportunity structure for this purpose. The opportunity structure is not a complete model that includes all benefits or disadvantages of the EU. Some authors claim that the opportunity structure captures best the pros and cons, especially due to its realistic character. However, elements as learning, sharing knowledge and benchmarking are not included, but are still very important, effective and efficient parameters to describe or change the domestic situation (Radaelli C. M., 2004).

5.2 Three dimensions: opportunities or constraints?

The three dimensions from the fourth chapter are hold up to the opportunity structure. The purpose is to show how the three dimensions, which corresponds to a relation between the EU and subnational governments, should be interpreted.

5.2.1 EU law: opportunity or constraint?

EU law's main objective is to promote fair competition in an open market economy. For subnational governments the application, transposition or compliance to EU law is a complex duty, mainly because its high abstract level and in some cases due to contradictory national acts.

In theory, EU law is considered to be a constraint (Rooij de R. , 2003). First, because EU law is supreme to subnational law. Subnational governments just have to comply to EU law, like they have to comply to national law. It is just a fact. It is rather an emotional than a rational constraint, since EU law seeks to improve governments efficiency and transparency. Little governments will protest these aims. Second, EU law is complex and relatively new, especially rules on tendering and state aid. Governments have to be aware of the role EU law plays in the judiciary system. Also in regard where national and EU law conflict. In addition, the consequences of non compliance can be enormous, since subnational governments remain responsible. The European Commission is entitled to financial punishments.

In reality EU law is less a constraint. Therefore the view on the question whether EU law is an opportunity or constraint should be balanced more carefully. The main aim of EU law is to create more

⁷⁹ In this research, *policies* are used to refer to policies from the European level that are directly applicable at subnational level, for example regulations and treaties. *Initiatives* are used to refer to policies from the European level that are indirect applicable to subnational governments, for example directives, decisions and directions.

⁸⁰ A note hereby is that positive effects can have high transaction costs and therefore are only beneficiary after a while. In sum, these long term positive effects are still positive effects only not immediately.

transparency and equality among MSs, undertakings and citizens. For example rules on state aid make governments treat all undertakings the same and EU rules on procurement is at the end even beneficiary since it leads to better deals. The aims of EU law should empower subnational governments' aims.

In principle, EU law is a constraint because the origins are obligated by nature and not intended by subnational governments. However, most EU rules have the best intentions towards governments. For example complex EU rules on tendering contributes to government's efficiency by aiming at transparency.

5.2.2 EU funds: opportunity or constraint?

In EU studies in general, EU funds are considered to be opportunities (Rooij de R. , 2003). Extra money is available in order to develop more or larger scale projects. However, there are some limits to the opportunity of EU funds though.

First, not all subnational governments fulfil the requirements and therefore not all governments are entitled to draw money from the structural funds (Rooij de R. , 2003). For example, economic strong provinces and municipalities shall have more difficulties to fulfil criteria for funds that aim at improving the social-economic position of regions.

A second limit of EU funds is the aspect of co-financing. Money from EU funds is only available when the government pays at least the half of it. In reality, the EU often contributes even less than fifty per cent to projects. EU funds therefore can only be attracted to expand presumed projects or to fasten them. Governments must have enough financial resources to attract EU funds in the first place, or they need to find private investors to contribute.

Third, the procedure to draw money from funds takes lots of time and efforts by subnational governments, because the procedure is quite complex (Rooij de R. , 2003). Subnational governments have to develop a complete and soundly based proposal; they have to evaluate the spent money; and they have to inform the European Commission and the national control agency more than once about the progress. Additionally, political leaders and civil servants better travel a few times to Brussels in order to convince the Commission of their plans. In order to have a chance at the money in the first place, a lobby at Brussels is sensible.

Finally, while applying to EU funds subnational governments are obliged comply to EU law as well (Kenniscentrum Europa decentraal, 2008). Rules on state aid also apply to projects where the European Commission approved EU subsidy⁸¹.

Though all limits may prevent governments from proposing plans or even getting appropriations, EU funds still should be seen as an opportunity. History has shown that lots of appropriations have been allocated to projects in the Netherlands (Rooij de R. , 2003). Therefore, EU funds and other financial programmes are still a very important opportunity to improve welfare locally or regionally.

⁸¹ For more on the relation between state aid and funds, see also 4.2.1 on state aid.

5.2.3 Involvement by subnational governments: opportunity or constraint?

The third dimension of Europaproof consist of two elements: where to lobby and how to get through to Brussels. Here, these elements are taken together in order to show the relative opportunity or constraint of involving in EU policy-making.

No government is obliged to participate in any type of network neither are governments obliged to influence EU policies. Therefore, policy-shaping cannot be a constraint and therefore it has to be an opportunity (Rooij de R. , 2003). Uploading subnational policies or policy-preferences should lead to lower implementation costs.

When it is not possible to upload national policies or preferences to the European arena, participation can still contributes to subnational policy-making. Besides policy-shaping, participation at the EU level also improves the awareness of what will come around in a few years⁸². However, the real impact should not be exaggerated. In reality the benefits are only marginal (Rooij de R. , 2003).

Most subnational governments will not be represented as a member of the CoR. Most Dutch municipalities or are too small to join the CEMR or Eurocities and for water boards there are even less influential networks. In general, theories so far have failed to prove that these institutions or networks contribute substantially to the policy shaping capacity of subnational governments (Rooij de R. , 2003).

Opportunities in regard to cooperation among border regions are limited due to their weak constitutional constructions, cultural and linguistic problems and due to complex and double legislation across the neighbouring MSs. De Rooij argues that border regions are new opportunities, but acknowledges that the opportunity often is not deployed, or only limited (Rooij de R. , 2003).

In sum, scholars have identified policy-shaping capacities as opportunities. Even though the consequences are marginal and addressed only to a limited number of subnational governments, participation is optional.

5.3 Interrelation between dimensions in the opportunity structure

The relation between subnational governments and the European Union can be divided over three dimensions: EU law, EU funds and involvement by subnational governments in order to help shaping EU policies. The question whether these dimensions are opportunities or constraints might explain the need to include the dimensions of Europaproof in the current subnational governance. Additionally, it may shine light on whether or not there is a choice to include dimensions in the first place.

However, the three dimensions are not isolated, they rather are interdependent. The dimensions must be seen in a broader frame in order to add a value to them. For example, involvement in EU policy-making affects compliance to EU policies and EU law. It might also affect the amount of money available from EU funds. Then, EU law may affect the availability of EU funds. EU funds may influence cross-border cooperation which in return may influences policy-making again. This loop can go on and on. This paragraph will outline the interrelated structure of these three dimensions of Europaproof.

Subnational governments are obliged to comply to EU law and most of the time they are the main executers of EU law. EU law is the base of the European game. However, applying EU law has its

⁸² EU policy-making takes a long period due to complex judiciary procedures.

advantages. For example rules on tendering aim at increasing efficient governance and having knowhow about EU law improves possibilities to draw money from EU funds.

EU funds allow subnational governments to enlarge or fasten planned projects. The negative part is that governments still are obliged to fulfil strict requirements like co-financing and the policy has to support community objectives. Participation at the EU arena might increase the chance to draw money from the funds and knowhow of EU law reduces the chance for punishment by the European Commission.

Drawing money from EU funds is not obliged for subnational governments, it is just an EU instrument to emphasize EU objectives. EU funds and programs are pure opportunities to strengthen local or regional projects. Also representing subnational interests at the EU level is not obliged. In theory subnational involvement at the EU level could lead to increased financial resources (EU funds) or agenda-setting activities like to development or change EU law or policies.

The analysis of the three dimensions, how they are interrelated and how they affect subnational governments are illustrated in the scheme below. The scheme outlines the characteristics of the dimensions and their interdependent relations to the other dimensions of Europaproof.

Table 3: The analysis of the three dimensions of Europaproof

| Dimension | EU law | EU fund | Involvement |
|------------------------------|---------------------------------|------------------------------|---|
| Opportunity structure | <i>Constraint</i> | <i>Opportunity</i> | <i>Opportunity</i> |
| Condition | Obligatory | Optional | Optional |
| Perspective | Top-down | Top-down | Bottom-up |
| Affected by... | Involvement | EU law/ Involvement | EU law/ EU funds |
| Affects... | EU fundraising / Involvement | Transnational cooperation | Local and regional projects/ EU fundraising/ EU law |

EU law

The scheme shows that EU law is the basis, because it regulates the framework of EU funds. Additionally, EU law is the reason why governments are interested to represent subnational interests: try to change the status quo of EU policies and EU law. Knowhow of EU law is important when subnational governments want to be active in EU fundraising or in the European arena with policy-shaping activities. Most important, subnational governments are obliged to comply to EU law and they are always responsible for correct application of EU law, even when the national government fails or misleads. For those reasons, EU law should be considered as the prior condition in order to be successful at the other dimensions of Europaproof. Subnational governments do not have a choice: they are obliged to comply to EU law. The punishment for noncompliance can be enormous.

