SCRUTINY & CONTROL IN EU AFFAIRS: THE DUTCH PARLIAMENT

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Scrutiny and control in EU Affairs: the Dutch parliament.

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FINAL VERSION

I.   Abstract

This research analyzes the formal Dutch structures and the reality regarding the Dutch parliament and their scrutiny and control tasks in the EU decision making process. The aim of the research is to find out in which stages of the decision making process the parliament can effectively scrutinize and control the government, and in which stages there is room for improvement. The first sub question answered what, in general, scrutiny and control for parliaments are and what role the government plays in this process. The second sub question analyzed the specific Dutch system, which rules and mechanisms are formally in place to enable the Dutch parliament to scrutinize and control. The last sub question entailed the analysis of the research. Here the actual situation of the Dutch system was analyzed. The analysis was done by interviews with six respondents. The respondents provided insight in the system and evaluated the mechanisms in each stage of the decision making process. Strong points of the Dutch system were the structure and opportunities for parliament to request and discuss information. Improvements can be made in the field of timeliness and quality of the information in several stages.

II.   Preface

Before you lies the joint thesis project made by Bram Klapwijk and Jelle Snippe. This project started in at the end of 2016, when a request was made by Dutch parliamentarian Pieter Omtzigt for two students who might be interested in helping with a position paper on the information position of the Dutch parliament in EU affairs. After several interesting and productive days, we helped construct a position paper. When the subsequent request for a possible thesis project came up, it was a no-brainer to start a joint thesis project.

This project was much improved by the great support that we have received from our supervisors and external support. We would like to thank Ramses Wessel, for engaging in thorough discussion and motivating us during the writing of our thesis. We also would like to particularly thank Pieter Omtzigt, for providing us an insight into the interesting dynamics of Dutch politics and for his support during our thesis. Additionally, we would like to thank Oliver Treib for providing excellent feedback and comments during the conceptual stages of our thesis. We would also like to thank Vigjilenca Abazi for her insightful comments at the start of this thesis about classified documents. Lastly, we would like to thank the respondents for taking the time to conduct interviews with us.

I would like to thank Jelle, because working with him on this thesis was great. Somehow, he managed to always have the answers on the questions I had, and motivated me to do the work as good as possible. I would also like to thank Thandy, my fiancée, for her support and patience at moments I was a bit stressed. And finally, I would like to thank my family for their support and questions about this thesis.

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I would like to thank Bram, who has worked with great collegiality and support on this project with me. Many thanks for the mental sparring, long skype meetings discussing semantics, and motivating me to do a good job. Furthermore, I'd like to thank my parents who put up with me and supported me during the time I was writing this thesis.

Jelle Snippe

III. List of abbreviations

Abbreviation	Dutch	English
AO	Algemeen Overleg	General meeting
BNC	Beoordeling Nieuwe Comissievoorstellen	Assessment new commission proposals
CFREU	Handvest van de grondrechten van de Europese Unie	Charter of Fundamental Rights of the European Union
CoCo	Coördinatie Commissie voor Europese Integratie- en Associatieproblemen	Coordination Commission for European Integration and association issues
EAC	Europese zaken commissie	European Affairs commission
EC	Raad van de Europese Unie	Council of the European Union
EP	Europees Parlement	European Parliament
EU	Europese Unie	European Union
EUCI	Bescherming van gerubriceerde EU-informatie	European Union Classification Information
EWS	Vroegtijdig waarschuwings systeem	Early Warning System
Gw.	Grondwet	Constitution
MP	Parlementslid	Member of Parliament
RVO	Regelement van Orde	Rules of Procedure
TEU	Verdrag betreffende de Europese Unie	Treaty on the European Union
TFEU	Verdrag betreffende de werking van de Europese Unie	Treaty on the functioning of the European Union
VAO	Verslag Algemeen Overleg	Report on general meeting
WWP	Werk en wetgevingsprogramma	Work and legislative program

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1. Introduction

Information is a powerful factor for making choices in public policy. Within the European decision making process, national parliaments fulfil a special purpose: they act as the representatives of the citizens of member states, and must institute checks on government oversight through the use of scrutiny and control mechanisms. This is true for both domestic and European policy processes, in with national governments are usually in a stronger position for bargaining or for gaining information. These checks can assume many forms, including direct control of the government by mechanisms that the parliament has at its disposal, or keeping tabs on government through investigative scrutiny procedures. These checks on the government have been complicated by the developments within the EU, where national parliaments can now find themselves in a position where they have to trust that their government is executing the tasks the way they are supposed to (Sprungk, 2010). This is a EU-wide problem, and since the Lisbon treaty of 2009, national parliaments have been given more handholds to get involved with the EU policy process. Systems such as the Early Warning System (EWS), the use of scrutiny reserves, or the ability to request Reasoned Opinions (RO) are all examples of tools that national parliaments can use. As with most matters in European policy, there are a myriad of ways in which national parliaments and governments arrange the use of scrutiny and control within the European policy process. Parliaments can have 'strong', direct control of the government within this process, or can have 'weaker', more indirect influence. Strong control measures include voting rights, legally or politically binding mandates, or the right to request extensive information from Council meetings (Mastenbroek, Zwaan, Groen, van Meurs, & Heiding, 2014, p. 3). On the other side, with a more indirect approach, are matters such as information rights, voting instructions, follow-up after Council negotiations, and rapporteurs.

There are signs from the Dutch parliament that it cannot execute its scrutiny and control functions to the fullest extent, flowing from preliminary research and reports previously conducted by its own European affairs commission. For instance, in a 2014 report on the use of the EWS and the ROs, it is indicated that capacity to use and awareness of these kinds of systems were low (Mastenbroek, Zwaan, Groen, van Meurs, & Heiding, 2014, p. 19). Furthermore, timeliness, quality, accessibility and usability of information from the government on the European policy process appear to be lacking. Thus, if this is the case, the Dutch parliament cannot sufficiently execute its core functions of scrutiny and control, which in turn can lead to the delegitimization of policies enacted by the European Union or actions undertaken by the Dutch government on a EU level. Furthermore, it still seems unclear how far and deep this lack of scrutiny and control is in reality, or what the root causes are. Filling in this information gap has practical relevance both for the literature and the Dutch parliament itself.

This research paper aims at investigating the functioning of scrutiny and control measures of the Dutch parliament, in relation to the government, within the EU decision making process. The main goal of the paper is to provide an in-depth study of both 'formal' and 'practical' scrutiny and control mechanisms that can be used by the parliament. It is useful to further define the aforementioned terms briefly in the context of this research paper. Scrutiny is the ability of the parliament to scrutinize the actions of government, through procedures or mechanisms that will provide the parliament with information on ongoing policy processes. Control is the ability of a parliament to take direct or indirect action to hold the government accountable within policy processes. The distinction between formal and practical scrutiny is important to outline as well. Formal scrutiny and control relates to the legal, procedural or 'on-paper' scrutiny and control measures that the parliament can employ. Practical scrutiny and control relates to the degree in which these formal measures are used, the obstacles that might be present when using formal measures and other practical considerations that might play into their use. The distinction is important, as also stated by Auel & Christiansen (2015, p. 264): '… on the one hand formal rights, legal rules and existing norms provide certain opportunities for parliamentary involvement in EU affairs, but, on the other hand, that these do not determine – and thus cannot be equated with - the actual behavior of parliaments.' The terms used in this research paper are further examined in-depth within the theoretical framework.

There are several important decisions that have been made in order to condense the scope of this paper, and to increase its practical relevance to the Dutch parliament. First, this research focusses on the period after the 2009 Lisbon treaty and on information regarding the European policy process, excluding information flows from domestic affairs. These limits are necessary because of the nature of this paper; using interviews to question informants on more recent matters allows for clearer information, and limiting the scope to the interactions on EU-matters allows for a more in-depth study. Further considerations for the limits in scope and the methodology used can be found in the methodological framework.

There are several ways in which this research adds to the existing literature on scrutiny and control, and provides a practically relevant examination for the Dutch parliament and government. When the current literature surrounding scrutiny and control is taken into consideration, it is apparent that there is an abundance of cross-country comparisons, and a certain lack of in-depth national studies. Furthermore, existing research largely focusses the direct scrutiny and control of the European policy dimensions, such as through measures implemented by the Lisbon treaty. Much less has been done to put scrutiny and control into a more concrete and granular context that focusses specifically on the interactions between parliament and government in EU affairs. The end results of this research could contribute to the understanding of practical dynamics, related to scrutiny and control, within the

context of national parliaments and governments. Furthermore, because this research originates from the request of a Member of Parliament (MP), there is a direct practical relevance that applies to it. It could help Dutch MPs, and to some extent MPs in other countries, to re-examine their positions and the importance of scrutiny and control.

In order for the paper to retain focus, several questions are posed. The purpose of the current research is to examine to which extent the Dutch parliament has been able to execute its scrutiny and control functions in relation to the government and within the European policy process. Simplified, this research aims at answering the question: to what extent has the Dutch parliament been able to perform its scrutiny and control functions over the government decision making within the EU policy process after the 2009 Lisbon Treaty? To aid in answering this question, the formulation of several sub-questions is helpful:

1. What are the tasks and responsibilities of parliaments and governments in the scrutiny and control process?

2. What are the formal structures that enable the Dutch parliament to perform its scrutiny and control functions?

3. To what extent do these formal structures result in effective use of scrutiny and control mechanisms by the parliament?

To examine these variables, a theoretical framework is constructed from the literature surrounding scrutiny and control in the EU context. Additionally, a methodological framework outlines the methods and analyses used for the research. The main body of this paper is built out of the three main research questions: question one, in which the theories used in the theoretical framework surrounding scrutiny and control are worked out, question two, in which 'formal' scrutiny and control measures of the Dutch parliament are examined, and question three, in which the 'practical' use and implications of these measures are studied.

2. Theoretical framework

For this research, it is important to establish some theoretical groundwork in order to examine parliamentary scrutiny and control. Since the focus of this research lies on examining the concepts of scrutiny and control, a literature study is conducted following the main concepts. It is, however, not simple to define scrutiny and control as a clear-cut variables with distinct identifying properties. For instance, the concepts of scrutiny and control relate heavily to variables such as transparency, secrecy, accountability, access to information, legitimacy and many more. Furthermore, the sometimes interchangeable use of these terms and the different contexts in which they are applied makes it particularly challenging to examine these variables. To make sense of the different variables, this theoretical framework consists of several parts, grouped together according to different topics. First, the principal-agent theory is discussed, second the concept of scrutiny, third the concept of control, fourth accountability and legitimacy are examined, and fifth the use of secrecy and transparency within parliamentary systems is discussed.

To examine scrutiny and control, it is first useful to make mention of the principle-agent theory. This theory is applied by many authors, e.g. (Auel, 2007; Sprungk, 2010; Proksch & Slapin, 2011), within the context of parliament-government relationships in either national or European contexts. This principal-agent theory is important for the examination of scrutiny and control, because it can aid in explaining why actors do or do not act in a certain way. Furthermore, it can show how interactions between principals and agents take place. Summarizing the basic premise of the principle-agent theory in parliamentary systems, Proksch & Slapin (2011, p. 53) state that: 'In parliamentary systems, voters delegate to political parties in parliament, who delegate decisions to a government, which delegates jurisdictions to cabinet ministers, who, in turn, delegate to bureaucrats to implement policies.'. Thus, this means that the agent is given some degree of discresion to execute the will of the principal for reasons such as to solve collective action problems of problems of capacity (Sprungk, 2010). This, however, can also potentially create agency problems when an agent does not fullfill the interests or goals of the principal, also known as agency loss. Auel (2007, p. 496) mentions several types of agency loss that can occur: when the agent fails to act in the best interest of the principal (shirking), when it acts against the interests of a principal (sabotage), or when information assymmetries occur which favor the agent (hidden information). Furthermore, Auel states that these agency loss problems can be avoided or limited by imposing ex-ante or ex-post control mechanisms upon the agent, including measures that hinder the appointment of an innapropriate agent (screening), or that set out monitoring and reporting requirements after the agent has been appointed. In terms of ex-post control, Auel (2007, p. 496) states that the most important are the 'right to demand information on the actions of the agent … and the capacity to impose sanctions, in other words to hold

the agent accountable.' This is further reinforced by Curtin (2007, p. 525), who puts accountability through control in the context of the principal-agent theory, stating that 'The single and unitary chain of delegation runs all the way from the voters to the civil servants that ultimately implement public policy…'. According to Curtin, accountability is achieved through the implementation of both ex-post or ex-ante accountability measures, such as monitoring and reporting and selection of agents respectively.

2.1. Scrutiny

Scrutiny is a core function of national parliaments, with many parliaments across Europe enjoying constitutional and other legal rights to investigate the activities of governments. Within the context of national scrutiny as a function of coalition-making, Martin & Vanberg (2004, p. 13-14.) describe scrutiny as a way of monitoring the delegated actions of potentially hostile ministers in order to put a check on the actions of governments. Auel, Christiansen & Tacea (2015, p. 284) describe scrutiny in a similar manner when it is viewed in a European context: national parliaments are given tools, either ex-post or ex-ante, to monitor the activities of their respective governments in the EU-decision making process. Holzhacker (2002, p. 462) defines scrutiny in a broader sense within the EU context, even with a slight overlap in the concept of control: 'Parliamentary scrutiny is the exercise of power by the legislative branch to control, influence, or monitor government decision-making.'. The overlap of control within scrutiny is also mentioned by Finke & Dannwolf (2013), where in some cases the use of scrutiny can be seen as an extension of opposition control. Broadly summarizing these three perspectives briefly, it can be said that scrutiny is a function of a national parliament that allows it to monitor, investigate, question, inquire or otherwise acquire information from a certain decision making process in order to provide a check to a government.