EU funds

For EU funds the scheme shows that EU funds does not affect EU law but it is able to affect involvement in some cases. Being active with EU funds does not change the awareness of the importance of EU law nor does it have any effect on correct application of EU law. Though EU law is a condition to apply EU funds correctly, it is not the case vice versa. EU funds does affect governments' shaping capacities by cooperation at the European arena. For some networks and for transnational cooperation, the EU subsidizes cooperation. EU funds only makes a difference though, when it is about cross-border or transnational cooperation funded by Interreg. Other funds make no difference to shape EU policies or to participate for any other reason at the EU level.

Involvement by subnational governments

Third, the scheme shows that cooperation in order to represent subnational interests do affect both EU funds and EU law (and thereby also EU policy). Participation at the EU level leads to possibilities to change EU policy or EU law. Subnational governments are important to the European Commission for input or EU policy since they are mostly the executors of EU policies. Lobbying at the European arena increases the chance for fundraising and probably even for the amount of money from funds.

Obligated and optional conditions

The scheme also shows a relation between the obligated condition and constraints on the one hand and the optional condition and opportunities on the other hand. In general, obligations are seen as constraints and options are equal to opportunities (Roos de R. , 2003). In general public management the choice of including or excluding tasks depends on the (political and administrative) willingness to include them and also on the financial possibility to include them (Keulen, 2006). This is also the case for dimensions corresponding Europaproof.

The choice to include or exclude dimensions of Europaproof depends on the relative costs and the relative benefits of the presumed opportunity. However, also the ability is important, like government's liquidity and society preferences. The question to include or exclude tasks, depends on the individual circumstances and whether new policies or projects shall have positive result. These preconditions are valid for Europaproof as well. The question whether or not the dimensions are worthy to include depend on whether the costs counter balance the results. Or in other words: whether the opportunity counter balance the constraints. Still, there are limits to outweigh. Constraints simply have to be observed. Besides, the punishment should be considered as costs.

5.4 'Goodness of fit'-principle and the three dimensions

In literature, scholars have identified a condition, the 'goodness of fit'-principle, which says that the degree of similarities between the current and the new situation define the adaption capacity to change (Mastenbroek, 2007) (Keulen, 2006). In origin, the 'goodness of fit'-principle is only applied to EU law, and more specific to transposition and implementation of EU directives in MSs. However, the principle can possibly be transferred to other elements as well. For the sake of this research about Europaproof, the 'goodness of fit'-principle shall be applied to EU funds and representation as also to a broader range of EU law⁸³. In line with the 'goodness of fit'-principle one could say that the more the subnational governmental organization fit the requirements of the Europaproof dimension, the easier the application of Europaproof will be. It is important to identify the present situation of a subnational

⁸³ Broader than the original scope of the principle, which is transposition and implementation of EU directives.

government (including all possible characteristics) in order to act in line with its personally compound Europaproof.

5.4.1 Fit of policy: stable and changeable characteristics

Whether dimensions are opportunities or constraints are expected to depend on the situation of each singular subnational government. The situation of a government depend on their unique circumstances. These circumstances together are called 'a fit'.

Van Keulen defines the fit of a government on the base of two variables: will and potential. Both variables consist of a stable and a changeable characteristics. 'Will' is built upon ambitions (stable) and preferences (changeable). Potential is built upon capabilities (stable) and resources (changeable) (Keulen, 2006, p. 111). These four characteristics of a government identify their current situation. A government's situation defines whether dimensions of Europaproof can be deployed in the first place.

5.4.2 Application to Europaproof

Europaproof consists of three dimensions. Whether the dimensions can be deployed depend on the current fit of a government. Therefore, it is impossible to define *Europaproof* as a static concept. On principle, many kinds of circumstances, conditions and actors could influence the preferences and resources of subnational governments to deal with opportunities. Europaproof must be interpreted differently per subnational government. It is impossible to define one interpretation of *Europaproof* that fits all governments, since all governments differ by nature.

The concept should include an indicator that secures a premature change of setting. It should be a concept including the current situation of a singular subnational government, including their stable and changeable characteristics. Therefore governments should look at its ambitions, preferences, capabilities and resources to identify their individual concept of Europaproof.

Subnational performances of governance depend on the will and the potential of governments. In order to know what Europaproof means to the individual government subnational governments should identify their ambitions, interests, skills, preferences, capabilities and resources. Therefore the process for becoming Europaproof should include at least a phase that reviews the present situation and a phase that refers to a desired situation.

On more note...

The process of Europaproof should be looked at from an efficiency point of view: focus on a more efficient enforcement of public duties. The main problem of the term Europaproof is that it could lead to a misleading concept. The term Europaproof holds a certain negative flavor since the word *proof* refers to *being protected against something*. The concept developed must not intend protecting governments from the EU. Europaproof actually should be seen from the point of view of efficiency. Europaproof does not mean to love the EU and all its output, it rather means to make the best of it: live up to its obligations and make use of the opportunities. Europaproof means something different to every subnational government.

As shown above, it is not self-evident to develop a concept that is applicable to all subnational governments. The concept of Europaproof should be used to advocate a process of securing the European dimension in the organization of subnational governments to the same extend as central governmental tasks are secured.

The concept must fulfil at least the following requirements:

- ✓ It should consist of three dimensions: EU law, EU funds and involvement of subnational governments;
- ✓ It should show its non-static character
- ✓ It should include a governments current situation
- ✓ It should include a governments desired situation

5.5 Four phases of Europaproof

While observing all requirements mentioned above, a framework is developed. This framework exist of four phases which ultimately will lead to a personal scale for Europaproof-ness. A full list of questions to ask and decisions to make is included in the appendix (appendix II). The questions lead to four decisions which corresponds to the four phases.

Phase 1: EU-conscious (Europabewust)

First, subnational governments have to acknowledge EU's role in subnational governance. Over the last sixty years the EU has increased powers, more jurisdictions to regulate and more policy-areas to regulate about. That also counts for subnational governments. Subnational governments have to be familiar with how the EU works, what the EU is capable of and how the EU *hits* subnational governments. Administrators and politicians should be familiar with the EU elements that influence subnational governance and how subnational governments are able to influence decisions at the EU level. There are documents available to get familiar with it. These are quit low profile, and therefore very relevant documents, for example (Kenniscentrum Europa decentraal, 2008) (Unie van Waterschappen, 2007) (Hessel, 2007).

Phase 2: current state and desired state

The second step is knowing and understanding where the specific subnational governments is placed, what its relation to the EU is and how the EU can contribute to a better local or regional society. The EU offers opportunities. Not all opportunities fit all governments. Subnational governments should identify their ambitions, preferences, capabilities and resources. Governments should ask themselves many questions in order to understand what is in reach and what is not. First they have to make an inventory of the current state. Then the government should find out how they can use EU's opportunities most efficient (and becoming Europe-efficient).

Step two could be seen as some sort of cost-benefit analysis: what dimensions of the EU benefit the subnational government. For example subnational governments could find out the considerable subnational resources in regard to co-financing; they could ask what the regional or local objectives are and how they are related to the European objectives; they could do research to the funds that could be employed; they could look whether the government has the disposal of political heavyweights; or they could investigate how the regional or local legislation fit to European legislation.

Finally, the government should identify if the current state is in line with the desired state and whether or not this desired state is feasible. If the current state is in line with the desired state, governments could skip the third phase, because they have already incorporated Europe in their organization. However, phase 4 must always taken into account.

Phase 3: Implementation

The third step is to point out the changes that has to be taken to incorporate Europe in the organization. Then of course, governments must implement the intended changes in order to reach the outcomes

from step two. Intended changes could be for instance attracting an EU-lobby oriented mayor or change the policy-making circle in order to develop regional objectives that fit EU objectives⁸⁴. The third phase should make the government act as Europe-efficient as possible.

Phase 4: Moving and improving

The fourth step is very much related to the non-static character or Europaproof: keep moving and improving. The EU keeps changing and developing and so should subnational governments. Changing is twofold. First the EU might change and therefore subnational governments should stay up to date and must follow changes in order to know in advance what will come around. Second, the situation of the subnational government might change due to elections and changes to the political environment or due to external influences like disasters or the current financial crisis. In all circumstances, every subnational government should keep identifying its current and desired states.