There are many forms of scrutiny that can be used, relating in part to the 'strength' of a parliament, and in both formal and informal ways. This is an important point that is made by several authors, (Auel & Benz, 2005, p. 389; Auel, 2007, p. 488; Finke & Dannwolf, 2013, p. 718), the fact that simply examining 'formal' scrutiny is not enough to paint a picture of the actual scrutiny powers of a parliament. As Auel (2007, p. 488) points out, simply the existance of formal scrutiny rights does not mean that parliaments maximize their behaviour to use these rights. Holzhacker (2002) furthermore emphasizes the strategic importances the specific government-parliament interactions could potentially have. In some cases, for governing parties that support the ruling parliamentary parties, it might not be politically favorable to perform heavy scrutiny procedures which in turn could weaken their own political position.

A distinction can additionally be made between passive and active scrutiny rights; with differences between receiving information from government and requesting information from

government (Héritier 2003, p. 821). Whilst passive information rights are important starting points for scrutiny, many authors point towards the important role of active scrutiny (Holzhacker, 2005; Auel 2007; Sprungk, 2010; Auel, Rozenberg & Tacea (2015). Héritier (2003, p. 821) defines active and passive scrutiny as: 'the possibility of transmitting information, and even demands, to a political or administrative decision making-body' and 'the possibility of obtaining information about on-going decision-making processes and the person involved in a decision making body' respectively. This distinction is important because, as Auel, Rozenberg, & Tacea (2015) accurately point out, there is a large variation between the rights of parliament within scrutiny, and the actual use of these rights. Furthermore, they point out that formal scrutiny rights are crucial preconditions for further EU scrutiny of parliaments, in addition to electoral and policy condidtions.

Another way in which scrutiny can be upheld is through the use of a so-called scrutiny reserve. Scrutiny reserve, as defined by Holzhacker (2005, p. 435), gives parliament: '… the right to demand time from the government to be able to consider matters and debate them before the government may vote in the Council of Ministers.'. Typically scrutiny reserve is used for issues that are considered to be salient by the parliament, and in which there are broad vested interests. Furthermore, the size, composition, scope, and effectiveness of specialized European Affairs Comissions (EACs) can have large influences on the scrutiny function of a parliament (Finke & Danwolff, 2015, p. 717). Such specialized EACs can table spectific proposals that relate to European affairs, put checks on the minister for foreign affairs and scrutinize the activities of the government in this regard. As a concluding remark on this section on scrutiny, it should be noted that there are important considerations for implementing certain scrutiny structures. Plainy stated, simply giving parliament more information through scrutiny does not mean that the scrutiny function of the parliament is enhanced. Simply increasing the quantity of parliamentary scrutiny within the system is not a sufficient action to achieve the desired effects of scrutiny, such as to increase accountability (Sprungk, 2010, p. 3). Effective scrutiny, according to Auel, is determined by a myriad of factors such as the 'scope, timing and management' of parliamentary scrutiny (Auel, 2007, pp. 488-490).

2.2. Control

Within national politics, parliaments in the EU can have a wide range of potential mechanisms at their disposal to control their governments. These mechanisms range from requesting information to ordering sanctions against the government for not representing the interests of the parliament (Sprungk, 2010). The parliamentary control function of the national parliaments in EU affairs is described by Karlas (2012, p. 1097) as resting on three main functions: 1) the ex-ante control of EU decision making, including specific positions of national governments during legislative acts, 2) ratification of changes in EU treaties, and 3) the transposition of EU legislation in to national law.

Winzen (2012, p. 660-661) conceptualizes control in three ways: first control measures the ability of parliament to make government act according to its preferences, which is based out of the principle-agent theory in which the parliament delegates authority to the government and exerts control to prevent agency loss. Second, Winzen points out that the amount of resources that are being devoted to processing information are important indicators of the efficiency of control. The appointment of specialized EACs is an important measure of control, a point that has previously also been made by Holzhacker (2012, p. 431). Third and last, Winzen defines 'parliamentary mandating or resolution rights to impose parliamentary positions on government' as a strong measure for parliamentary control. In a later paper Winzen (2013, p. 299) notes that oversight institutions, meaning rules and procedures that increase parliamentary control of EU-affairs, increase parliamentary involvement within the decision making process. Within these oversight institutions, two main themes are central according to Winzen: addressing information asymmetries that exist or might exist between the government and parliament, and to address parliamentary authority losses. Within national politics, parliaments have many mechanisms to control their governments. Müller & Meyer (2010) examine control in the context of multi-party systems, stating that in these systems control is more complex due to the presence of a coalitional agenda and a party agenda. In such systems, the ex-ante implementation of strong selection criteria for ministers (coalition-loyal) and the ex-post direct monitoring by strong and specialized committees are important (Müller & Meyer, p. 1087). In summary, the conceptualization of the controlling function of national parliament relates to the degree in which, before, after or during scrutiny, national parliaments can influence the decision making process. An important note to make here however, is that scrutiny and control functions are to some degree complementary to each other. Winzen (2013) notes that as parliamentary scrutiny increases, so does the degree of control through a more indirect way: governments will take into account that national parliaments are observing the decision making process and generally adjust their behavior because of this. If parliaments are given more room to scrutinize the activities of the government, an inherent degree of control is automatically created.

It is useful, at this point, to take a step to the side and to examine some additional factors that relates to the use and effectiveness of scrutiny and control: the amount of resources that are available. MP's must carefully examine whether the engagement of scrutiny and control mechanisms, and in particular the outcome of such actions, will yield satisfactory results in order to justify the expended resources (Döring, 1995, p. 28). Broadly speaking, these resources could include a myriad of things: from legislative actions and time (Döring, 1995), to the allocation of manpower or the size of administrative staff to sift through documents (Winzen, 2012, p. 660; Finke & Dannwolf, 2013, p. 718). There are few authors that write about scrutiny and control that do not mention, at least to some degree, the effect

that sufficient or insufficient resources can have on the scrutiny and control functions of a parliament. One description used often in the literature, and which should be pointed out here, is that of the 'strong' or 'weak' parliaments. Whilst applied in many different contexts, it generally entails that strong parliaments have more direct influence through their respective scrutiny and control measures than weak parliaments (Mastenbroek, Zwaan, Groen, van Meurs, & Heiding, 2014). For example, Auel (2007, p. 487) points out that that in the context of parliamentary scrutiny of EU affairs: 'Strengths and weaknesses of national parliaments in EU affairs are generally measured with regard to the scope, timing, management and impact of parliamentary scrutiny of EU affairs.'. This does not mean, as subsequently stated by Auel, that informal measures should be overlooked. Another example of strong parliaments is the Danish case, in which Sousa (2008) points out that the Danish parliament has historically been strong in controlling the decisions of the government in the Council by instituting strong formal rights within their respective EAC.

2.3. Accountability & legitimacy

Within the literature surrounding scrutiny and control there are several terms which occur frequently alongside the already discussed topics: accountability and legitimacy. These concepts tie into scrutiny and control in different ways that, in order to paint a complete picture, should be mentioned in this framework. Starting with accountability, used by numerous authors (e.g.: Raunio & Witberg, 2000; Bovens, 2004; Curtin, 2007; Auel, 2007), in various EU and domestic contexts. Accountability is used interchangeably with other concepts in the literature, and does not always have clear-cut boundaries. Bovens (2007, p. 105) notes that accountability is used to denote matters such as: clarity, transparency, responsibility, involvement, deliberation, and participation. Furthermore, Bovens accurately points out the rather normative dimensions that could be pinned on accountability, stating that it is often: 'used to positively qualify a state of affairs or the performance of an actor. It comes close to 'responsiveness' and 'a sense of responsibility', a willingness to act in a transparent, fair, and equitable way.'. Bovens additionally distinguishes several forms of accountability; accountability to administrative forums, to citizens, clients, and civil society. Curtin (2007, p. 534) uses Bovens perspectives on accountability as well, stating information rights as important prerequisites for accountability: 'namely the opportunity of hearing an explanation or justification of the actor's actions or decisions and for such account giving to be debated and queried.' Sprungk (2010) likewise puts heavy emphasis on information rights, and in particular the quality of the received information to increase accountability. Müller & Meyer (2010) state that accountability is created mostly through ex-ante or ex-post mechanisms in multi-party systems. Fox (2007, p. 668) dishinguishes two types of 'faces' for accountiblity: answerability (the right the demand answers) as 'soft face', while the 'hard face' includes answerability plus the possibility of sanctions. This is a clear example of a definition in which scrutiny andcontrol, through either ex-post

or ex-ante mechanisms, leads to this state of accountability. From the above information it is apparent that accountability does not simply mean an extension of control, or an extensions of scrutiny: it ties into scrutiny and control but focusses more on the impact of these measures on delegated power. That is to say, scrutiny and control are both measures that can be used in order to make agents that have received delegated power more accountable to their principals. Furthermore, there appears to be a distinction between 'knowing' and 'acting' in the sense of accountability: to which extent is a principal informed of the actions of an agent, and to which extent is this principal able to alter or control the behavior of said agent.

A concept that relates closely to accountability, but has important distinctions is legitimacy. Terms such as legitimacy can often be found in literature surrounding the democratic deficit of the EU (e.g. Beetz, 2015), or of national parliamentary systems. There are many forms of legitimacy, such as input, output, social and legal legitimacy (Curtin & Meijer, 2006, p. 112). Curtin & Meijer further define formal (legal) legitimacy and social (empirical) legitimacy: the manner in which a particular structure of authority was constituted and acts according to legal rules and procedures, and the affective loyalty of those who are bound by it on the basis of deep common interest and/or strong sense of shared identity respectively (Curtin & Meijer, 2006, p. 112.). Curtin and Meijer state that output legitimacy relates to the agreement between people that a particular structure should and even participate in rule making because of the benefits it brings, and that input legitimacy relates to the belief that citizens have a fair chance to influence decision-making and to scrutinize the results. Schmidt (2013) also employs the terms input, output and additionally 'throughput' to characterize legitimacy. While the basic definitions and meaning of input and output legitimacy do not differ much from those of Curtin, the dimension of throughput is an interesting addition. Throughput, as defined by Schmidt in the context of the EU is: 'Throughput legitimacy … is judged in terms of the efficacy, accountability and transparency of the EU's governance processes along with their inclusiveness and openness to consultation with the people.' (Schmidt, 2013, p. 2). In this sense, throughput legitimacy can be seen as not only relating to what goes in and what comes out of a certain political or administrative process, but also what happens and in which way things such as policy come to be. To summarize, it can be said that generally speaking, all forms of legitimacy aim to validate the existence of a certain structure, process or institution and to justify its existence. There are many links that can be made with other concepts discussed in this framework, such as that through scrutiny and control certain actors can be made accountable which in turn can increase the perceived legitimacy of a certain structure.

2.4. Secrecy, transparency

If information can be acquired through means of scrutiny, governments or public bodies can be controlled by holding them accountable for the contents of this information (Sprungk, 2010). Scrutiny

and control of the government are core features of parliaments, but the use of secrecy or transparency ties in heavily with the role of the government as a legislator, especially on a European level (Curtin, 2014). A main theme within transparency literature is the degree to which secrecy and transparency should be used. For instance, some studies note that there is an established idea that increased transparency will limit the room for government to negotiate, which in turn leads to gridlocks or unnecessary extensions of negotiation times (Hagemann & Franchino, 2016, p. 408). However, scientific literature is still rather divided on this topic. Hagemann & Franchino (2016, p. 425) conclude their paper by stating that specific types of transparency can help increase accountability namely that 'public access to legislative records can help overcome problems of incomplete information, which in turn can reduce the risk of negotiation failure and increase the efficiency of decision-making.'.

As mentioned before, transparency relates to the aforementioned concepts of accountability and legitimacy in different ways. Certain processes or institutions, such as parliamentary enquire procedures or the European Ombudsman, can reinforce both legitimacy and accountability. It should be noted, however, that there are many ways in which transparency can be done and institutional capacity, or the availability of certain resources, is a major factor in determining the efficiency of transparency (Fox, 2007). In relation to legitimacy, Curtin and Meijer, (2006, p. 120), conclude that simply creating more transparency does not imply that more legitimacy is automatically created. Several things are mentioned as an example: there can be an informaton overload which is counter-productive for the receiving party, increased information flows can result in sensasionalist press which in turn reduces legitimacy, and that increased transparency might not reach the intended audience because they are not informed or interested in the existence of this new information. Another perspecive is provided by Fox (2007), who distinguishes two faces of transparency: clear and opaque (fuzzy) transparency. In the first instance, clear transparency relates to the 'information-access policies and to programs that reveal reliable information about institutional performance, specifying officials' responsibilities as well as where public funds go.' (Fox, 2007, p. 667). In contrast, opaque or fuzzy transparency denotes transparency that is only done nominally, without the purpose of actually revealing institutional behavior or to increase accountability. To exemplify his point, Fox cites the case of data on farm subsidies in the USA, in which a watchdog organization had to expend a large amount of effort and funds in order to gain access to information that should technically be publicly accessible. In this sense, his definition of fuzzy transparency concurs with major points in the access to documents discussion, for instance that in the European court case of *Council* v. *Sophie in 't Veld* (Abazi & Hillebrandt, 2015). In this case, which concerned a request for a document containing legal advice in international negotiations, access to the document was only granted after a significant amount of effort and time was spent, and even then the document had many important parts blacked-out.

Here we can see there are many nuances to be taken into account when determining the effectiveness of transparency to raise legitimacy or accountability: to which degree is information accessible, proactively processed and communicated, (Auel, 2007) and what kind of sanctions or changes can be enforced if this information does not comply with the receiving party? Furthermore, as stated before by (Auel, 2007, p. 488), a true picture of the parliamentary functions of scrutiny and control cannot be painted by just examining formal structures of transparency, accountability, scrutiny and control. Some parliaments, such as that of Austria, have strong formal powers for controlling the government in EU decision making, but make little use of these powers in practice (Auel, 2007, p. 493).