⁸⁴ Change management does not fall under the scope of this research. For those who are interested in change management in public governance could have a look at for example (Lievers & Lubberding, 2001).

Chapter 6 Europaproof, a useful concept?

The former chapter introduced Europaproof as a non-static concept consisting of three dimensions: EU law, EU funds and involvement by subnational governments. These three dimensions have no empirical base. The conceptualisation so far is build upon what Europaproof should entail in theory. This chapter shall take a look at the reality: do subnational governments experience Europaproof as an interplay of EU law, EU funds and participation? In order to do so, the preliminary conceptualisation of Europaproof will be mirrored to three cases. The cases shall show how Europaproof is understood in subnational governments and whether this is in line with the preliminary concept described in chapter five. The reasons to look at these three cases are explained in chapter two.

The cases are laid down in respect to how these three subnational governments interpret Europaproof and how dealing with the EU is organized in three organisations.

6.1 Case 1: The Hague

The Hague is the third largest city of the Netherlands, with almost 500,000 inhabitants. The city is located in the economic hart of the Netherlands, the Randstad. The national government and it's administration are resided in the Hague, together with many embassies, the International Criminal Tribunal for the former Yugoslavia (ICTY), Europol and other international (oriented) organizations.

The municipality of The Hague acknowledges the relevance of Europe to include in policy-making. The pioneering project for Europaproof includes four elements in regard to Europe that are important to the Hague: EU policy, participation in networks, image of the city and sharing knowledge. These four together could lead to an Europaproof the Hague⁸⁵.

First, according to the Hague European policy includes three elements: 1) influencing EU policy with an active lobby towards Brussels; 2) being in possession of policies in development and achieved policies in Brussels in order to be in good time for correct implementation; and 3) being able to attract money and subsidies from Brussels.

Second, according to the Hague participation with other governments across Europe is important to the Hague as city and society. Therefore participation must be assisted. Participation thus should be seen as assistance by civil servants to political leaders in order to participate at influential (European) networks like Eurocities⁸⁶.

Third, the Hague believes that it is important to promote its city in order to attract tourists, companies et cetera. Therefore, the city focuses on building upon their image. For example, the city contributes to several international sport and cultural events⁸⁷. The Hague's image should rely on its function as

⁸⁵ These four elements are developed by the unit Education, Culture and Welfare and is adopted by the board. Not all units are obliged to adopt this framework.

⁸⁶ At the moment, the mayor of the Hague (Jozias van Aartsen) is president of Eurocities. One of the alderman (Henk Kool) is full member of the CoR. Besides, the former mayor (Wim Deetman) used to be the vice-president of the CEMR.

⁸⁷ One could think of World Championships for all kinds of sports and the Dutch Dance Theatre (Nederlands Danstheater).

resident for the many international organizations. Therefore the Hague presents itself as '*the City of Peace and Justice*'.

Final, according to the Hague it is important to share experiences and knowledge with other subnational governments across Europe and this is possible to join European (or international) networks. The Hague is represented by at least the G4, Eurocities, CoR and CEMR. The Hague also participates in task-specific networks, however sometimes only temporary.

The Hague has two services that are EU oriented. First, Bureau International Affairs (BIA) which is related to the internal tasks in relation to the EU. BIA works on issues in regard to the EU, holds contact with International Organizations situated in the Hague and coordinates international cooperation, networks and twinning relations. Second, since 2009 the Hague informs citizens, students and companies in the Hague about Europe via their Europe Direct Centre. It shares information about European subsidies, European legislation, European policies, European organizations in the Hague and more.

6.2 Case 2: Overijssel

Overijssel is one of the twelve provinces in the Netherlands. It is situated in the east of the Netherlands next to the German border. Overijssel has over 1,1 million inhabitants over 3,400 km², that is under average in the Netherlands. Within the jurisdiction of Overijssel there are 25 municipalities and 17 of them count less than 40,000 inhabitants⁸⁸. Overijssel is predominantly a rural province and covers over 12% of all agriculture businesses in the Netherlands⁸⁹.

Since 2004, Overijssel started to focus on awareness around EU law in relation to the province. This decision is actuated by an internal judicial audit. The results of the audit showed that there were great risks to non-compliance to EU law. The Europaproof-track consist of two parts. First, the organization must be informed about EU law and being able to comply it. Second, policy-guidance towards Brussels should be a part of regional policy-making. Policy-guidance in Overijssel has two dimensions: knowing what will come around and being in good time in order to agitate conform the European policy-intentions.

Within the organization of Overijssel, the unit Governance Affairs is (among other things) responsible to improve the quality of governance for the province of Overijssel. Therefore, the track around Europaproof in Overijssel is located at this unit. All units are managerial independent⁹⁰ and may decide independently their structure, content and focus including the content and focus toward the EU. The unit Governance Affairs has composed a working party that seeks to inform all units about EU law, EU policy-making and if such should be the case policy-shaping. The focuses are on consequences of non-compliance in regard to EU law and the advantages of participation in regard to EU policy. The working party consists of one member per unit, so that all units are represented in the working party. The aim of the project is to improve the awareness of the consequences of the EU for Overijssel for entire

⁸⁸ Source: http://provincie.overijssel.nl/beleid_en_documenten/cijfers_en_kaarten/inwoneraantallen_en (visited: 05/10/2009)

⁸⁹ Source: <http://statline.cbs.nl/StatWeb/publication/?DM=SLNL&PA=71466ned&D1=0&D2=a&D3=0,5-16&D4=a&HDR=T,G1,G3&STB=G2&VW=T> (visited : 05/10/2009)

⁹⁰ The organization of Overijssel is based upon integral management on the unit level. That includes that within the framework laid down by the board and the direction together, the unit managers are integrally responsible for the quality of policy documents within their unit.

organization. Neither the unit Governance Affairs nor the working party are responsible for results due to non-compliance or bad application. Instead the units themselves stay responsible for correct application of EU matters, which is especially important to EU law since the punishments for misuse are relatively high. The working party aims at improving the quality of governance by informing, advising and supporting units that are willing to improve their Europaproof-ness.

Within the organization, all units may decide themselves how to apply Europe to their unit because all units serve different purposes and are build upon different structures. These differences between units includes different perspectives on the need and willingness to apply Europe. The working group focus on the units that are behind in respect to the other units. Since all units are represented in the working group, they share experiences and information in order to learn from each other.

The difficult part for Overijssel are the enormous differences between the two dimensions, shortly EU law and EU policy. EU law is far more acute by nature. Not taking action right now might lead to great problems later like punishments by the European Commission. All in contrast to EU policy which has a far more complex character and is a long term process. EU law has to be applied right now, where EU policy shall become applicable over some years. In order to integrate EU policy in regional policies, the policy-making process has to change into thinking ahead of what shall come in the future.

The working party tries to inform the organization in several ways. First, the unit manager has to understand the importance of incorporating *Europe* in the unit. Second, employees often miss the fact that almost all have to deal with EU law. The working party seeks to inform employees on the relevance of EU law, for example that state aid rules also have to be applied in case of EU subsidies. Third, excursions to Brussels are organized to improve the understanding of how the EU works. Besides, Overijssel shares her knowledge and expertise on Europaproof with other governments as well⁹¹.

In regard to the shaping capacity of Overijssel, the HNP⁹² is their leading partner in Brussels to represent regional interests⁹³. However, interests in regard to Europe can also be represented in the Hague. Here is a delicate interface visible: in some cases Overijssel show a different preference than the national government. In those case, direct links to Brussels might help in order to bypass the national government.

6.3 Case 3: Hengelo

Hengelo is a city in the east of the Netherlands near the German border and has a population of approximate 80,000 inhabitants.

Hengelo is part of the *Euregio Enschede-Gronau*. Beside the Euregio, Hengelo remains close relations with neighbouring cities like Enschede, Almelo, Oldenzaal and Borne, which is laid down in *Netwerkstad Twente*. The Euregio aims at improving the cross-border structure and to reduce problems that occur due to cross-border cooperation. The Euregio also provides a lobby towards Brussels to represent its interests in regard to economic and social projects.

⁹¹ Overijssel has been co-organizer of two conferences on Europaproof for municipalities (Raalte and Hardenberg) in the jurisdiction of Overijssel.

⁹² For more on HNP see chapter 4.

⁹³ Overijssel shares two lobbyists with the province of Gelderland who both represent the dossiers on the eastern Netherlands.