2.5. Summary

Summarizing the above theoretical framework, there are several things that can be concluded. At first, that scrutiny can be considered: a function of a national parliament that allows it to monitor, investigate, question, inquire or otherwise acquire information from a certain decision making process in order to provide a check to a government, and that control can be considered: the degree in which, before, after or during scrutiny, national parliaments can influence the decision making process. Within these definitions, both 'formal' and 'informal' scrutiny and control are important. In other words, the degree in which formal rights are used to scrutinize and control. Additionally, that scrutiny and control can operate in a mutually enforcing way. When there is strong scrutiny, an automatic degree of control is also placed upon the entity that is being scrutinized. Furthermore, there are important prerequisites that must be considered when examining the parliamentary use of scrutiny and control, such as the potential political trade-off, resource cost, or incentive to use these measures. Furthermore, administrational capacity, time, and salience of the issues at hand greatly influence the use of scrutiny and control measures.

Furthermore, accountability and legitimacy are both concepts that can be the result of scrutiny and control. Accountability can be summarized as the ability of an agent to be held accountable to a principal, with either ex-ante or ex-post measures. Legitimacy can be seen as the general belief or understanding that a structure or political institution should exist and operate in the way that it currently is operating. This also ties scrutiny with the concept of transparency or secrecy, since transparency can positively influence scrutiny. Without (parliamentary) scrutiny and control, accountability and legitimacy are neglected, since there would be no way of following the actions of important agents and no way to hold them to account. However, as pointed out in the literature, this does not mean that simply increasing scrutiny and control leads to a more accountable and legitimate system.

3. Methodology

3.1. Research questions

In this chapter, the research methodology of the research will be discussed. First, the overarching goal of the proposed research is formulated. Second, the structure of the research paper is explained, including the types of measurements and analyses that will be used.

The focus of the research centers around the main research question: To what extent has the Dutch parliament been able to perform its scrutiny and control task over the government's decision making on EU matters after the 2009 Lisbon Treaty? The main research question will be answered through the use of several sub-questions:

1. What are the tasks and responsibilities of parliaments and governments in the scrutiny and control process?
2. What are the formal structures that enable the Dutch parliament to perform its scrutiny and control functions?
3. To what extent do these formal structures result in effective use of scrutiny and control mechanisms by the parliament?

Each of these research questions will be discussed in separate chapters. The research has an unfolding nature, where the first chapters will build the basis for the rest of the thesis. The first research chapter, chapter 4 in this thesis, will provide a broad conceptualization of scrutiny and control. It will explain the different functions of parliamentary scrutiny and provide theoretical background into the dynamics of parliamentary scrutiny and control. Where the theoretical framework aimed to introduce concepts such as scrutiny and control, this chapter will work out these concepts in more detail, and provide measurable variables. It will make a distinction between rights and tools parliaments can rely on in order for them to effectively scrutinize, and will also map the responsibilities of government and aspects on how information needs to be provided in order for parliaments to effectively scrutinize. This conceptualization will then be used to provide insight in the Dutch system, discussed in the second chapter, and will form a base for the interviews.

The second chapter, chapter 5 in this thesis, will focus on examining the broad, formal structures in which scrutiny and control are organized. Compared to chapter one, this chapter narrows down the scope of scrutiny and control to the Dutch parliamentary system. These can be laws, constitutional provisions, and other formal scrutiny and control structures that are in place within the system. The chapter will also go further than the first chapter, creating insight in the formal structures and flows of information in a business-as-usual scenario. It aims to find how the government keeps the parliament informed of the EU decision making process in the general sense, and how the parliament can use its rights and tools in this process. This means that legal structures, such as constitutional laws

and institutional arrangements within the parliament or government, but also process-based structures, such as special commissions or informational memoranda, need to be examined. The final goal of the data is to paint a picture of the formal scrutiny and control structures that, in principle, are present within the Dutch system.

The last chapter, chapter 6 in this thesis, will be the oriented towards a granular examination of scrutiny and control functions within the Dutch parliament over the government in EU affairs. This question deepens the research by adding a practical dimension. As stated before in the theoretical framework this analysis is necessary in order to provide sufficient insight into the actual usage of scrutiny and control powers. This chapter will thus review to what extent the formal structures as examined in chapter two are present in reality. This review will be guided by the conceptualization of scrutiny and control made in chapter one.

3.2 Research design

Several research methods will be elaborated, starting with the sampling and case selection, continuing with data collection, and finally with data analysis. As stated before, the general research design has an unfolding nature.

3.2.1 Sampling and case selection

The research aims to discover the resemblances and discrepancies between the formal scrutiny and control structures and reality. As the research focusses on the parliamentary scrutiny and control, the subjects of analysis logically can be found there. To provide structure, this research aims at analyzing this within specific cases. These cases start as EU proposals which are to be discussed in parliament, thus giving roles and tasks not only to the government in the EU decision making process, but also to the government and parliament in the Dutch parliamentary system. A full case can be seen as a proposal from the Commission which has undergone the whole policy making process, and has been accepted in the Council. Selection of these cases is based upon a few characteristics:

- Differentiated policy areas; such as economic policy and environmental policy. This gives an overview of where potential problems or successes can be found and gives insight as to why they are found there.

- Cases that are 'complete': cases would preferably be complete in the sense that the legislation that is examined has been passed. This allows for a more complete overview of the information flows surrounding a particular case.

- More recent cases were preferable, and no case should be older than 2009. The timeframe of the research, the post-2009 Lisbon treaty era, is chosen because of a few reasons: it allows

bounding of the cases examined in chapter 3 of the research, both in terms of time and topic, and national parliaments fulfil new roles after the Lisbon treaty (Auel & Christiansen, 2015). Using a most similar case study design in this research will have a few benefits and pitfalls: the research will be bounded by a timeframe (after Lisbon) in which these cases have taken place. The pitfalls, to be taken into consideration, are that cases need to represent several policy fields (such as for instance economic or social policy), several outcomes (negative and positive), and need to be analyzed in light of the political position (if applicable) of the interviewee.

3.2.2 Data collection

The fourth and fifth chapter will mainly be based on the theoretical framework and scientific literary sources on scrutiny and control. However, in addition to these theoretical sources there is the possibility of interviewing a senior clerk or member of the registrar, or other expert in the field.

For the sixth chapter and main part of the research, several interviews with members of parliament, experts, and other relevant actors will be conducted. The preliminary focus of these interviews will be five concrete cases, to be used as leading examples to examine the process of informing the parliament. If this does not prove to be practically feasible, respondents will be asked to provide more general information. A target of minimum two interviewees per case is aimed for. The interviews shall have a semi-structured nature, providing a similar outline for each interview, but leaving room for deeper discussion. The structure of the interview is determined at the start of chapter six, and is based on the findings of chapter four and five. The translated research questions can be found in appendix one.

3.3 Data analysis

The data analysis will take place through qualitative content analysis structured around the central themes that were set out at the beginning of chapter six, based on chapter four and five. All interviews will receive the same general structures which allows the result to be coded within a certain topic. Based on the interviews, the analysis determines if and which formal structures have been met in reality. To be precise, the analysis will not only analyze if formal structures have been met by the government, but also if the parliament has effectively used all its mechanisms. After sub-question three has been answered, the main research question can be answered. Based on the findings of chapter five and six, it can then be concluded if formal structures are present to perform scrutiny and control, if the government complied with these structures, and to what extent the parliament has been able to use the mechanisms of scrutiny and control.

4. Scrutiny and Control

4.1. Introduction

This chapter will answer the first sub-question: *'what are the tasks and responsibilities of parliaments and governments in the scrutiny and control process?'*. The chapter aims to provide a clear overview on the different scrutiny and control mechanisms parliaments can have, based on the literature and other sources. This chapter will serve as a basis for the following chapter, which will focus on the formal structures of the Dutch parliamentary system. The next chapter will incorporate the conceptualization in its analysis. The second aim of this chapter is to determine in which ways the different variables of scrutiny and control can be analyzed, i.e. what makes them measurable. It is of great importance to understand the role of the government in the parliamentary scrutiny and control process, as the government has its own obligations in order to enable the parliament to scrutinize. Therefore, both the rights of the parliament to scrutinize and control the government, and the obligations and role of the government in this process will be analyzed. First, a distinction based on Héritier's (2003) division between an active and passive parliament will be used to make a broad division between the roles of the parliament and the government. Second, ways and tools of scrutiny as a function of the parliament will be analyzed. Third, the variables regarding information are analyzed to determine what obligations governments have to meet when they provide information. Fourth and last, control mechanisms the parliament can use are outlined. The chapter will not look into the process of a parliament within the European legislation procedure, as this will be discussed in the next chapter for the Dutch parliament.

4.2. Roles for the parliament and government

Scrutiny and control are two concepts which have received wide interest from both scholars and politicians in the past. As explained in the theory, scrutiny and control contribute to matters such as accountability and legitimacy, which are essential for the relationship between citizens, parliament and the government. The theory also explained that scrutiny and control are two aspects of the same coin, where scrutiny can also be seen as a form of control. However, these concepts were also summarized. Scrutiny was summarized as a function of a national parliament that allows it to monitor, investigate, question, inquire or otherwise acquire information from a certain decision making process in order to provide a check to a government. On the other hand, control was seen as the degree in which before, after or during scrutiny, national parliaments can influence the decision making process of their governments. The research will, for now, continue with this division and will, in some cases, indicate when a certain mechanism can be seen as a hybrid between scrutiny and control.

Now that scrutiny and control have been defined, including their respective importance, the

question of which different scrutiny and control tools or mechanisms parliaments can use arises. Starting with scrutiny, Héritier (2003, p. 821) provides a clear and straightforward distinction between active and passive access to information. The passive access to information for parliaments entails the right to receive information from the government without any actions from the parliament. This means that formal structures have arranged a stream of information from the government to parliament. On the opposite side, active access to information implies an active role from the parliament in obtaining information from the government. To facilitate this, formal structures have been set-up which enable the parliament to request or demand information from their government, to which the government does, or does not, have the obligation to respond. Building on this distinction, it can be concluded that there are tasks for both the parliament and the government. It is the parliament that can vary its scrutiny activities, while the government has to comply with certain outlined rules. The wide range of scrutiny mechanisms therefore need to be outlined, after which the rules for government action can be determined. It should be noted that with all general scrutiny and control mechanisms, the EU has significant effect on the use and effectiveness of these mechanisms. With the establishment of the EU, the parliament significantly lost terrain when it comes to certain policy areas, diminishing its power over the government. At the same time, governments also lost some ability to fully inform their parliaments, as they are constraint by EU legislation.

4.3. Scrutiny

To examine scrutiny to its full extent, this sub-chapter consists of three sections. Section one will look at the actual right of parliaments to receive or request information from the government. This lies at the heart of parliamentary scrutiny. The second section will look at the different tools and aspects of scrutiny, such as the use of committees and the openness of deliberations. The last section will summarize the different aspects and will outline how these aspects will be used in subsequent chapters.

4.3.1. Receiving and requesting information from the government

At the heart of scrutiny lies the right to receive and request information from the government. As Héritier (2003) explained, the passive right to receive information from the government needs formal structures which arrange the right to receive information. Where in case of the passive role to receive information only the variables of information differ per country (topic of next paragraph), the active role of a parliament can differ greatly per country.

Building on the formal structures that allow parliaments to request information from their government, the way of requesting can vary between oral questions, written questions, urgent

questions, interpellations, or a combination of these rights (Wiberg, 1995, p. 187-188; Yamamoto, 2007, p. 49-61). Moreover, when oral questions are asked it is important to see whether other parliamentarians have the opportunity to join the questioning and are able to ask supplementary questions, or that each question is processed separately without further options to join a particular case. Another important aspect of requesting information is whether information can be requested by an individual, or by a group (Yamamoto, 2007, p. 53). To which extent the number of requesting parliamentarians has influence on the obligation for the government to respond correlates to this issue. In case the government is obliged to respond, the variables of how to respond will be subject of the next paragraph.

A last and important way of requesting or obtaining information is through informal ways. Yamamoto (2007, p. 49) and Holzhacker (2002) explain that parliamentarians often obtain information by use of their networks within the parliament. Especially in the case that a parliamentarian is member of the ruling party, information is quickly retrieved through internal party communication.

4.3.2. Active scrutiny

Throughout the parliaments in the world, many different tools, mechanisms and requirements for scrutiny can be found. In order to execute the actual scrutiny, several tools are used. In the context if this research, the scrutiny starts with the European Commission. With the vast amount of new legislation being proposed by the European Commission, parliaments need the capacity to focus on the proposals they deem relevant to scrutinize. To do so, some countries have installed systems or institutions filtering the proposals (Auel, 2007, p. 489). An example of such an institution is the filtering committee in the United Kingdom (UK), which determines which proposals need further attention, and which do not (European Union Committee, 2014, p .14).

Even with a filtering committee in place, the amount of information is still too much to process for many parliamentarians. Therefore, as a next step, many countries have set up parliamentary committees which focus on European affairs in general as a second tool to scrutinize information (Winzen, 2012, p. 660). The way countries have set up this committee structure can differ in various ways. First of all, some countries have a single EAC, while other parliaments have multiple. These committees can furthermore be hierarchical, as for instance in the UK where the EAC has 6 sub-committees, or be without hierarchy. Furthermore, some committees can be permanent while others are of a more temporary nature. A second committee structure can be found in the powers these committees enjoy (Yamamoto, 2007, p. 16-17). Here one can think of powers such as information analysis, ability to question the government and the proposal or adjustment of legislation (Döring, 1995, p. 368).

A last tool to improve the scrutiny is by the use of experts (Yamamoto, 2007, p. 31). Experts, or citizens with a particular relation to the legislation at hand, can provide a useful insight on matters the government has not informed the parliament on. Here, the question is whether a parliament is allowed to use experts, and what their value is.