Second, the *Netwerkstad Twente* is represented in Brussels via three institutions. Firstly via the *Euregio Enschede-Gronau* as outlined above. Secondly *Netwerkstad Twente* is represented in Brussels via a cooperation with three other city-networks⁹⁴. This cooperation together has the possession of two lobbyists who serve Hengelo its interests among others, in regard to influencing European policies and to draw money from European funds. Third, *Netwerkstad Twente* is associate member of Eurocities. Via Eurocities Hengelo participates at the European level on the dossiers of economic development, mobility and social affairs⁹⁵.

Due to both its geographical situation and economic and social situation, Hengelo has opportunities to employ money from EU funds. In order to draw even more money, Hengelo established a desk on European subsidies which should bring more money to Hengelo and inform and advise on the one hand employees of the organization Hengelo and on the other hand this desk is advising companies, associations and citizens how to employ EU funds and programs.

Even though Hengelo participates at the European arena via a number of institutions and joint ventures, Hengelo is especially interested in one dimension of Europaproof: EU law. Where EU law is concerned, Hengelo is actively working on securing state aid, tendering and the Services Directive in the organization. As a result, Hengelo is working on improving the knowledge about what EU does, how the EU works and how the EU contributes to Hengelo. Also in Hengelo, there are voices that argue that there are too many EU rules even though these rules are strictly national. Often European rules are sharpened by the Dutch national government which makes rules complex to apply.

For large projects the legal department of Hengelo is directly involved, like for the project *Warmtenet*⁹⁶. For other issues it depends on the individual employee to ask for legal advice about the European context or not. The legal department is actively working on informing all employees about EU law, especially rules on state aid and tendering. Two statements, one on tendering and one on state aid, are the leading documents on Europaproof⁹⁷. For Hengelo, European rules are not per definition constraints. For example, tendering improves the professionalism of the organization and even makes the organization work more efficient. If the tender is set up correctly, the project will be cheaper or of better quality due to market competition. The municipality is forced to think about the goals they would like to reach. Will they go for quality or shall they go for little costs?

In sum, Europaproof is not a singular project in Hengelo. However, Hengelo acknowledges the advantages and disadvantages of Europe and therefore tries to improve knowledge issue-oriented. The municipality works actively with other governments in order to improve its chances in Brussels, it deploys its possibilities to draw money from funds and programs and it seeks to inform its employees about the application of EU law and consequences for non-compliance to EU law.

⁹⁴ These city-networks are *Knooppunt Arnhem-Nijmegen*, *Parkstad Limburg* and *Brabantstad*.

⁹⁵ Source on participation in the European arena:

http://www.regiotwente.nl/index.php?option=com_content&view=article&id=1422&Itemid=573 (visited 5/10/2009)

⁹⁶ *Warmtenet* is a company owned by the province of Overijssel, the city of Hengelo and a private business (Twence). Hengelo wants to participate and underlines the European aim to be the CO2 neutral by 2050. *Warmtenet* contributes to this aim by reducing CO2 for heating purposes.

⁹⁷ These statements are 'Nota Staatssteun' and 'Nota Aanbesteden'.

6.4 Three cases and three dimensions

The three cases show the inclusion of the European dimension in subnational governments. The Hague includes four elements in respect to Europaproof: EU policy, participation towards Brussels, image-building and sharing knowledge and experiences with other governments. Overijssel focuses on EU law and EU policy in respect to Europaproof. Hengelo has no singular program in regard to Europaproof, but the organization does have a focus on EU funds, participation towards Brussels and the application of EU law.

The subnational governments in the cases identify the following elements of the EU that are relevant to their subnational organization: EU policy, participation towards Brussels, image-building, sharing knowledge and experiences with other governments, EU law and EU funds. If these elements are compared to the element that were introduced in chapter four and the dimensions of Europaproof table 4 will arise (see below).

Table 4 shows similarities and differences between the elements found in the cases and the dimensions introduced in the fourth chapter. The elements from the cases are reviewed are the base of all elements that lead to the three dimensions.

The table shows that in general the elements *EU law* and *EU funds* from the case-study fits exactly the dimension *EU law* and *EU funds* from the concept of Europaproof. The table also shows that the dimension *involvement* do not reflect precisely the elements from the case-study. Sometimes *involvement* is linked to *EU policy* and sometimes it is linked to *participation*. In general *participation* in the case-study is used to include the part that focuses on representation which at the end should lead to EU policy-shaping. In the concept of Europaproof these elements are both included in *involvement*, since very often representation aims at policy-shaping. As the table shows, this is not always the case. In one case, *EU policy* seems to refer to something different: *EU law*. The difference here is that policy-adaption is seen as an obligation to observe EU policies. This obligation is laid down in EU law. One element is hard to link: *knowledge sharing*. The element refers to better function as a government by learning from each other. Here knowledge sharing needs partners to learn from and to share own knowledge. Therefore *knowledge sharing* must be linked somehow to *participation* or *involvement*. However, *knowledge sharing* is new as an element to the preliminary concept of Europaproof.

From the case-study, one element cannot be linked to an element from the fourth chapter at all: *image-building*. It looks like this element is not related to including the European Union in the organization. However, it does not exclude the element as being a relevant element to a subnational government either.

Table 4: Comparison between theory and case-study

| | Elements from 4.1.1 Europaproof in policy documents and manuals | Dimension | Elements from cases |
|--|--|------------------|---|
| 2004/2005 documents ⁹⁸ | Policy-shaping | Involvement | EU policy/ participation |
| | Policy-adaption | EU law | EU policy |
| 2007/ 2008 documents ⁹⁹ | Application of EU law | EU law | EU law |
| | Compliance to EU law | EU law | EU law |
| | EU law in general | EU law | EU law |
| | Represent subnational interests at the EU level | Involvement | Participation |
| | Involvement of subnational governments to shape national preferences | Involvement | Participation/ EU policy |
| | Represent subnational interests at the EU level | Involvement | Participation |
| Government agreements 2007/2008 ¹⁰⁰ | Involvement of subnational governments to shape national preferences | Involvement | Participation/ EU policy |
| | Application of EU law | EU law | EU law |
| | Compliance to EU law | EU law | EU law |
| | Application of EU law | EU law | EU law |
| Manuals on Europaproof ¹⁰¹ | Policy-shaping | Involvement | Participation/ EU policy |
| | EU funds and programs/ EU subsidies | EU funds | EU funds |
| | Public tendering | EU law | EU law |
| | EU rules on water and environment | EU law | EU law |
| | EU rules on state aid | EU law | EU law |
| | EU services directive/ Four freedoms | EU law | EU law |
| | EU law in general | EU law | EU law |
| | Participation at EU networks and so in order to improve a lobby-position at the EU level | Involvement | Participation/ EU policy/ knowledge sharing |
| | Apply EU law | EU law | EU law |
| | Comply to EU law | EU law | EU law |

If the elements from the case-study are translated to the three dimensions of Europaproof it becomes clear that all governments from the case-study include all three dimensions to a certain extent (see table 5). It shows that at least these three dimensions should be included in the organization. If it is true that Europaproof refers to all possible EU elements that have influence on subnational governments or that

⁹⁸ 2004 document = (BZK, 2004)

2005 document = (BZK, VNG and IPO, 2005)

⁹⁹ 2007 document = (BZK, 2007)

2008 document = (BZK, 2008)

¹⁰⁰ 2007 government agreement = (BZK and VNG, 2007)

2008 government agreement = (BZK and IPO, 2008)

¹⁰¹ These manuals are: (Unie van Waterschappen, 2007), (VNG and BZK, 2005) and (Kenniscentrum Europa decentraal, 2008)

can be influenced by subnational governments, then the cases proof that the concept of Europaproof should be composed by at least these three dimensions.

Table 5: Fit between concept and case-studies

| | EU Law | Participation towards Brussels | EU funds |
|--------------------------|--------|--------------------------------|----------|
| The Hague (municipality) | YES | YES | YES |
| Overijssel (province) | YES | YES | YES |
| Hengelo (municipality) | YES | YES | YES |

The case shows that The Hague is not focussing on *EU law*, *EU participation* or *EU funds* in particular. The case shows that the Hague beliefs that these three elements belong to one denominator: EU policy. Additionally, the Hague includes three other elements (*networks*, *image-building* and *knowledge sharing*). One cannot argue that the Hague is not aware of the opportunities offered by the EU. However, one can argue that the Hague is focussing on more than only EU law, participation in Brussels and *EU funds*, like for instance *image-building*.

The case on Overijssel shows that the province argues that both *participation* and *EU funds* should be seen as a part of EU policy. For Overijssel, these two dimensions are interrelated. It shows that the government needs to be aware of *EU law* in order to act efficiently to *EU policies*.

Hengelo is active in regard to all EU law, participation towards Brussels (in terms for Hengelo: EU lobbying) and EU funds. However, these activities are not centrally monitored nor are they driven by a central Europaproof-force. Nevertheless, Hengelo do participates at all areas.

Chapter 7 Conclusions and Recommendations

This chapter will provide the conclusions of this research. Additionally this chapter provide some recommendations in respect to further research and recommendations to subnational governments.

This research is focused on the relation between subnational governments in the Netherlands and the European Union. The research used a preliminary frame to identify Europaproof based on European Integration theories. The framework for this research included all EU elements that have influence on subnational governments or that can be influenced by subnational governments.

The main reason to do research in regard to Europaproof was that there were multiple meanings to the term 'Europaproof'. That makes it for governments hard to decide what issues are relevant and what issues are not, but also the question whether or not there is an ordinal order. Besides, it would be interesting to see where 'Europaproof' could be placed in European Integration theories. So the aim of the research is twofold.

The aim of this chapter is to provide an answer to the research question. The research question is build upon two sub questions, which together should provide an answer to the research question. The research question is phrased as follows:

- ***How can Europaproof be conceptualized in order to be applicable to subnational governments?***

The first sub question is related to the conceptualisation of Europaproof and formulated as follows:

- ***How should Europaproof be conceptualized?***

The second sub question refers to the applicability of the concept to subnational governments and is phrased as followed:

- ***Can the concept derived be applied to subnational governments?***

Chapter three showed the relevant theories on European integration. It showed why and how European integration takes place. Thereby it shows *why* Europaproof is in question in the first place. Additionally, it shows how the EU and subnational governments are related to each other and how subnational governments participate in regard to the EU and how the EU affects the subnational governments.

Together these studies show that subnational governments cannot ignore the EU any longer. Besides, from the literature review, it would be wise for subnational governments to acknowledge the importance of the EU and its policies. Subnational governments thus must integrate the EU in their organization and make the EU a structural element of subnational governance.

To some extent these insights can teach us how to look at Europaproof in the subnational organization. The theories and approaches from EI show the background and frames for Europaproof. It refers to the question why subnational governments have to integrate EU matters in the subnational organization. It also refers to the question why governments should keep adapting. Finally, it describes how the EU and subnational governments are closely interweaved.

The insights from chapter three are used to set up a framework for the concept of Europaproof in chapter four. The literature review offers together with a set of policy-documents and manuals a list of elements that are relevant in respect to Europaproof. Then it becomes visible that these elements can be clustered to three dimensions: EU law, EU funds and involvement by subnational governments.

The fifth chapter seeks to structure the dimensions and looks for relations between them. The opportunity structure helps to understand how the dimensions relate to each other, but also how they relate to the subnational governments. Some elements are optional, but not all of them. Based on the 'goodness of fit'-principle, the fifth chapter also shows that the governments' situation determines the impact of the dimensions. Therefore not all dimensions shall have the same influence on subnational governments. Then it seems logical that these conditions (interdependence between dimensions and different impacts) must be included in the concept of Europaproof. At the end, the fifth chapter shows that it is impossible to conceptualize Europaproof as a static concept. It rather should entail four phases that together lead to an adapting and improving government.

The sixth chapter looks whether the concept is applicable to subnational governments. The concept is based on theoretical findings and policy-documents and manuals, from which most of are published by the central government. The sixth chapter shows that based on a case-study, the core part of the concept is applicable to subnational governments. It also shows that governments might include more elements than covered in the concept, which does not prove the concept to be incomplete.

The content of these chapters together make it possible to answer the research question.

7.1 Conclusions

Europaproof is a relevant study-object

- The old debate in studies of European integration show why European integration takes place. NF and LIG both outline different causes for integration. For example, spill-over effects, the affect of supranational institutions and bargaining between governments. A result of European integration is that subnational governments have to deal with European integration as well. The reasons for integration help to understand how subnational governments could behave in regard to European integration.

Form, role and character of subnational governments

- MLG studies explain the form, role and character of subnational governments in the European Union. Subnational governments are mainly seen as executors of EU policies. Therefore in turn they receive powers to influence EU policy-making and extra resources to achieve European aims. These are relevant elements in regard to Europaproof.

EU as layer cake

- From MLG studies two different types of policy-making through multiple levels can be distinguished. The EU looks the most like a layer-cake. Here the top-layer (the EU) covers the rests of the layers (municipalities, water boards, provinces and the central government). This approach shows that it is necessary to include all government levels at policy-making. If not, the cake will collapse. This relation is also visible in regard to Europaproof. The EU asks for subnational input, because otherwise the system of EU governance will collapse. Subnational governments are necessary conditions to make EU policies. Subnational governments are not sufficient conditions for EU policy-making though.

EU as a structural element of subnational governance

- Studies of Europeanization in this research focus on the impact from the EU on subnational governments. Europeanization refers to a set of processes that makes that the EU becomes a structural element of a government. Therefore, Europaproof can best be linked to (some definitions

of) Europeanization. Europeanization introduces the differentiation between policy-shaping and policy-adaption. It also argues that these are related, since policy-shaping reduces adaption-costs.

Degrees of Europeanization

- Studies of Europeanization show that it is possible to distinguish different degrees of Europeanization. That means that in theory it should be possible to identify degrees of Europaproof as well.

Contribution to MLG and Europeanization

- Europaproof is not a part of either MLG or Europeanization. Europaproof is rather a link between the two EI approaches. It seeks to elaborate on both the bottom-up approach from MLG and the top-down approach from Europeanization. Europaproof is a contribution to both approaches.

Options and obligations

- Europeanization studies divide impacts from the EU between optional and obligatory impacts. This division shows how subnational governments have to deal with impacts. Some impacts cannot be ignored, because they have to be obeyed. Other dimensions however can be employed, but the decision to include or exclude remains to the government. For Europaproof that proves that there is a distinction between two sets of impacts: opportunities and constraints.

Misleading term

- One conclusion is that Europaproof appears to be misleading. Europaproof seems to refer to being protected against the EU. None of the policy documents advocates subnational governments to prevent themselves from the EU, it rather refers to securing the EU at the subnational level. A special procedure to incorporate EU in the organizational structure is indispensable. Subnational governments should rather act Europe-efficient: knowing what the EU brings and what it has to offer and understanding what the corresponding (internal) costs are. However, Europaproof is already too familiar to governments to change the term.

The scope of Europaproof

- Europaproof entails three dimensions, which together outline the scope of the concept. The first dimension is *EU law* and refers to the obligation to secure, apply and maintain EU law at the subnational level. The second dimension is *EU funds*, which refers to improving regional or local projects through EU subsidies. The third dimension is *involvement of subnational governments at the European arena*, which refers to coalition-building and lobby-activities in order to shape EU policies.

Opportunity structure

- The opportunity structure can be applied to structure the three dimensions. The opportunity structure distinguishes between opportunities and constraints. *EU law* is considered to be a constraint and *EU funds* and *involvement* are considered to be opportunities. Constraints are the parts of Europaproof that are obligated. Opportunities are the parts of Europaproof that are optional to include. One should be aware that constraints are not pure constraints and opportunities may show some limits as well. For example, EU law also benefits the subnational government by aiming at efficiency and transparency. Additionally, EU law should be treated like national law. There is no choice to include EU law, governments are obliged to comply to EU law. Limits of opportunities are in relation to the relative opportunity of the dimension. In general, all

governments may apply EU funds and participate at the EU level. However, not for all will the benefits exceed the efforts.

Relation opportunity structure and obligations and options

- The dimensions can be interpreted through different views. These views explain something about the interpretation of the dimensions. The dimensions can be looked at as either:
 - Opportunities versus constraints
 - Options versus obligations
 - Bottom-up approach versus top-down approach

Especially whether the dimensions are optional or obligated show similarities with the opportunity structure. Opportunities are expected to be optional and thus as addition to the regional or local governance. Constraints on the other hand are obligated and therefore often experienced as a limit to regional or local governance.

EU law is a constraint

- EU law is considered to be a constraint, since it is obligated to maintain EU law at the subnational level. Especially European rules on state aid, procurement and environmental issues are relevant to subnational governments. Even though these rules in general make subnational governance more efficient and transparent, these are not experienced positively.