In addition to the tools that improve the quality of scrutiny, there are two more important matters for the scrutinizing activities of parliamentarians which also have controlling aspects. The first one is the scrutiny reserve (Auel & Christiansen, 2015, p. 268; Winzen, 2013, p. 307-308). A scrutiny reserve works in such a way that when the parliament activates the reserve, the government is not allowed to vote on the matter in the Council before the parliament has provided permission for the vote. Such a scrutiny reserve provides a useful tool to both improve the parliamentary scrutiny function, as well as a way to control its government. The scrutiny reserve can, therefore, be seen as a hybrid mechanism of both scrutiny and control. On the one hand it controls the actions of the government by restricting any actions in the Council, and on the other hand is the tool meant to have time to scrutinize a matter in more detail. The second matter is a formal requirement for scrutiny, as it determines to what extent scrutiny can be performed publicly or behind closed doors. Several authors such as Auel (2007, p. 488), Holzhacker (2002, p. 463), and Raunio (2011, p. 315) have explained the importance of open deliberations for both the scrutiny and control function of the parliament, but also for the accountability of the government. The authors explain that openness is a trade-off between the aforementioned concepts and speed. It is argued that when deliberations are done behind closed doors, the government will find less obstruction by either the parliament, media or public and will therefore be able to execute its tasks faster. On the other hand, however, is the risk of such deliberations that the government will not be held accountable in a proper way, which will enable it to follow own directions instead of those of the parliament. In this sense, it can thus be seen as basic principal-agent problem.

4.3.3. Conclusion

Figure 1: The scrutiny process

Figure 1 summarizes the information. As stated, parliaments first and foremost have the right to receive information. The moment parliaments do not receive this information, or when they believe that they need more, parliaments have the formal right to request information, which can be done in different ways. They also have the possibility of requesting information through informal structures, which can be a significant source of information. However, due to the informality, for this no rules are laid down. As soon as information is received, the information will be filtered. This can be done by committees, or other structures that make a distinction between information that needs to be scrutinized or not. Lastly, the information will be scrutinized. For this, parliaments can use three mechanisms. The use of EACs can ease the task of parliaments, experts can shed light on valuable or missing information, and the scrutiny reserve can be used to extend the scrutiny period. Another aspect within the scrutiny phase is whether the deliberations can be open for public, or not. The contents of this figure will be useful to examine the formal scrutiny and control structures of the Dutch parliament in a later chapter.

4.4. The task of the government

As the agent within the principal-agent theory, the government has to execute tasks on behalf of the parliament, and inform the parliament about the execution of these tasks. How the government informs the parliament is crucial for the scrutiny process, and is laid down in sets of rules which can be

very specific, or rather general. Theory and prior parliamentary inquiries have distinguished several variables of information. These variables are the way the government is supposed to provide the information to the parliament in order for the parliament to execute its scrutinizing task. This sub-chapter knows the same set up as the previous sub-chapter, with first an analysis of the different variables of information and secondly a conclusion which provides a schematized overview of the variables and a discussion on how the variables will be used in the research.

4.4.1. Variables of information

The first variable, featured prominently in the literature, is time (Auel, 2007, p. 489; Martin & Vanberg, 2004, p. 17; Tweede Kamer, 2014, p. 10). In order for the parliament to be able to scrutinize certain information, the information needs to be provided before the parliament needs to provide an opinion or decision on the matter.

A second, and more facetted variable, is the type of information (Mastenbroek et al., 2014, p. 14-15). Which particular type of information governments send to their parliaments varies greatly between countries in the EU. In countries such as Finland and Sweden, government are forced to send all information, such as Council meetings, trilogues meetings, Coreper and informal meetings. With the extensive supply of information, parliaments in such countries have a strong control the actions of their government. Other countries such as Germany and Poland require less information from their governments, although they still obligate the government to send all legally allowed information, including their efforts in Council meetings (*ibid*).
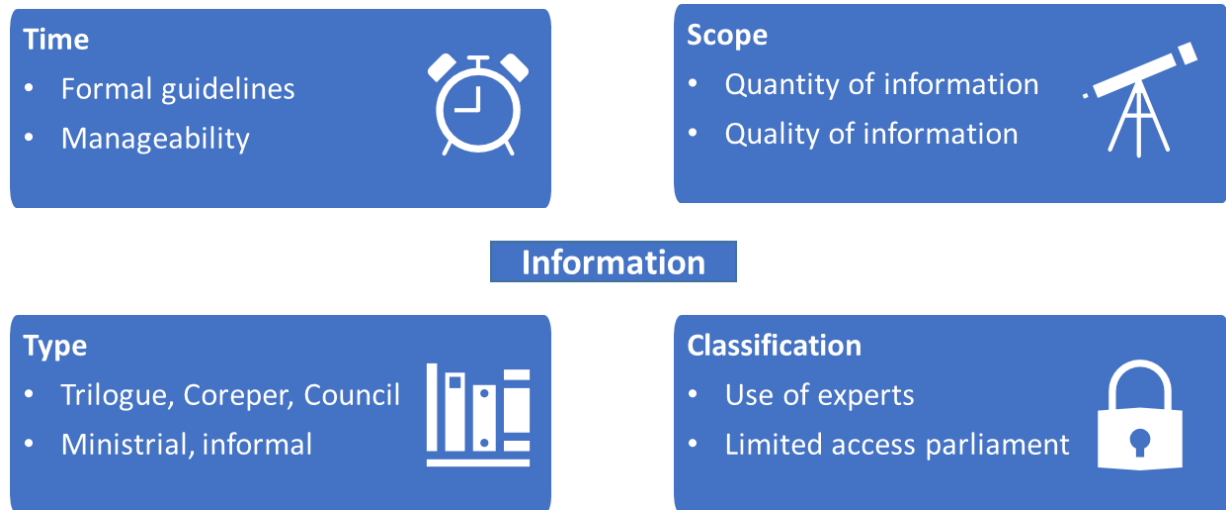
The extent of information governments send also correlates with another variables, namely the openness of information. This variable correlates to the openness variables of the previous sub-chapter, where it was discussed as an aspect of scrutiny. Within the EU, documents receive different classifications. These documents can be either relevant information, or meetings on a certain topic. With each classification level, ranging from 'Top secret' as the highest rank to 'Restricted' as the lowest rank, parliaments and citizens have certain rights to obtain, or not obtain, a particular piece of information (Council, 2013). The classification in the EU is determined by the 'European Union Classification Information' (EUCI) system, which decides that each EU institution internally has to deal with the administration of classified documents (Abazi, 2015, p. 100-101). This means that classification is based on procedures, and that institutions also have the ability to arrange classifications within their own administrations. The Council has, for example, created a new administrative label for certain documents, namely 'limité' or 'limited'. This label has created some controversy due to the great number of documents no longer available for parliaments and the public, and has for instance been questioned by the Dutch parliament on its compatibility with the Treaties

(House of Representatives, 2017). With these classifications, governments find themselves placed in between the parliament they have to report to and the EU, where they have certain confidentiality obligations. Logically, the extent of classification relates to which information governments provide to their parliaments. Moreover, if governments decide to provide more information on EU matters, scrutiny will also become more an activity behind closed doors as citizens and also parliamentarians are not allowed to have knowledge about it. Classification also has an influence on the use of experts in the scrutiny process. Since experts are citizens, they fall in a category in which even more information is shielded of from them. The less experts are allowed to know, the less they can be of use for parliaments in their scrutiny tasks.

A last variable of information is the by Auel (2007, p. 489) named 'scope' of information. The scope entails two parts, which will also be used separately for the research. The first is the quality of information. With quality of information it is meant how useful the information is to the parliament. This relates partially to the classification of information, since it might mean that through the EU, information is left out and therefore incomplete. Thus, completeness is the first aspect of quality of information. A second distinguishable aspect of the quality of information can be described as the 'readability' of the information, whether difficult technical terms are used, or an understandable summary from the government with clear explanations. Connected to the quality of information is the quantity of information, the second part of the scope. On the one hand, quantity can also boil down to the completeness of information, where a low quantity equals incomplete information. However, for the research, quantity will equal the actual amount of information in the sense of what needs to be processed by parliaments in order to be able to understand and form an opinion on a certain matter. Here, the amount of information can be too little, but also enough or too much. It is clear that this variable is closely related to the quality of information, as a 600 page document, for instance, is likely to be too much to process and thus reduces the quality of the information. Moreover, it is also related to the variable of timeliness of information, which could determine that the amount of information needs to be processed in, for instance, one day or a month.

4.4.2. Conclusion

Figure 2: Variables of information

Time	Scope
• Formal guidelines	• Quantity of information
• Manageability	• Quality of information

Information

Type	Classification
• Trilogue, Coreper, Council	• Use of experts
• Ministrial, informal	• Limited access parliament

As schematized in figure 2, information has four main variables which need to be analyzed. These are firstly time, which indicates the formal guidelines on when information needs to be received, and scope, which entails the quality and quantity of the information. The scope variable is influenced by the time variable, as the amount can be too much when documents are not send in time. With this, manageability is meant. The other two variables of information are the type and classification of information. Logically, the type of information is closely related to the level of classification information has. The level of classification on its turn influences to what extent the parliament can receive information and to what extent experts can be used to review the information.

4.5. Controlling the government

Now that the roles of the parliament and government in the scrutiny process are clear, the control mechanisms of the parliament can be analyzed. As Lupia (2003, p. 43) explains, scrutiny needs to be put into practice through control, otherwise scrutiny has limited impact on the government. Therefore, following the structures of the other sub-chapters, first the different sets of control mechanisms will be analyzed and second they will be presented in a schematic way supported by information of in what way they will be used for the following chapters of this research.

4.5.1. Mechanisms of control

With scrutiny, parliaments ultimately aim to exert control over their governments in the EU decision making process. A main distinction can be made between ex ante and ex post control (De Wilde, 2011).

Ex ante control, in the context of this research, can be seen as affecting, or an attempt to affect, the actions of the government before a decision in the European Council is made. Ex post control, on the other hand, is a form of scrutiny with the aim to verify that the government acted the interest of the parliament. In this way, ex post scrutiny indirectly controls the actions of the government in the decision making process. For the purpose of this research, the word control will be interpreted as the attempt to influence the government, rather than to check up on the government, as that is part of the scrutiny sub-chapter above. This clear-cut line is drawn in order to distinguish scrutiny and control mechanisms, and to provide clarity in the next chapters.

Parliaments can use several control mechanisms, ranging from frequently used 'normal' mechanisms to steer the actions of their governments to 'nuclear' mechanisms which are used in extreme cases. The first and least binding mechanism parliament can use is the right to issue a negotiation (Winzen, 2012, p.658) or an opinion (Auel, Rozenberg, Tacea, 2015, p.284). With these mechanisms, government is allowed to deviate from the parliament their position. Secondly, mandating or resolution rights enable the parliament to force the government to take their position into account, or even follow their will fully (Benz, 2004, p.884-885). As a last resort, parliament can use votes of disapproval or confidence (Yamamoto, 2007, p.65). With a vote of (no) confidence, trust in a minister or government can be terminated, and lead to a possible removal from office. For this, a minimum of parliamentarians is needed (*Ibid.*).

4.5.2. Conclusion

The concept control will be viewed as the mechanisms and the ability to force the government to do the parliaments will. It looks at the different mechanisms a parliament can employ in order to force the government before it will undertake actions in the Council. Three different sets of control mechanisms where distinguished, ranging from a low level of bindingness with negotiations and opinions to a moderately strong level of bindingness with mandates and resolutions and a vote of confidence as the ultimate control mechanism to stop deviant behavior of the government.

Table 1: Control mechanisms

Mechanism	Level of enforceability
Negotiation & Opinion	None - Low
Mandate & Resolution	Moderate - Strong
Vote of Confidence	Strong

4.6. Conclusion

This chapter has a descriptive nature, with the aim to explain and conceptualize the concepts of scrutiny and control. As a basic distinction, scrutiny involves all activities in which it tries to obtain and evaluate information about actions of the government and developments within the EU decision making process, while control means the ability and use of mechanisms to change the actions of the government to the parliament's will. Within the scrutiny and control process, rights and obligations have been laid down for the government and the parliament. First of all, parliaments should have fundamental rights which enables them to receive and request information from the government. Based on this right, members of parliament can request information in in written or verbal form, or through informal channels. As soon as information is received, active scrutiny is required. For this, parliaments can rely on mechanisms to filter information, and committees and experts to further analyze the remainder of the information. Deliberations are an important aspect of the scrutiny process, and these can be held in public, or behind closed doors.

Based on the requirement of the government to provide information, this information also has to meet certain standards. Often rules are determined in what time information needs to be send, and of what quality it should be. These rules might not correspond with the needs of parliamentarians, which need more time or more elaboration on a certain matter. The timing and scope (quality and quantity) can thus be measured in a formal way, whether the government meets the requirements, and a subjective way, in which way the parliament perceives the timing and scope of information. On the other hand type of information and classification levels can be found. Here governments find themselves trapped in between EU legislation on the one hand, which forbids or allows the governments to provide information to their parliaments, and on the other hand the parliaments which require relevant information for their scrutiny and control functions. Countries in Europe have set up different systems with different levels of accessibility to information of, for instance, higher classified documents and informal meetings. Lastly, this chapter looked into the different control mechanisms. Due to the clear cut restrictions on the definition of control, three different types of control mechanisms were found, each with their own level of bindingness. At the lowest level of bindingness, negotiations or opinions can be found. Here, the parliament can order a negotiation or issue an opinion, but the government can decide whether or not they take the will of the parliament into account. Secondly, mandates or resolutions can be employed by parliaments. These are of a much stronger level of bindingness, and force the government to take the parliament's position into account, or even force to fully follow it. Lastly, a vote of confidence of the parliament can be the strongest indication of discontent with the government's actions as their agent, and forces the government or a member of government to step down.

5. Chapter 2: Formal powers EU scrutiny Dutch parliament

In this chapter the formal scrutiny and control rights of the Dutch parliament in EU affairs will be discussed. The formal powers of the Dutch parliament consist of several distinct points: first, there is the legal basis as laid down in the Dutch constitution or laws and EU legislation, the second point is responses to the initiation of EU legislation, the third point deals with information procedures and their purpose, and the fourth denotes several direct or indirect actions that the parliament takes on an EU level to keep itself informed. A good starting point for examining the formal powers is the 'Bovenop Europa' report from the Dutch EAC of 2012. This document sheds a lot of light on the formal powers of the Dutch parliament and the development thereof within EU affairs. This report, created to take stock of the many ways in which the Dutch parliament can stay 'on top of' Europe, consists of a total of 13 measures that the parliament can take. This report is used as a basis for examine the formal scrutiny functions of the Dutch parliament.