EU funds is an opportunity

- EU funds is considered to be an opportunity, since it remains the choice of subnational governments to include or exclude EU funds. EU funds could empower regional or local initiatives, but it depends on the will and capabilities of subnational governments whether EU funds are true opportunities.

Involvement of subnational governments is a opportunity

- Involvement of subnational governments is considered to be an opportunity, since it remains the choice of subnational governments to participate at the EU level or not. The consequences for participation are considered to be marginal. Therefore, the question whether involvement leads to true opportunities is contested. Still, participation at the EU level remains an opportunity.

'Goodness of fit'-principle

- The question whether or not dimensions of Europaproof fit to the subnational governments depend on the governments themselves as well. The will and potential of governments affect the fit of opportunities of Europaproof. Government's preferences and capabilities define to what extend opportunities can be deployed. The 'goodness of fit'-principle does not refer to constraints. Constraints must be observed at all times.

Relative opportunities

- It remains a choice to include or exclude opportunities. The best solution for subnational governments is to look whether the opportunity benefit the government at the end. That means that subnational governments have to know how they can benefit from the EU and what the adaption costs are for the presumed change. No subnational government is like any other. Both the current situation may differ and thereby the ideal point may differ. But also the will and potential could differ.

Non-static character

- Empirical Europeanization studies show that both the EU and subnational governance keep changing. Since Europaproof refers to the relation between the EU and its affect on subnational governments, the concept of Europaproof cannot hold a static character. Europaproof must make governments keep moving and improving in regard to the EU. The EU keeps changing and developing and so should subnational governments. Changing is twofold. First the EU might change and therefore subnational governments have to stay up to date and follow changes in order to know in advance what will come around. Second, the situation of the subnational government might change due to elections and changes to the political environment or due to external influences like disasters, like the current financial crisis.

Four phases

- If we include all elements from the former conclusions, the result is that Europaproof consists of four phases:

Phase 1: Europe conscious

→ This phase should focus on subnational governments' acknowledgement of the importance and the role of the EU to subnational governments. Subnational governments must be aware of the European dimension of governance.

Phase 2: Cost-benefit analysis

→ The government should identify if the current state is in line with the desired state and whether or not this desired state is feasible. This phase can be seen as a cost-benefit analysis in regard to the EU.

Phase 3: Implementation

→ The government should secure the constraints and develop and change the structure and governance in order to act efficiently in regard to the opportunities offered by the EU (to the outcomes of step 2).

Phase 4: Moving and improving

→ Governments must stay up to date and follow changes by the EU. The EU should be like the national government is to subnational governments.

Application to governments

- From the case-studies can be drawn that governments also include at least the three dimensions of Europaproof. These dimensions together are not always named Europaproof, neither are the dimensions named the same as in this research. The labelling of the dimensions is not important, the content is.

Additions to Europaproof

- Even when a concept is set, governments are always free to include more elements related to the EU or to include the dimensions deeper than proposed. The case-study shows that in one case a subnational government includes *image-building* to Europaproof. The analysis of the case shows that there is no reason to assume that *image-building* belongs to the concept meant in policy-documents by the central government. However, it does not assume that image-building is irrelevant to subnational government either. It is disproved that image-building should be a part of Europaproof.

7.2 Answer to the sub questions

The former paragraph provided conclusions of this research. These conclusions show answers to the sub questions of this research.

Sub question1: How should Europaproof be conceptualized?

First of all, it is hard to conceptualize Europaproof. One of the conclusions above is that it should be a non-static concept. That means that the concept of Europaproof will be different for all governments. Therefore the answer to this first sub question cannot be answered easily. The answer can only exist of a list which refers to the content and scope of Europaproof. That is the most precise conceptualisation possible for *Europaproof*. The concept for Europaproof should at least include:

- ✓ that Europaproof consists of three dimensions: EU law, EU funds and involvement;
- ✓ that each dimension is either an opportunity or a constraint;
- ✓ that EU law is a constraint;
- ✓ that EU funds is an opportunity;
- ✓ that involvement is an opportunity;
- ✓ that all governments must secure EU law in their organization;
- ✓ that each government must know how the EU can contribute to local or regional governance;
- ✓ that each government should know what the relative opportunity is of the two opportunities;
- ✓ that governments must keep moving and improving in regard to Europaproof.

Sub question 2: Can the concept derived be applied to subnational governments?

The concept can be applied to subnational governments. The concept does not exclude subnational governments from including more elements to their conception of Europaproof neither does it seek to make governments act as Europe-efficient as possible. In the end, the degree of Europaproof depends on the will and potential of governments.

7.3 Recommendations for further research

This research aimed at clarifying the scope and shape of a frequently used term (*Europaproof*) in the Netherlands. The limits of this research are in the spheres of explanatory values and external validity. Further research here can make contributions to general understanding of the use and usefulness of Europaproof both in the Netherlands and in other MSs.

Translation to other MSs

- This research focuses on the Netherlands. Across MSs of European Union a broad diversity of different constitutions can be distinguished. Therefore the Netherlands cannot be compared easily to other countries in the European Union. Subnational governments may be more or less autonomous, national governments may be more or less centralized, internal relations may differ and so on. Therefore, conclusions of this research can only be valid externally if the prior conditions are the alike. However, the opportunity structure to model dimensions of Europaproof can very well be transferred to other MSs as well. The dimensions should probably be translated though.

Financial consequences to non-compliance

- This research had limited time to go in depth of the financial side of the dimensions. Probably, the costs can differ per opportunity. Further research on finances in regard to Europaproof may define the ordinal relations between involvement and EU funds. Also consequences of non-compliance to EU law may explain if governments win or lose financially and how much the differences are between the dimensions.

Governments' decisions to include or exclude dimensions

- Other limits of this research are the explanation of why subnational governments are triggered to include a dimension instead of looking to all dimension of Europaproof. Further research on identifying how governments decide on inclusion or exclusion dimensions will contribute to Europaproof.

Differences between municipalities, provinces and water boards

- This research treated all subnational governments the same. However, municipalities, provinces and water board differ to some extent. Further research could provide what the differences are between the different types of governments in regard to Europaproof.

All possible elements that have to be or could be applied

- Further research is also recommended in regard to the three dimensions in depth. This research shows only broadly the scope of the three dimensions which are relevant for subnational governments. For subnational governments it would be interesting to have a comprehensive framework that identifies all elements that have to be applied or that could be applied.

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Appendix

Appendix I. Dutch summary

Europaproof is een vaak gebruikte term in de praktijk van decentrale overheden. Europaproof wordt gebruikt om decentrale overheden te informeren over de mogelijkheden om de voordelen van de Europese Unie te gebruiken en de verplichte elementen zo goed mogelijk te borgen. Decentrale overheden moeten *Europaproof* implementeren in hun organisaties. Het probleem hierbij is dat er geen eenduidige uitleg beschikbaar is voor de term *Europaproof*. Dit onderzoek kijkt hoe wetenschappelijke literatuur een bijdrage kan leveren aan het conceptualiseren van het holle begrip *Europaproof*. In dit onderzoek staan de beleidsdocumenten en beleidshandleidingen centraal bij het conceptualiseren. Dit onderzoek beoogt een concept te bepalen gebaseerd op wetenschappelijke studies, welke toepasbaar is op alle decentrale overheden. De onderzoeksvraag is dan ook: *hoe zou Europaproof geconceptualiseerd moeten worden om toepasbaar te zijn voor alle decentrale overheden?*

Onderzoeken met betrekking tot Europese integratie kunnen op drie manieren bijdragen aan kennis over Europaproof. Ten eerste legt het het nut bloot om *Europaproof* te borgen in de decentrale overheid. Daarnaast zijn eerdere onderzoeken erg nuttig om uit te leggen hoe decentrale overheden en de Europese Unie samenwerken en wat de rol van decentrale overheden hierin is. Ten slotte zijn eerdere studies belangrijk om uit te leggen welke invloed the Europese Unie heeft op decentrale overheden. Bij elkaar genomen kan op basis van eerdere studies met betrekking tot de Europese integratie erkent worden dat decentrale overheden de Europese Unie als bestuurslaag niet meer kunnen negeren. Decentrale overheden moeten the Europese Unie op de een of andere manier borgen in hun organisatie. Eigenlijk moeten ze de Europese Unie een structureel element maken van het decentraal bestuur. Dit onderzoek gebruikt met name inzichten uit benaderingen van *Multi-level governance* en *Europeanisering* welke beiden behoren tot het domein van de Europese integratie theorieën.