5.1. Legal basis

This sub-chapter will analyze the legal base which forms the foundation for the Dutch parliament to receive and request information, and how they are allowed to process it. It will form the first step towards the following sub-chapters, where specific Dutch tools and mechanisms within the scrutiny phase will be discussed.

The right to receive and to request information are rooted in two interwoven constitutional articles, on which Verheugt (2011) and Van Mourik (2012) both provide slightly deviating interpretations. Verheugt (2011, p. 39) explains that article 42 paragraph 2 of the Dutch constitution, or 'grondwet' (Gw), provides a ministerial responsibility to account their actions to both parliamentary chambers. Originating from this article, Verheugt continues, are the rights of interpellation and survey. Further building upon the ministerial responsibility in art. 42 Gw is art. 68 Gw, which indicates that the government is required to provide the desired information in all cases in which it does not harm the interest of the state (Verheugt, 2011, p. 40). While Verheugt considers the existence of the all the other articles mentioned to be based upon article 42 Grondwet, Van Mourik (2012, p. 22) points out another distinction. She argues that article 68 Gw creates a passive role for the government, where the government does not provide any information unless the parliament actively requests this information. Article 42, on the other hand, creates an active role for the government, where based upon the ministerial responsibility new information has to be provided to the parliament without prior request. Grounded in these two constitutional articles, the parliament has several ways to obtain information, which are the right of survey, the right of interpellation and the right to question. First of all, the parliament has the right of inquiry (enquêterecht). With this right, the parliament can

investigate a certain matter in great depth by using external parties for information. Due to the significance of this right, it has hardly been used in the past (Verheugt, 2011, p. 41). The right of enquiry is first mentioned in article 70 Gw, and has a law which provides more detail on the use of the right, the so-called 'Wet op de Parlementaire Enquête'. A second right the parliament has, is the right of interpellation (Verheugt, 2011, p. 39). With this right, members of parliament can request information from the minister or a secretary of state, both in a verbal and written way. For the second chamber this right is given to the parliament in the procedural rules of the second chamber, or 'Regelement van Orde van de Tweede Kamer (RvO II)'. Closely related to this right, though of a less formal nature and more frequently used, is the right to ask questions (Van Mourik, 2012, p. 27). A distinction can be made between written questions, laid down in articles 134 and 135 RVO II, and verbal questions in the weekly question hour, based on article 136 RVO II. For the former, the requirements for the questions are that they have to be short and clearly formulated. The chairman of the chamber will then forward the questions to the right member of government, who has a maximum of three weeks to reply to the questions. With the verbal questions, the parliament has the possibility to ask questions every Tuesday in the weekly question hour. These questions have to be handed in with the chairman before the meeting, and the chairman decided which questions will be processed during the question hour, and in which order they will be discussed (*Ibid.)*.

Besides certain rights to receive and request information, parliament can also rely on committees to process information. These committees can be of varying nature, but all have in common that they can prepare work for the parliament, though not take decisions on their behalf (Van Mourink, 2012, p. 28). The procedural rules of the second chamber (RVO II) provide several articles for the different committees, which are the permanent committees (article 16), general committees (article 17), theme committees (article 17a) and temporal committees (article 18). These committees have, just as individual members of parliament, the right to enquire information from government officials.

5.1.2 EU legal base

In addition to the national legal base for scrutiny and control, there are several EU-level laws that need to be taken into account. Several important pieces shape the context of direct EU-level scrutiny and control. These laws directly affect the national scrutiny and control dynamics, and not mentioning them would make this chapter incomplete.

Starting with the Treaty on the European Union (TEU), which contains several provisions directly related to scrutiny. The first provision is already mentioned in the introduction: art. 1 TEU states that 'A new stage… in which decisions are taken as openly as possible and as closely as possible to the citizen' (Consolidated Treaty on European Union, 2008). Furthermore, this treaty reiterates this

ambition in art. 10(3). In article 11(2) of the TEU, it states that the institutions shall maintain 'an open, transparent and regular dialogue with representative associations and civil society.'. In the Treaty on the Functioning of the EU (TFEU), several provisions also provide legal basis for transparency and openness. art. 15(1) of the TFEU states 'In order to promote good governance and ensure the participation of civil society, the Union's institutions, bodies, offices and agencies shall conduct their work as openly as possible..' (Consolidated Treaty on the Functioning of the EU, 2012). Furthermore, the TFEU leaves the details of facilitating transparency to the Parliament and the Council in art. 15(3), basically stating that every citizen has the right to access EU documents in accordance with transparency regulations that the Parliament and the Council dictate. Finally, the TFEU states in art. 298(1) and (2), that the EU shall 'have the support of an open, efficient and independent European administration' and that 'the European Parliament and the Council acting by means of regulations … shall stablish provision to that end.'. On the subject of accessibility to documents the Charter of Fundamental Rights of the EU (CFREU), ratified with the Lisbon treaty, also explicitly states in Art. 42 that 'Any citizen of the Union, and any natural or legal person residing or having its registered office in a Member State, has a right of access to documents of the institutions, bodies, offices and agencies of the Union, whatever their medium.' (Charter of Fundamental Rights of the European Union, 2012)

The primary regulations that regulate the access to Council documents are Regulation (EC) No 1049/2001 in regards to the accessibility of documents, Regulation (EC) No 45/2001 in case of protection of individuals to the processing of personal data and the free movement thereof, and Regulation (EC) No 1367/2006 in the case of Justice in Environmental matters. For this paper, the focus is on the first regulation. (Regulation (EC) No 1049/2001, 2001) handles the accessibility to Council and European Parliament (EP) documents, and shall be summarized here. First, the directive reaffirms the statements of Art. 1 TEU, stating that openness is a concept enshrined in the treaties. It makes mention of the further base of this concept in the treaty provisions (Such as Art. 6 of TEU and the CFREU). The directive states in paragraph (6) that 'Wider access should be granted to documents in cases where the institutions are acting in their legislative capacity, including under delegated powers, while at the same time preserving the effectiveness of the institutions' decision-making process. Such documents should be made directly accessible to the greatest possible extent.'. It highlights that in select and exclusive cases the rights to access of documents, due to highly sensitive content or danger to the negotiating process, can be denied. This is stated again, formulated in paragraph (11) as 'in principle, all documents of the institutions should be accessible to the public. However, certain public and private interests should be protected by way of exceptions.'. Furthermore, to ensure the right to access the possibility of court proceedings or complaints to the Ombudsman should be applicable.

Last, but certainly not least, are the court cases conducted within the European judicial system. Because of the relatively small legal basis outside the treaties, much of the interpretation of the accessibility to documents was formed by the courts (Hillebrandt, Curtin, & Meijer, 2014). There are many court cases (e.g. *Council v. in 't Veld, Council v. Info Access Europe, Commission v. IFAW*) that deal with transparency and the access to documents, and going into detail for these court cases would be outside the scope of this thesis. Summarizing these cases, it can be said that in general, the court rules in favor of the requesting party and that in many cases information should have been granted in cases where it was not.

5.2. Responses to Commission proposals

Before initiating legislation, the European Commission will open calls for input from a multitude of societal actors within Europe. The Dutch parliament has utilized several ways to respond to such calls for information from the Commission.

First, since 2007, the permanent EAC discusses their priorities based upon the yearly plans of the European Commission, or in Dutch the 'Werk en Wetgevingsprogramma' (WWP). This discussion focusses around the list of priorities of both the Dutch second chamber, the government, and the European Affairs minister. Furthermore, the European affairs staff coordinates these priorities with the relevant commissions within the parliament. Since 2009, the Dutch chamber can indicate whether it wants to treat the subject individually, or make it subject to a test of subsidiarity. Lastly, since 2010, there is also a degree of coordination and debate between the European Commission, through the commissioner for inter-institutional affairs, the Dutch parliament (first and second chamber). The findings of the rapporteur, according to the 'Bovenop Europa' report (Tweede Kamer, 2012) are that the strengths of this measure lies in the inclusion of many societal stakeholders and the involvement of the EU staff members.

Second, the European Commission requests input before every major policy change from a variety of stakeholders. These green or whitepapers, as they are known, are responded to by the Dutch government. This response, according to the 'Bovenop Europa' report (Tweede Kamer, 2012 p. 4), has to be sent to the second chamber a minimum of 30 days before the response is then sent to the Commission. This measure seeks to make the second chamber more informed of the EU, and since 2007 all of the 40 green or whitepapers have been discussed with the second chamber. Additionally, a rapporteur from the permanent commission of a specific policy field was appointed for six of these consultative documents. This rapporteur then attempts to formulate a joint position with the entire second chamber, in order to give more weight to the information input sent to the Commission from the government. Lastly, the second chamber is free to send its own response to green or whitepapers to the Commission. This measure was evaluated positively by most, however criticisms were that these

procedures could take a lot of time and that results could be invisible to the second chamber.

Third, all proposals that are marked as priorities for the chamber are treated separately within the parliament since 2007. New proposals from the Commission are sent to the national parliaments directly (as a result of the treaty of Lisbon), upon which they are filtered by national EU affairs staff, put into a special information system (Parlis), and tabled for discussion in the relevant permanent commissions. During this discussion, called 'procedurevergaderingen' or procedural meetings, future actions are discussed based on recommendations made by the EU-affairs staff. There are over one hundred staff recommendations every year. This method was assessed positively by almost all inside positions in the parliament, according to the Tweede Kamer (2012, p. 5.), but that the measure is virtually unknown to the general public. Furthermore, the report indicates that there is no simple way of tracking in which phase of national negotiations the proposed EU laws are. Recommendations from the rapporteurs include making information from the Parlis information system publicly accessible, and integrating the separate systems from the Dutch first and second chamber into one system.

5.3. Information procedures

Information procedures, including the procedures related to the processing of information, are important to informing the parliament and breaking down information into useable chunks. Several such procedures can be found within the Dutch system.

First, and perhaps most prominently, there is the use of documents to inform the Dutch chambers of relevant new Commission proposals, known as BNC-fiches. These documents contain a summary of the proposed legislation, and a preliminary position from the Dutch government regarding the proposal. These BNC-fiches are worked through in a special interdepartmental working group for new Commission proposals, or as it is known in Dutch, the 'beoordeling nieuwe commissievoorstellen' (BNC). This group consists of civil servants of all ministries and representatives from the respective associations for municipalities and provinces (Van Mourik, 2012). For a long time these BNC-fiches were the sole instrument the parliament had at its disposal to scrutinize or control the government in EU affairs, however this is no longer the case (Tweede Kamer, 2012, p. 8). The parliament can now work independently on EU proposals, even if the government does not send a BNC-fiche within the standard timeframe of 6 weeks. Where first the BNC-fiche was the starting point for discussions surrounding EU-affairs, the discussion now starts when new proposals are announced. Van Mourik, (2012, p. 41) provides an overview of the contents of these documents: a short summary of the proposal, a first assessment of the subsidiarity principle, an estimation of the financial consequences following the proposal, and a preliminary negotiation position. After the BNC working group approves of this BNC fiche it is sent to the Coordination Commission for European Integration and Association issues (shortened to CoCo in Dutch). This commission determines whether there are politically

sensitive subjects in the document and determines whether they need to be discussed further. The assessment from 'Bovenop Europa' (Tweede Kamer, 2012) reports that while the instrument is important, it could be more efficiently linked to the yearly priorities set by the parliament.

Second, the parliament has implemented a form of scrutiny reserve, or 'behandelvoorbehoud', in EU affairs, as consequence of the ratification of the treaty of Lisbon. Within two months after the publication of a new Commission proposal, the parliament can ask the government to hold off on responding to the proposal until a specialized debate has been held surrounding the policy at hand. Future steps within the policy process are discussed and agreements are made on how to keep the parliament informed. These agreements include the strategy, important policy points to be sent to the parliament, and the ways in which the government will keep the parliament informed. The assessment, conducted by the rapporteurs, is relatively positive. The report (Tweede Kamer, 2012 p. 6) states that this measure made it easier for relevant actors, including journalists and EU staff, to follow new EU proposals and to coordinate their actions, as well as strengthening the role of the parliament.

Third, after the publication of legislative proposals from the Commission there is a period of long negotiations on a European level. Before 2007, the Dutch parliament had no involvement during this phase at all, and this situation has led to an increase of the European 'toolbox' of the parliament (Tweede Kamer, 2012). One such measure is the technical briefings, conducted by the permanent representation staff, or experts from the Commission itself. These targeted briefings in the relevant permanent committees provide an important source of information for the parliament. According to the rapporteurs assessing these briefings (Tweede Kamer, 2012, p. 9), there was much appreciation for the increased use of this instrument. However, there is an element of confidentiality, based on the preference of the briefing party, that can lead to a situation in which the results of such briefings are unknown to the general public.

Fourth, before every Council meeting there is a general discussion (Algemeen Overleg or AO) surrounding the upcoming Council meeting. Before every Council meeting, the parliament receives a written paper that includes the position of the relevant minister. This 'annotated agenda' is sent to all the members of parliament. These papers are then up for discussion in the AO meetings. There are several relevant nuances surrounding this procedure; First, that AOs have no legal mandating character, and there is no legal provision that states that these AOs need to actually take place. However, due to the great importance that these meetings carry with them it seems politically unthinkable that a minister would participate in a Council meeting without carrying out a AO first (Tweede Kamer, 2012). Second, there is the possibility to 'force' the relevant minister to adopt a position through a plenary meeting after the AO. During this meetings parliamentarians can adopt motions that can influence the position of the minister. This special procedure is called the report on a general meeting or 'Verslag van een Algemeen Overleg' (VAO). These VAOs only take place if a

member of parliament wishes to call for a resolution.

Fifth, the use of 'round-table' talks to inform a wide variety of societal stakeholders is an important measure for increasing transparency towards the broader public. In these talks, societal actors are invited to discuss EU related issues with the involved members of parliament. Examples of topics covered in these talks range from social affairs to immigration policies. This tool is particularly valuable, according to 'Bovenop Europa (Tweede Kamer, 2012), where there are complex and abstract EU related subjects that need to be made clear to a wider societal audience.