De multi-level governance (MLG) benadering beoogt de relaties tussen Europese instellingen, nationale overheden, decentrale overheden en allerlei andere actoren (zoals belangenorganisaties) uit te leggen aan de hand van wederzijdse afhankelijkheid. Sommige geleerden identificeren twee verschillende typen binnen de MLG (Hoetjes, 2001) (Hoetjes, Hoogeveen, & Rood, 2003). Een van deze twee, de meerlagentaart-benadering, is zeer relevant voor het beschrijven van de Europese Unie. De benadering houdt in dat de taart is gemaakt van verschillende punten, die de lidstaten reflecteren. Als deze punten samen staan vormt het een chaotische taart. Over deze taart wordt een extra glazuurlaag gegoten, die de Europese laag voorstelt. Het is voorstelbaar dat deze constructie niet de meest stevige is.

De tweede benadering, Europeanisering, beoogt de Europese integratie te verklaring door te kijken naar de consequenties van de Europese Unie op nationale en decentrale overheden. Onder geleerden van de benadering van Europeanisering is geen consensus wat betreft de definitie van Europeanisering. De voornaamste oorzaak daarvan is dat Europeanisering verwijst naar een groot scala aan elementen die allemaal de impact van de Europese Unie op decentrale overheden kunnen uitleggen. Dit onderzoek gebruikt Europeanisering als *een serie processen die tot gevolg heeft dat de Europese Unie een structureel element wordt in politiek-bestuurlijke instituties van een natiestaat* (Rooij de R. , 2003). De Europeanisering benadering maakt een verschil tussen de twee voornaamste interacties tussen de EU en decentrale overheden: Europees beleid toepassen op decentraal niveau en het Europees beleid (mede)maken door decentrale overheden. Sommige geleerden binnen Europeanisering betogen dat men de mate van Europeanisering zou moeten kunnen vaststellen (Harmsen & Wilson, 2000). Dit zou dan moeten gebeuren op basis van drie niveaus. De verschillen tussen de niveaus bepalen of een

bepaald element verplicht of facultatief is en in welke mate dat zo is. Tot op een bepaald niveau sluit dat aan bij *Europaproof*. Daarom zal uiteindelijk de conditie van een dimensie (verplicht of optioneel van karakter) een onderdeel uitmaken van het concept om zodoende te laten zien hoe belangrijk het is om de verschillende dimensies te borgen in de decentrale overheid.

De literatuurstudie vormt het kader om *Europaproof* te onderzoeken. Vervolgens wordt een serie beleidsdocumenten en handleidingen gebruikt om elementen te filteren die binnen dat kader vallen. De elementen worden geclusterd in drie dimensies: EU recht, EU fondsen en de participatie van decentrale overheden in Brussel.

Dit onderzoek past de *opportunity structure* toe om de dimensies van *Europaproof* te structureren. Daarnaast wordt op deze manier getracht te bepalen wat de relatieve bijdragen van de afzonderlijke dimensies zijn voor *Europaproof*. Oorspronkelijk bestaat de *opportunity structure* uit een tweeledige benadering om een bepaalde situatie te beschrijven. Aan de ene kant vindt men de positieve elementen: de kansen (*opportunities*). Aan de tegenovergestelde kant vindt men de ongewenste elementen: de beperkingen (*constraints*). De dimensie *EU recht* wordt gezien als een beperking, omdat decentrale overheden bij wet verplicht zijn Europees recht na te leven. De dimensie *EU fondsen* wordt gezien als een kans, omdat het de kans vergroot om regionale en lokale projecten te versnellen of om ze uit te breiden. De derde dimensie, participatie van decentrale overheden richting Brussel, wordt ook gezien als een kans, doordat inspanningen van decentrale overheden kunnen leiden tot een betere situatie (*fit*) om later Europees beleid te implementeren in decentraal beleid.

Decentrale overheden zijn bij de wet verplicht Europees recht toe te passen en te handhaven. De voornaamste achterliggende reden van Europees recht is om in een open markt economie eerlijke concurrentie te promoten. Decentrale overheden kunnen problemen ondervinden aan de vaak complexe taak Europees recht toe te passen, na te leven of te implementeren in decentraal beleid doordat het Europees recht vaak abstract van karakter is. EU recht als dimensie wordt gezien als een beperking doordat het bij de wet verplicht is toe te passen en er dus geen keuzes gemaakt kunnen worden. Toch zouden decentrale overheden Europees recht moeten omarmen omdat het in de meeste gevallen efficiëntie en transparantie beoogt. Iets dat uiteindelijk voor alle decentrale overheden positief zal uitpakken.

The Europese Unie wijst veel gelden toe via verschillende Europese fondsen en programma's. Decentrale overheden zouden hiervan kunnen profiteren door met gelden uit deze fondsen of programma's decentrale initiatieven te versterken. Hoewel de dimensie *EU fondsen* gezien wordt als een kans, zijn er toch behoorlijke grenzen aan deze kans. De voornaamste beperking van de kans vindt men in termen als voorwaarden waaraan decentrale overheden moeten voldoen om gelden te verwerven en om deze niet terug te hoeven betalen. Hoe dan ook, het blijft de keuze van decentrale overheden om inspanningen te verrichten om daarmee extra gelden binnen te halen in de eerste plaats. Zich wenden tot Europese fondsen is optioneel en niet verplicht. Daarom moeten EU fondsen wel gezien worden als een kans in plaats van een beperking.

De derde dimensie van *Europaproof* is de participatie van decentrale overheden in Brussel. Brussel vraagt vaak om input van decentrale overheden bij het maken van Europees beleid. Daarnaast kunnen decentrale overheden ook hun situatie verbeteren door voorkeuren te uploaden naar het niveau van de Europese Unie. Deze derde dimensie bestaat uit twee onderdelen: weten waar overheden kunnen lobbyen en weten hoe je daar je voorkeuren kunt uploaden en wat het kan opleveren. Wanneer decentrale overheden willen participeren bij het maken van Europees beleid zullen zij moeten weten

hoe ze voorkeuren kunnen uploaden en waar zij dat lobbyen moeten doen. Onderzoeken naar lobby activiteiten laten zien dat lobbyen enkel een marginaal effect heeft. Toch moet deze derde dimensie gezien worden als kans. ‘Nee heb je en ja kan je krijgen’ zou hier goed van toepassing zijn. Wel of niet participeren in Brussel is een keuze die decentrale overheden zelf kunnen maken, daardoor kan het in principe al geen beperking zijn.

De drie dimensies, EU recht, EU fondsen en participeren in Brussel, staan niet op zichzelf en kunnen ook zeker niet los van elkaar gezien worden. Zij zijn eerder wederzijds afhankelijk. De *opportunity structure* zou de mogelijkheid kunnen bieden om te verklaren wat de noodzaak is voor decentrale overheden om sommige dimensies wel te borgen en anderen niet. Daarnaast zou het feit of dimensies optioneel of bij de wet verplicht zijn kunnen bepalen hoe ze geïnterpreteerd zouden moeten worden. Onderstaande tabel geeft de relatie aan tussen de drie dimensies, de *opportunity structure* en of deze verplicht of optioneel zijn.

Tabel 1: Dimensies en de opportunity structure

| Dimensie | EU recht | EU fondsen | Participatie |
|-----------------------|----------------------|------------|--------------|
| Opportunity structure | Beperking | Kans | Kans |
| Conditie | Bij de wet verplicht | Optioneel | Optioneel |

Een andere benadering is de ‘goodness of fit’-benadering. Deze wordt oorspronkelijk gebruikt om te verklaren dat de huidige situatie bepalend is voor de inspanningen die gedaan moeten worden om Europese richtlijnen te implementeren. In dit onderzoek wordt deze benadering gebruikt om uit te leggen hoe de drie dimensies door decentrale overheden geïnterpreteerd zouden kunnen worden, gebruik makend van de situatie van de overheid in relatie tot de gewenste situatie. Geen enkele decentrale overheid kan vergeleken worden met een ander. Iedere decentrale overheid heeft zijn eigen goodness of fit. Dit feit moet een onderdeel uitmaken van het concept. Om die reden kan het concept voor Europaproof nooit een statisch karakter hebben.

De uiteindelijke definitie van Europaproof kan door de ‘goodness of fit’-benadering verschillend van aard zijn. Toch kan er een concept voor Europaproof gevormd worden. Het concept bestaat uit vier fasen die gelijk zijn voor alle decentrale overheden. De uitkomst van iedere fase en daardoor ook het eindresultaat kan verschillen per decentrale overheid.