Sixth and last, before the introduction of the scrutiny reserve, the only way to facilitate a discussion early in the EU policy cycle was to call for a specific thematic debate. This means that a certain subject that is particularly salient in EU politics will be discussed during a general meeting surrounding this topic. This measure ensures that certain salient issues will be given special public attention, and has been used with increased frequency. The added value of this measure, based on the assessment in 'Bovenop Europa' (Tweede Kamer, 2012), appears to be the focusing or channeling of specific attention of the parliament in certain problems.

5.4 EU-level measures

There are several EU-level measures, direct or indirect, that the Dutch parliament has at its disposal. Some of these are a direct result of the ratification of the treaty of Lisbon, and give national parliaments more control over the EU policy process. Others are more straight-forward, and decrease the accessibility of 'Brussels' to the Dutch parliament.
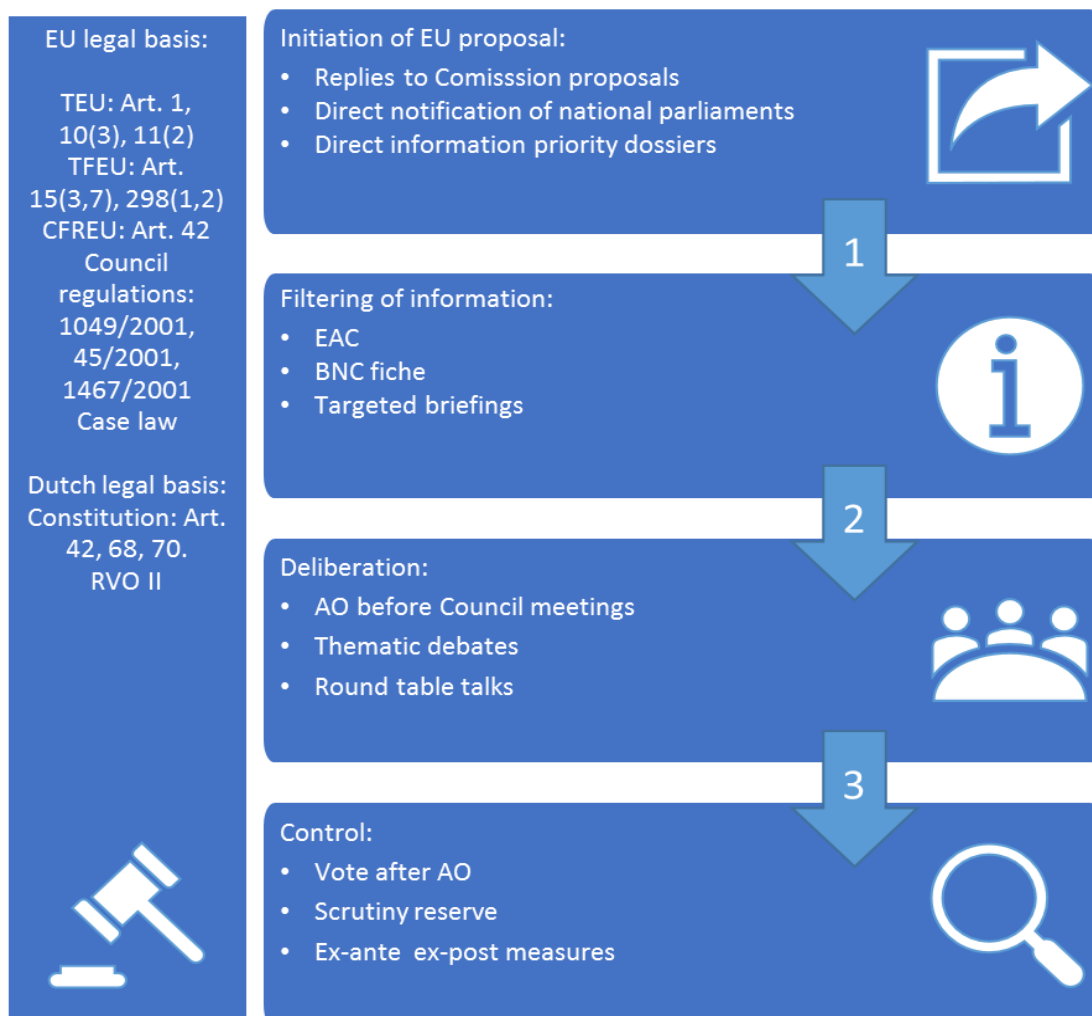
First, every time there is a new EU proposal the Dutch parliament can decide to institute a subsidiarity test upon the proposed legislation. This needs to happen within eight weeks of the publication of the proposal; its general purpose is to test the justification that the proposed law needs to be taken on an EU level as opposed to national, or sub-national levels. This measure was further strengthened by the treaty of Lisbon, with the implementation of the yellow and orange card procedure. This procedure, sometimes referred to as the Early Warning System (EWS), now has a basis in the treaties and can be used to force the Commission to either alter the proposal in the case of a yellow card (one third of all EU parliaments indicating a negative subsidiarity test) or to discard the proposal entirely (half of all EU parliaments, supported by the European Parliament or Council.) The 'Bovenop Europa' report (Tweede Kamer, 2012) indicates that on paper this measure apparently strengthened the role of the parliament, but still suffers from underuse a year after its implementation. On the other hand, the report states that it has led to increased coordination between EU national parliaments. The rapporteurs indicate that this measure has a mixed reception: it technically strengthens the position of the parliament but suffers from several technical and legal obstacles. This has also led to the increased use of the aforementioned use of a scrutiny reserve, since it is considered

to be an easier method of dealing with EU affairs.

Second, the increase in supporting staff for the parliament has led to an increase in the number of EU working visits to Brussels, and to an increase of visits from EU commissioners to the parliament. Direct contact with the parliament increases the understanding between both parties and is a necessary condition for exerting a degree of influence. Furthermore, in addition to the face-to-face contact that can be facilitated between the parliament and the wide range of EU actors, there is also the possibility of personal contact through video conferencing. Investments in 2010 have led to there being suitable equipment available to parliamentarians to conduct video conferences with their European counterparts. In addition the assessment of specific measures the report (Tweede Kamer, 2012) mentions that, due to the increase in direct communication with the EU, the parliament has identified several occasions where the government did not send information in a timely fashion. Had it not been for direct communication, this information would have not been received by the parliament.

5.5. Conclusion

Figure 3: Summary of scrutiny and control in the Dutch system

EU legal basis:	Initiation of EU proposal:
TEU: Art. 1, 10(3), 11(2) TFEU: Art. 15(3,7), 298(1,2) CFREU: Art. 42 Council regulations: 1049/2001, 45/2001, 1467/2001 Case law	• Replies to Comisssion proposals • Direct notification of national parliaments • Direct information priority dossiers
	1
	Filtering of information: • EAC • BNC fiche • Targeted briefings
Dutch legal basis: Constitution: Art. 42, 68, 70. RVO II	**2**
	Deliberation: • AO before Council meetings • Thematic debates • Round table talks
	3
	Control: • Vote after AO • Scrutiny reserve • Ex-ante ex-post measures

The above figure provides a summary of the matters discussed in chapter 2. There are many measures that the Dutch parliament has at its disposal in a formal sense, ranging from legal to informal measures. In summary, it is apparent that there are three distinct phases in which scrutiny and control occur: first, the 'information' phase in which there is a general aim to inform the relevant actors in the EU legislative process, and the phase in which filtering of information occurs. Second, a 'deliberation' phase, in which topics that are deemed salient are discussed in various settings such as the thematic debates or the round table talks. Third, a 'control' phase in which the results of the previous phases are put into concrete measures. Furthermore, these measures are generally based in law to some extent, be it EU or national law.

In addition to the above, there are further matters that should be noted here. From this chapter it appears that the Dutch parliament has many more measures aimed at scrutiny rather than direct control. This could be because, as previously stated, a high degree of scrutiny automatically creates a degree of control, but it could also be due to the customs of the legislative process in the Netherlands. Furthermore, a large part of the scrutiny process appears to be based around creating a dialogue, which could diminish the necessity for strong control measures.

6. Scrutiny and control in practice

This chapter focusses on several matters: cataloguing the practical results from the conducted interviews, to discuss current events related to the information position of the Dutch parliament in EU affairs, and to discuss the implications of the findings. This chapter will first examine the practical results structured around the themes of the previous chapter, then discuss current events, subsequently discuss the implications of the gathered data, and finally, to answer the relevant sub-research question: *to what extent do these formal structures result in effective use of scrutiny and control mechanisms by the parliament?*

6.1. Research situation

Selection of respondents for the interviews was conducted through a study of parliamentary activity, particularly related to EU affairs. Reports from the permanent commissions of the Dutch parliament as well as the European Affairs Commission were used to determine suitable participants. Selection was based on criteria such as activity in these commissions, relation to the subject of the thesis (information position or similar topics), and experience. In the end, over 25 parliamentarians were contacted via e-mail and telephone with an invitation to participate in the study through a single, semi-structured, interview. Due to practical limitations, namely the Dutch elections, the response rate was lower than anticipated. Many of the contacted parliamentarians indicated to be too preoccupied with the fallout of the election to participate in the study. Some respondents, however, indicated that their supporting staff could be available for an interview, as was the case for two of our respondents. These staff members were suitable due to their practical experience with the subject and due to the close relation to the relevant parliamentarian. Furthermore, a number of possible key respondents identified in the earlier stages of this research by their activity in permanent committees or by proposed actions in the parliament, were not reelected. As mentioned in the methodological framework, this research set out to examine the information position of the Dutch parliament using several concrete cases. However, due to practical limitations this had to be let go in favor of finding more suitable respondent. To compensate for this, respondents were subsequently asked whether they could provide cases in which the information process was particularly positive or negative.

A total of six respondents from a broad selection of political parties, spanning left to right, were interviewed on their views of the information position of the Dutch parliament. Interviews were subsequently transcribed, sent back for confirmation, and then coded to be used in this research. A full list of respondents and their political affiliation can be found in appendix 2.

6.2. Findings

The findings of the conducted interviews are structured according to topic, following a similar structure as the previous chapter. The data indicates both the general response and outlier responses that are of particular interest. A summary of the data can be found in the conclusion at the end of this chapter.

6.2.1 Initial phase

The initial process of EU legislation is brought to the attention of the Dutch parliament through three main instruments: the input that the parliament and government can give on green and whitepapers of the Commission, the joint position that the parliament and the government can take in these negotiations and the priorities that parties in parliament set based upon the yearly Commission agenda.

Input related to green and whitepapers was generally seen as a useful practice to create an initial discussion in the parliament. It is considered to be more than just a formality, with parliamentarians indicating that, at least on the EU level, they felt the input could potentially help in shaping the EU policy process. The input of the Dutch government was also seen as being generally positive, with enough room for discussion based the needs of the parliament. On the actual effect and outcome of the input responses were mixed, with some respondents indicating limited impact and others to being able to hinder prospective legislation in its formative stages. Some respondents indicated that parliamentarians had to plug themselves into the system before the green and whitepapers were even formed in order to have effective control over them.

Joint positions related to calls for input from the Commission were seen in a similar fashion. They do not occur frequently, and when they do it is usually a matter of simply touching upon a majority statement. It is uncommon for the parliament to have a significantly deviating standpoint than the government, also due to the deliberative nature of this instrument. In terms of testing subsidiarity and proportionality of EU legislation, the parliament and government appear to be on the same frequency.

The priority agenda of the parliament based upon the yearly agenda of the European Commission was noted as an useful instrument, but not enough to put the EU policy process under attention on its own. Respondents indicate that the added value of this instrument largely lies in its ability to create a discussion and to serve as an additional moment of reflection. Additionally, respondents note that the supporting work done by civil servants is of good quality, particularly when it comes to identifying key legislation.

6.2.2. Filtering

After the possibilities to influence the Commission in the initiation process, the stream of information finds its way into the parliament, where different tools and institutions have been set up to handle the vast amount of information. In this process of differentiating useful and needed information from less useful and less needed information, the Dutch parliamentary system has three tools and institutions: the BNC-fiches, the European Affairs Committee, and technical briefings. The respondents were asked to provide a general evaluation of these instruments, and to evaluate aspects of the information provided by these tools and institutions, such as quality, quantity and timeliness.

Starting with the BNC-fiches, the evaluation of new Commission proposals, all the respondents indicated they had no major complaints surrounding this instrument. Several positive comments were made on the conciseness of the information, which provided adequate summaries and clear indications on matters such as proportionality and subsidiarity. It was also mentioned that, on average, the provided information was in line with what all parties in the parliament expected to receive. The brevity of the information was, on the other hand, also mentioned as a drawback of the BNC-fiches as details were often left out. It was acknowledged that this was logical since the nature of the information was meant to be a summary, and that therefore it was up to the parliamentarians and their supporting staff to take action and investigate sources mentioned in the document. The quality of the BNC-fiches varied greatly per topic, and, on average, the timeliness of fiches was evaluated as being moderately timely. Several respondents indicated that on timeliness the system could be improved upon. Furthermore, it was mentioned that sometimes a letter from the cabinet was send to replace a BNC-fiche, which was not seen as a desirable substitute and questions arose on which legal base the cabinet was allowed to do so.

The European Affairs Committee, a permanent committee of the parliament, received a positive evaluation from the respondents. First and foremost, all the respondents had great compliments for the EU affairs staff that both worked in and outside the EAC. The staff was, as many respondents noted, always available to provide information and delivered substantial amounts of work of good quality. Where the staff was seen as a positive, the great amount of small parties in parliament was seen as a possible hindrance for the EAC to function completely as intended. Small parties, respondents explained, have to prioritize many topics and meetings on a daily basis, which makes it impossible to attend all meetings. This problem is also present for larger parties, since they also need to prioritise matters. Often the 'hot topics' of the day receive priority over the 'dull' European topics. Subsequently, larger parties tend to be much more represented in EAC meetings. Lastly, rapporteurs were seen as a positive tool to increase commitment to and involvement with a certain case. The current topic of Brexit was mentioned as a good example of the use of rapporteurs.

Lastly there are the technical briefings, which have the purpose of providing extra information on a certain topic. The respondents all indicated that the quality of the briefings vary greatly, and that can be attributed to two main factors. Firstly, just as any other presentation, the presenter has great influence on how the information is presented. Moreover, the presenter also determined the level of politically colored statements. This last aspect could make a presentation more interesting, but at the same time a factual, non-political view, was also much appreciated. Secondly, the level of detail also influences the quality of briefings. In some cases briefings were seen as general and superficial, which would be great as an introduction to the topic, but invaluable for parliamentarians already working on the topic for a longer time period. In other cases, the briefings would be of such a high level that they were too detailed for newer persons. All in all, regardless of these drawbacks, the briefings were indicated as very useful. A problem with these briefings, as several times was mentioned, is the level of priority. Technical briefings are, in general, priority wise far below many other types of meetings. Therefore, these briefings are often not attended on account for other meetings, and shortly meeting in person with the presenter for ten minutes would be much more time efficient. Lastly, another reason besides gaining new information was noted, namely that going to such briefings provides the opportunity to meet new people which can be of help in the future. Thus, technical briefings also have a networking role.

6.2.3 Deliberative phase

The deliberative phase surrounds three main topics: the AO before every Council meeting, the knowledge that parliamentarians possess on relative instruments that they can use to gain information, and the effect of discussions in the AOs including knowledge of the position of the Dutch government in the Council and further information, sometimes referred to as the 'black box'.

The AOs before every Council meeting were one of the most discussed topics, with generally critical responses from the interviewed parliamentarians. One central theme when discussing these AOs was the mixed quality of the meetings which, as indicated by the respondents, varied significantly based on the salience and political importance of the topic. Respondents note that some AOs on low-importance issues are done completely in writing, usually involving as few as two or three participants. Other, high-importance topics are treated much more thoroughly, with respondents noting the AO on agriculture and fisheries usually has twelve or more parties participating in the discussion. These high-importance AOs usually result in a voting procedure within a VAO. The main document that is provided to the parliamentarians is the annotated agenda of the upcoming Council meeting. While most respondents agree that receiving the agenda helps set the tone of the debate, the timeliness is often cited as being poor. Furthermore, respondents note that the document sometimes only provides fairly superficial information, and that the implied meaning of the texts within the annotated agenda is

sometimes left ambiguous. This ambiguous nature is mostly found in topics where negotiations might be considered delicate, or upon which there is much confidentiality. Another point made by most respondents is that parliamentarians have the responsibility to be 'on top' of proposals that they might find politically salient, indicating that if one would solely rely on the annotated agenda for formulating a position or for gathering information, the parliamentarian in question will most likely not have been actively involved in the process. Lastly, the weaker position of smaller parties also comes into play during the AOs. Larger parties, having more capacity, can decide to plug themselves into most AO meetings, whereas smaller parties have to make strategic decisions regarding attendance to a large degree.

Respondents were also asked to assess the general awareness of information mechanisms, and the use thereof, by parliamentarians. The responses generally indicated that the parliamentarians were usually aware of the measures or tools at their disposal, but held a more withheld attitude towards using them. Political reality, including current events, plays a heavy role in the incentive to pursue information. An interesting point that was raised is the fact that the general implementation time for European proposals is roughly three years, which means that for some parliamentarians there is very little sense of urgency. Thus, processes and laws in the EU process that might be salient in the sense of party values might not be heavily scrutinized if there are more pressing short-term issues at hand. Positive remarks were also made about the supporting capacity of civil servants or clerks in bringing matters of importance to the attention of parliamentarians.

Moving onto the matter of the 'black box', interviewees responded with mixed criticism. Some indicated that there was insufficient oversight within this phase, particularly in scrutinizing the governments exact positioning during Council negotiations. Respondents were either accepting of this situation, stating that it would be more efficient to control the situation beforehand, or critical in the sense that they would like to receive the explicit input of the Dutch government in this phase in order to raise transparency. The amount of information received during this phase largely depends on the sensitivity of the subject, and whether the debate is contentious on the European stage. Respondents also indicate that improvements should be made in the feedback from Council meeting, including the position of the Dutch government and the input it has put on the negotiating table. The possibility of a confidential technical briefing can help to inform the parliament in delicate matters, such as the Brexit, but cannot subsequently be publicly discussed. Some respondents indicated that being connected to certain sources, particularly informal sources close to the negotiations, could help give an idea of how the negotiations went.

6.2.4. Control

To control, or to steer the government into a certain direction was a much debated topic during the interviews. As clarified in the first chapter, the research aims to make a clear distinction between scrutinizing the actions of the government and the European decision making process, and controlling the government in the European decision making process, specifically in the Council. The interview questions mainly focussed on the general meeting, 'Algemeen Overleg' (AO), and the possibilities parliament has to influence the government in the Council. Furthermore, respondents were asked if there are other mechanisms to steer the government and what their opinion on the scrutiny reserve was. Several findings were made, which include the discussion on the blurry line between scrutiny and control. The aforementioned aspects will be discussed in the paragraphs below.

The first and foremost way to influence the government before a council meeting is through an AO. Where the previous paragraphs assessed the information sent to the parliament, this paragraph assesses the quality of the AO and the possibilities for the parliament to steer the government. Responses on the question to what extent government could be influenced varied greatly. First of all, one of the respondents pointed out that during an AO there would be no vote, the aim is to reach consensus. This implies that the government does listen to all the parties. On the other hand, it was also pointed out that the government is ruling based on a majority in parliament, thus having the possibility to continue its own path as long as the governmental parties support that path. If, however, a majority in parliament decides that they want to alter the government's position, they can do so with a vote, which takes place in the continued general meeting 'Voortgezet Algemeen Overleg' (VAO). Not all respondents agreed with each other on the effectiveness of these motions and their impact. Some argued that the government has to listen to the parliament, and that a motion is an excellent way to force government to act according to the parliament's will. Moreover, motions keep both the government and the parliament 'awake' and closely involved with the topic, making sure that both parties will not forget certain agreements made by the vote. Another positive feature of using voting is of a more political nature, as parties can distinguish themselves in the broad political landscape by requesting that a vote be held. Respondents also indicated several disadvantages to the AO and motion system. The main negative point about the AO and possible motions in de VAO is that they take place very shortly before the Council meetings. Even if it was the case that the parliament had full control over the government in the Council, most work on the proposed EU legislation would already have been done on the EU level, leaving the Dutch parliament and its ministerial representative rather powerless to make radical changes against 26 or 27 other member states. Acknowledging this problem, several respondents indicated that being on top of a new legislative proposal at the very start of the legislative process would be much more effective, that way the government and Dutch efforts at EU

level could be steered much earlier in the process. A second reason why trying to steer the government in AO's and with motions is not effective is because it is not always clear how the Dutch ministers acts in the Council, and because ministers sometimes deliberately deviate from their paths for political reasons. This ex-post scrutiny aspect will be discussed more in the next paragraph, but is clearly related to the evaluation of this system.

The second instrument is the scrutiny reserve, or 'behandelvoorbehoud', is a hybrid instrument with the aim to control, but with the possibility to have more time to scrutinize. Respondents were unanimously skeptical about this instrument. While most acknowledged that it was positive the instrument was at their disposal, as it means certain cases will have attention from both government and parliament, the word 'behandelvoorbehoud' implied a stronger meaning than what the instrument actually provides. Most respondents described the instrument as something which made 'the government come and knock on the parliament's door' to make some arrangements or 'to put a break on the process and make some information arrangements'. Thus, the instrument could more be seen as a different label on a certain case rather than a powerful mean to control the government in its actions. Besides the AO and the scrutiny reserve, the respondents did not indicate any other measure to control the government. When asked whether they would like more control over the actions of the government, responded sometimes indicated that more control is always desirable. However, they also indicated that the current system with high levels of scrutiny was the key to good control, and if they wanted to improve something for more control, it was better scrutiny. This blurry line between scrutiny and control was striking, as all respondents stated that more information ex ante the AO or ex post the Council meeting would drastically improve their control over the government's actions.

6.2.5. Ex post scrutiny

The ex-post scrutiny phase deals with the feedback respondents after decisions have been made on the EU level. This phase received some criticism from respondents, primarily due to the opaque way in which the information was sent back to the parliament. The reports from the results of the EU Council, for instance, were indicated to be too vague and did not include the exact input or position of the Dutch government. Many respondents indicate that they would prefer to explicitly receive the positions and input of the Dutch government, or at least receive more in-depth information about the processes and results of the negotiations. One respondent indicated that the Dutch parliament operates on the principle of trust, and assuming that the government would actively try to act in a significantly different way would imply distrust.

6.2.6. Additional findings

This final subsection of the findings discusses additional findings on elements which influence the scrutiny and control function of the parliament. First of all, the interview discussed the European classifications on documents and the implications for their scrutiny and control tasks. Second, other ways outside the government-parliament structures for obtaining information were discussed and, last, the efforts of the parliament itself were discussed.

Starting with the classification of documents, specifically those from the Council, several comments about the levels of classification and the implications of classification on scrutiny and control were made by the respondents. Most of the respondents were aware of the different levels of classification and, with that knowledge, most of them told that they often do not understand why certain documents received the classification of limité or restreint. The strictness of these classifications on documents which are in many cases 'nothing exiting' has some serious implications on the scrutiny tasks of the parliamentarians and their staff. It is perceived as highly unpractical that in some cases only parliamentarians, not their staff, have access to these documents. Subsequently the contents of these documents can also not be publicly discussed. One of the respondents even indicated that he would omit looking into restricted documents at all cost and that he would try to find the document online, not published via EU channels, in order to be able to use it in public debates. Also, it is highly questionable whether having access to a '600-page document' without supporting staff or experts and without the right to make notes can be called transparency. The lack of access to these documents and the inability to use them is seen as an obstruction for properly doing their work jobs, even more so because 'the parliament represents the people', and without transparency it is difficult to act in the interest of the people. Having said these arguments against the EU classification rules, the respondents disagreed on the extent of transparency and the role of the Dutch government. Some of the respondents argued that the government should send more limité and restreint documents, as it also happens in other countries, while others agreed with the government in obeying EU and Council rules on classification. Furthermore, some of the respondents said to be content with the current amount of transparency, saying that there is always need for certain levels of transparency and secrecy in order to perform a job properly.

A additional topic that was discussed during the interviews are the contacts outside the Dutch system with other European institutions and parties in other countries. All respondents indicated that they have close ties with their parties in the European Parliament, which they found to be very important. However, the strong relations were especially deemed important in order to have corresponding opinions on matters, rather than to obtain information from the EP to the Dutch parliament. Respondents indicated that meetings with their EP contacts are not frequent enough to

really gain on information and, moreover, members of the EP also do not always receive information, especially in the trilogues phase. Besides these contacts, some respondents indicated that they would have informal, non-institutionalised contact with the permanent representatives in the EU. Contacts with similar parties in other member states were sometimes indicated as important, but these contacts are mostly based around strong personal relationships between the parties and more of an ad hoc nature rather than a concrete system for cooperation or for exchanging information.

The last aspect that, according to all the respondents, has great influence on the quality of scrutiny and control are the efforts parliamentarians put into their scrutinising and controlling tasks themselves. Throughout the interview the respondents kept on emphasising that ultimately the responsibility lay with them. In case the government does not send information, it is up to the parliament to request this information. In case something is not discussed, parliament has to schedule a debate and discuss. In case the government acts differently in the Council than expected, parliament has to question their actions. Respondents emphasised that the Dutch system offers many possibilities to request and discuss information, and that that is one of the stronger points of the Dutch parliamentary system. Although indicating that it is hard to keep up with all the different cases, especially as smaller parties, respondents saw this as a recommendation for the parliament itself.

6.2.7. Current events

In addition to the previously mentioned topics, several current events were also discovered during the interviews that have relevance towards the information within the European policy process. These current events include the ongoing investigation of the European Ombudsman O'Reilly into whether the Council of the EU allows sufficient public scrutiny of the evolving discussions on draft EU laws, and the proposed 'Europawet' proposed by two Dutch MP's. The former is relative due to the implications for transparency within the Council and the 'Black box' issue, and the latter is relevant due to the fact that it proposes several improvements to the current information process and makes an apt analysis of current faults within this process.

Starting with the inquiry of the European Ombudsman O'Reilly, it is focused on three main areas as published in the press release surrounding the topic: the consistency of practices between working parties; the completeness of the Council's document register; the accessibility of documents on the Council's document register; and the recording of Member States' individual positions (European Ombudsman, 2017). In a letter written to the Secretary-General Council of the European Union in March, O'Reilly outlines four points of attention within this discussion. First, in matters that are of a technical nature, legislation is usually worked out in a lower predatory body such as the Coreper I or II. These texts are then sometimes adopted without discussion in the Council. The documents related to these cases do not have the greatest possible direct access as is implied by

Regulation 1049/2001: 'documents in cases where the institutions are acting in their legislative capacity'. Second, the Ombudsman points out that the quality, length, timeliness and usability of documents such as outcomes of proceedings, progress reports, or compromise proposals is lacking. The letter further states that '… in many cases these documents are the only possible source of information by which the public can follow how decisions are prepared before being discussed or approved in public by the Council.' (European Ombudsman, 2017). Third, the letter mentions the lack of member state positions in official documents after the relevant legislation has passed. It cites a major ruling, *Council v. Access Info Europe*, as one of the examples in which member state positions were left out of a note containing proposals for amendments to legislation. Fourth, the Ombudsman points out that several documents, including written comments made by delegations surrounding the legislative procedure, do not have a standard interinstitutional file code which makes these documents harder to find.

Moving on to the proposed 'Europawet', a law proposed by Dutch MP's Mulder and Maij, which aims to improve the information position of the Dutch second chamber in relation to the European Union (Tweede Kamer, 2017). To make the underlying reasons for this proposition clear, the law includes an explanatory memorandum. The main points of the memorandum, which form the basis for the proposal, shall be summarized here. This memorandum states that the parliament is heavily dependent on the Dutch government for information from the EU legislative process. Thus, the proposal aims at strengthening the information flows towards the parliament and thereby increasing the parliamentary control of the government in EU affairs.