Stap 1: Europa bewust

→ Deze fase beoogt dat de decentrale overheid het belang van de Europese Unie erkend voor de decentrale overheid en haar beleid en bestuur. Daarnaast moet de decentrale overheid weten welke rol zij in theorie zou kunnen spelen in Europa.

Stap 2: Kosten/baten analyse

→ In de tweede fase zouden decentrale overheden een overzicht moeten maken van de huidige situatie (aangaande de EU) en de gewenste situatie. Als blijkt dat er een verschil tussen de huidige en gewenste situatie is moet onderzocht worden of de gewenste situatie haalbaar is. Deze fase zou gezien kunnen worden als een kosten/baten analyse met betrekking tot Europa.

Stap 3: Implementeren

→ Als uit fase 2 blijkt dat er verandering noodzakelijk is om de gewenste situatie te bereiken, zullen deze opgesteld moeten worden om ze zodoende te kunnen implementeren. De decentrale overheid moet daardoor in ieder geval de verplichte dimensie (EU recht) borgen in de organisatie. Daarnaast kan de decentrale overheid veranderingen doorvoeren met betrekking tot bijvoorbeeld het binnenhalen van Europese fondsen of het uploaden van beleidsvoorkeuren.

Stap 4: Up to date blijven

→ Decentrale overheden moeten altijd up to date blijven wat betreft Europa. Als er veranderingen zijn, moet ook de decentrale overheid weten dat er voor hen ook zaken kunnen veranderen. In principe moeten veranderingen vanuit de Eu hetzelfde behandeld worden als veranderingen door de centrale overheid.

Per overheid kan de uitkomst van een fase verschillen. Verschillende voorkeuren of mogelijkheden van decentrale overheden kunnen bijvoorbeeld een verschil maken om de huidige of gewenste situatie te bepalen.

Dat het bovenstaande concept toepasbaar is in de praktijk wordt getoetst in drie cases. Uit het casusonderzoek blijkt het concept inderdaad toepasbaar. Toch laten de casussen ook zien dat decentrale overheden vrij zijn om Europaproof breder te interpreteren dan het ontworpen concept. Het concept beoogt ook niet compleet te zijn. Decentrale overheden moeten in ieder geval denken aan EU recht en het zou verstandig zijn de organisatie te toetsen op mogelijkheden met betrekking tot EU fondsen en participatie in Brussel. De vraag of deze laatste twee dimensies een onderdeel moeten uitmaken van decentraal beleid hangt volledig af van de voorkeuren en mogelijkheden van de decentrale overheid.

Appendix II: Roadmap Europaproof – decisions to make and steps to take

Europaproof consists of four phases. Each step is the same for all governments, however the outcomes will differ. This roadmap summarizes a set of steps to think about and decisions to make.

1. Europe-consciousness

➔ ***Decide how to make all civil servants and politicians aware with the EU.***

- Be aware of European rules that affect the subnational government;
- Be aware of the implications of EU law (especially: rules on state aid, tendering and specific EU regulations and EU directives);
- Know what changed due to the Treaty of Lisbon;
- Be aware of the existing European funds;
- Be aware of the European objectives that are linked to the European funds or programs;
- Be aware of the existing international networks for subnational governments;
- Be aware of the advantages by participating in pan-European networks;
- Know where to find information about EU law¹⁰²
- Know where to find information about EU funds¹⁰³
- Know where to find information about European networks or organizations¹⁰⁴

2. Cost-benefit analysis

➔ ***Decide what the best situation would be for the government in regard to Europaproof.***

➔ ***What opportunities exceed its efforts and costs?***

➔ ***Set out ambitions in regard to financial and human resources for EU affairs (how much are you willing to spend)***

- Do research on how the subnational government performs currently in regard to EU law;
- Do research on how the subnational government performs currently in regard to EU funds;
- Do research on how the subnational government performs currently in participation/lobby towards Brussels;
- Set out political ambitions for the subnational government in regard to (political and administrative) involvement at the European arena.
- Link the current individual local or regional objectives to European objectives and search for similarities between the two;
- Investigate what human and financial resources are available in regard to EU funds¹⁰⁵ (how much do you spend);

¹⁰² See for example the websites of Kenniscentrum Europa decentraal (<http://europadecentraal.nl/>), VNG (<http://www.vng.nl/smartsite.dws?id=579510>) and the Ministry of Economic affairs (for example: http://www.ez.nl/Onderwerpen/Ruimte_voor_ondernemers/Staatssteun/ http://www.ez.nl/Onderwerpen/Huidige_economie/Aanbesteden)

¹⁰³ See for examples the websites of VNG (<http://www.vng.nl/smartsite.dws?id=59735>) and kenniscentrum Europa decentraal (<http://europadecentraal.nl/menu/110/Voorpagina.html>)

¹⁰⁴ See for example the VNG brochure on partnerships.

¹⁰⁵ One should at least include (a) human resources in order to draw up a programme with ambitions, needs and goals in order to receive financial resources from the European fund; and (b) financial resources to co-finance the project aimed under EU funds.

- Investigate what human and financial resources are available in regard to EU participation at the European level (networks, direct links to Brussels)¹⁰⁶;
- Do research on the both the costs of preparing proposals to draw money from EU funds and the benefits of the expected money receiving from EU funds or programs.
- Do research on the benefits of no action towards EU funds and the costs of missing expected EU subsidies;
- Do research on both the costs for participating at the EU level and the benefits of policy-shaping activities.
- Do research on both the benefits of non-participation with other subnational governments across the EU and the costs for no participation in EU policy-making, learning from other governments and other opportunities.

3. Change and implementation

➔ ***Decide whether implementation will benefit the government or society in the end.***

- Live up to the requirements from EU law. Important to EU rules are:
 - o EU state aid rules
 - o EU tender rules
 - o EU regulations on environmental issues
 - o EU regulations on water issues
 - o Treaty provisions on free movement of persons, capital, services and goods (4 freedoms)
- Potentially improve the organization in order to be able to live up to these legal requirements¹⁰⁷ ;
- Use the opportunities in regard to EU funds that are true opportunities to the subnational government¹⁰⁸;
- Use the opportunities in regard to lobby at the European Union. Relevant institutions to lobby are:
 - o European Commission
 - o Council of Ministers
 - o European Parliament
 - o Committee of Regions
- Use the opportunities to build coalitions. Relevant networks to deploy co-operations can be:
 - o Committee of Regions
 - o Council for European Municipalities and Regions
 - o Eurocities
 - o House for Dutch Provinces
 - o G4
 - o Euregio's

¹⁰⁶ One should at least include (a) the human and financial resources that are necessary in order to keep close relations with members of networks joining; and (b) the human and financial resources that are necessary in order to prepare policy-shaping activities.

¹⁰⁷ Take on a EU legal advisor (or one extra), assign a Europaproof-coordinator

¹⁰⁸ True opportunities are opportunities that have more benefits than costs. The cost-benefit analysis of step 2 should make this clear.

4. Moving and improving

➔ ***Decide how to stay informed about changes.***

➔ ***Decide how to implement changes.***

- Be aware when the European situation will change. For example:
 - National elections change the Council of Ministers
 - European elections change the European Parliament
 - European elections impose a changed European Commission
 - New composition of the Committee of Regions
- Be aware when EU policies are changed
- Be aware when EU law is changed (for example EU directives, EU regulations or changes to treaties like currently the ratification of the Treaty of Lisbon)
- Be aware when the national authority completed the transposition of EU law to national law
- Be aware that changes at subnational level might change the opportunity structure as well. For example:
 - Elections
 - New delegates
 - New governor

Appendix III. Tables

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Appendix IV. List of abbreviations

| | |
|------------|---|
| BZK | Ministry of Interior and Kingdom Relations (Ministerie van Binnenlandse Zaken en Koninkrijksrelaties) |
| CEMR | Council of European Municipalities and Regions |
| Commission | European Commission |
| CoR | Committee of Regions |
| EI | European Integration |
| EU | European Union |
| EP | European Parliament |
| HDP | House of the Dutch Provinces (Huis van de Nederlandse Provincies) |
| IPO | Umbrella association of Dutch Provinces (Inter Provinciaal Overleg) |
| LIG | Liberal Intergovernmentalism |
| MLG | Multi-level Governance |
| MS | Member State |
| MSs | Member States |
| NF | Neo-functionalism |
| SEA | Single European Act |
| UvW | Umbrella association of Dutch Water boards (Unie van Waterschappen) |
| VNG | Umbrella association of Dutch Municipalities (Vereniging van Nederlandse Gemeenten) |