The document includes an extensive problem analysis cumulating in three main defects within the current information process. It starts off by stating that the Dutch parliament has to continuously exert scrutiny over the European policy processes, many of which occur during Council meetings. These meetings, which can be informal or formal, often occur in relative secrecy, which makes scrutinizing these processes directly relatively impossible. Additionally, the parliament cannot exert direct control over the Dutch government within these negotiations which, in contrast, it would be able to do during strictly national affairs. The document reiterates points made in the interviews earlier in this chapter, namely that it is very difficult to scrutinize exact the position of the Dutch government.

First, the memorandum states that parliamentarians do not possess all relevant documents necessary to carry out its scrutiny function. Whilst parliamentarians have been given access to the 'EU Delegates Portal', which includes official agendas and related documents. However, this database does not include informal pieces, called non-papers, that are often used during negotiations. According to the memorandum, these informal documents often form crucial parts of the policy process within the Council. Furthermore, the memorandum points out that the parliament does not have sufficient

oversight in the so-called trilogues between the European Parliament, Commission, and Council. During this phase the leading document is the so-called four-column document which includes positions and potential compromises. This document is not available to the parliament during the negotiations. Additionally, the position of the Dutch government is translated into coordinated instructions for the permanent representation at the EU level. The memorandum points out that insight into these documents, confidential or public, supports the scrutinizing and controlling function of the parliament in relation to the government.

Second, the document points out that the timeliness of information is often not in order. It makes the point that 'being on time in the formal process in the Hague means being too late for the informal process in Brussels'. This means that decisions made by the EU are only brought to attention of the parliament in a relatively late stage of its development. This essentially means that the later one tries to influence the process, the less influence can be exerted, because there is already a determined direction. The memorandum further points out the active information rights (also previously mentioned in this thesis) which the parliament possesses, stating that even though this right is present there is still information that is not being provided in a timely fashion. This results in the control of the Dutch parliament being 'impossible, too late, or without meaning' (Tweede Kamer, 2017).

Third, the memorandum points out that the quality of the available documents is not sufficient. It point out that the annotated agenda that is sent to the parliament before each Council meeting varies in quality depending on the relevant ministry and from meeting to meeting. The document further specifies that these agendas do not give the parliament enough insight, because they lack: precise time-frame of the proposal, the relevant field of influence, whether the Dutch government is in a majority or minority position and what repercussions that might have for the negotiations. Furthermore, the memorandum states that relevant standard document numbers used in the EU delegates portal are not referred to in the annotated agendas. This means that these documents cannot easily be found by interested parliamentarians.

Lastly, the proposal states several possible improvements that can be made to the system, which it sets out in five major points. First, the proposal defines which documents should accompany EU proposals to be sent to the parliament. This includes all legislation, but also green and whitepapers, announcements, memos, and opinion pieces. Second, reading guides should be made by the government that include the most important information, including the proposed goal, contents of the proposal and the process it will follow. Furthermore the law introduces a so-called 'BUC-fiche' (Beoordeling Uit-onderhandeld Comissievoorstel) as an additional tool to the BNC-fiche. This tool will act like the typical BNC-fiche, however it will instead look at the end of the European policy cycle to evaluate subsidiarity, proportionality, and national consequences for implementation. Third, the proposal calls upon the government to provide all relevant documents, including those of an informal

nature, that are relevant to the EU legislative process. To make accessibility better for parliamentarians, these documents should be made available on a digital portal, such as the delegates portal. Fourth, the proposal states that existing information agreements that are currently uncodified, or a matter of custom in some cases, should be codified and streamlined to achieve a uniform information process. It also sets out specific timeframes and qualifications for documents. For instance, the report that is sent to the parliament after the conclusion of a Council meeting should include the efforts made by the Dutch government and the most important efforts made by other member states. Lastly, the proposal aims at codifying existing arrangements on sending EU oversight reports to the parliament, such as an early-warning report regarding developments within the EU.

6.3 Discussion of findings

In this paragraph the findings will be briefly discussed. The aim is to discuss the implications of the findings on scrutiny and control. For that several important themes, both positive and negative, will be discussed first.

The first prominent and reoccurring theme is that of the task of the parliamentarians themselves. First of all on a general note, the respondents indicated that it is always up to the parliamentarians themselves to request and retrieve information when it is found lacking. As noted in chapter four, Dutch parliamentarians enjoy a constitutional right to be informed by the government. This right is referred to in many of the interviews and is seen as a major strength of the Dutch parliament. Thus, it can be said that parliamentarians have the means, and should therefore make use of these means. Of course, the use of these means is hindered with the high amount of activities on a daily and weekly basis, many of which are of a national nature rather than an EU nature. Parliamentarians and their parties have to prioritize. Often, priority goes to the salient current topics, often found in the media, rather than the more long-term and complex EU topics. Comments made regarding the political 'lifespan' of parliamentarians make matters even more complicated: how good is the quality of scrutiny and control if the person in charge of a case is replaced? General attention given to EU cases can be seen in multiple matters: the attendance of technical briefings, tasks within the EAC, attendance at AOs, and the general use or, sometimes rather disuse, of tools parliamentarians have at their disposal to retrieve information about EU affairs. Thus, regardless of the activities of the government, a great responsibility lies with the parliamentarians. The tools are available to optimize the levels of scrutiny and control, but due to high amounts of work and low salience of EU topics, these tasks risk to be neglected.

At the level of the government several positive points were mentioned, however there was also definite room for improvement. The presence of structure was one of the strong points of the Dutch

system, and is clearly seen as a positive. Through the priority agendas, BNC-fiches, annotated agenda and the scrutiny reserve, parliamentarians have a certain structure in the EU proposals and view on the process. All these moments and tools provide an opportunity for parliamentarians to get back in the loop regarding a topic and use their tools for scrutiny and control. Moreover, the EU staff provides a great support by providing information and notifications for important matters. That being said, information in tools such as the BNC-fiches and annotated agendas are often too concise and leave out important details. Moreover, the tardiness of these documents sometimes obstructs the tasks of the parliamentarians. This is especially true for the annotated agenda, as they are very important due to the short time period between the AO and the Council meeting. This finding was also confirmed by the memorandum on the Europawet, which referred directly to these issues. Lastly, another good point made by the memorandum is that parliamentarians need to get involved earlier in to process for the most effective use of scrutiny and control.

At the European level parliamentarians encounter more and more difficulty in performing their tasks of scrutiny and control. The feedback received from the government about the negotiations in the Council is often unclear, or incomplete. Especially after the AO, it is unclear what exactly has happened the Council and during the trilogues. For the parliament it is of great importance to know what the government is doing and how they are acting, otherwise they cannot perform their controlling functions. This also relates to the comments Ombudsman O'Reilly made in her report. Although the Council meetings are bound by certain levels of secrecy, the current levels of secrecy are obstructing for parliaments in Europe. Related to this matter are the official classification rules of the Council. Respondents indicated that these classifications, especially the lower ones, are very difficult to deal with as they limit the amount of information the parliament receives and make it so that parliamentarians have to look into documents without the use of notes or personal assistance. This, even though the supporting capacity and the influence on scrutiny and control quality were rated very positively by the respondents. All in all, the secrecy during the Council and trilogues meetings obstruct the parliament in their scrutiny function, resulting in less control. The classification, and sometimes lack thereof, of documents also make scrutiny harder. However, there is no simple solution for this problem, and it does not simply mean parliamentarians want full public access to all documents. Small improvements could already prove efficient, such as proper document identification and better feedback reporting from the government.

In conclusion, the respondents frequently indicated that they wanted to receive more information, more time to scrutinize and more insight into the actions of the government. On the contrary, many respondents did not necessarily ask for more control mechanisms in order to achieve this. This

indicates that there is a blurry line between scrutiny and control, and that in the Dutch system control is often achieved with more scrutiny.

6.4. Conclusion

This chapter focused on finding out the practical implications of scrutiny and control for the Dutch parliament. This chapter aimed to answer the question: *to what extent do these formal structures result in effective use of scrutiny and control mechanisms by the parliament?* From the above information, several things can be concluded that can help answer this question.

First it can be concluded that in general most instruments were fairly positively assessed. This indicates that there are no major faults within the system and that, at least in a general sense, the instruments serve their purpose. However, there were noted differences in the degree to which instruments were used and in which contexts they were used. This is often, as explained by the interviews and the previous discussion, a result of a type of political prioritizing. A negative point was, however, surrounding the post-BNC phase of the information process. This phase was assessed by almost respondents as being the least sensitive to scrutiny and control

Second, formal structures of control seemed relatively underrepresented in the Dutch system. This gives the impression that the Dutch parliament has little power to enforce its scrutiny and control functions. This is, on the contrary, not entirely true. While there are only a few true control mechanisms in the system, the vast amount of deliberative and scrutiny-oriented measures inherently creates a degree of control. Furthermore, the parliament acts upon the general premise that deliberations and comments made during deliberative phases are taken seriously and acted upon by government.

Third, a major recurring theme was the participation of parliamentarians themselves in the scrutiny and control questions. Active parliamentarians that really press for information can make much more efficient use of the scrutiny and control instruments than more passive parliamentarians. Capacity also plays a role in this discussion, with bigger parties possessing greater capabilities of keeping up with the EU legislative process. However, capacity does not make a good substitute for compliance, and active parliamentarians in small parties will still know how to hook onto salient topics.

Thus, it can be concluded that the on-paper scrutiny functions largely have the intended effect, however in some cases, due to the political context surrounding EU legislation, instruments could not be effectively used. Furthermore, parliamentarians can make scrutiny and control mechanisms effective by making active use of them.

7. Conclusion

This research paper was focused on determining the difference between on paper and practical scrutiny and control when it comes to the information position of the Dutch parliament in EU affairs. In order to answer the main question of this research, *'to what extent has the Dutch parliament been able to perform its scrutiny and control functions over the government decision making within the EU policy process after the 2009 Lisbon Treaty?'* it is good to look back the information that has previously discussed.

In the theoretical framework, scrutiny and control were defined as: a function of a national parliament that allows it to monitor, investigate, question, inquire or otherwise acquire information from a certain decision making process in order to provide a check to a government, and that control can be considered: the degree in which, before, after or during scrutiny, national parliaments can influence the decision making process. Additionally, several important prerequisites that must be considered when examining the parliamentary use of scrutiny and control were discussed, such as the potential political trade-off, resource cost, or incentive to use these measures. Lastly, it was pointed out that simply increasing scrutiny and control leads to a more accountable and legitimate system.

In chapter four it was said that fundamental passive or active information rights were crucial to scrutiny and control. Furthermore, information through these rights should be able to be filtered, analyzed by experts, and deliberated upon. Parliament should also be in some position to execute a controlling function in order to steer government action. However, control mechanisms do not only take the form of binding resolutions or mandates, but can also take shape through softer negotiations or opinions. The role of governments in this process is to provide information that meets standards for timing, scope, quality, and quantity.

Chapter five focused on cataloguing the instruments that the Dutch parliament has at hand to scrutinize and control the government. Three phases were defined: the initial legislation phase where EU matters are brought to the attention of national parliaments, the deliberative phase in which information is discussed and debated, and a control phase in which includes ex-ante and ex-post controls. From this chapter, it became apparent that that the Dutch parliament has many more measures aimed at scrutiny rather than direct control, and enjoys a constitutional right to information. A large part of the scrutiny process appears to be based around creating a dialogue, which could diminish the necessity for strong control measures.

Chapter six deals with the practical side of scrutiny and control in the Dutch parliament. The main findings in this chapter were that that the on-paper scrutiny functions largely have the intended effect, however in some cases, due to the political context surrounding EU legislation, instruments could not be effectively used. The major phase in which scrutiny and control were not effective was

after the BNC-fiche. Additionally, capacity and support from staff are crucial for parliamentarians to execute their scrutiny and control function. Furthermore, parliamentarians can make scrutiny and control mechanisms effective by making active use of them.

The above information gives us enough data to answer the main question. The extent to which the Dutch parliament has been able to execute its scrutiny and control function over the government decision making in the EU policy process after 2009 is rather high. The Dutch parliament enjoys many scrutiny measures that create an inherent amount of control, there are few indications that there are major faults of the current system, and most respondents respond positively to the major instruments. This does not mean, however, that improvements cannot be made. Particularly in the phase after the parliament is informed through the BNC-fiche improvements could be made to the feedback loop and to the information sent to parliament during this phase.

8. Recommendations

There are several recommendations this research can make based on the findings. These recommendations are mostly based upon the conducted interviews, but several points have additionally been added. The recommendations will be discussed in the same order as previous chapters, starting at the initiating phase of EU policy and ending at the ex-post scrutiny phase after the decision in the Council. Some recommendations might be simpler to achieve and implement than others, though all of them could potentially make improvements for the scrutiny and control function of the parliament.

First of all, the initiation phase. Several respondents made comments to this phase, and to general changes in the set-up of the European Union, specifically the role of the Commission and the Dutch Permanent Representatives there.

A first possible solution to increase the involvement of parliament in the decision making process is by reforming the EU into a more federal union, where the different member states work together on topics that are geographically relevant for them. An example could be the North Sea fisheries, where countries bordering the North Sea or countries with other direct involvement there can be involved in the policy making of this area. Positive about this solution is that the Dutch parliament only specifically has to focus on areas the Netherlands are assigned to. A difficult point with this solution is the process of deciding which countries are entitled to join the decision making process.

A second solution proposed is to radically change the role of the Commission, and to take away the right of initiative. The Commission still remains with the role of developing a legislative proposal, but the start of a proposal lays in the hands of the national parliaments. With this, also the EP might have a bigger role, but national parliaments can also have a say in what the Commission should be

focusing on. A positive aspect about this solution is that no new policy will be made without the knowing of the representatives of the people, thus the power of the people will increase. However, at the same time new policy thus needs to come from the Member States, and the question is whether the heavy and lengthy negotiations will not simply be moved to other areas within the Union.

A last solution in the EU areas and the initiation phase is to generally improve the streams of information from the Commission to the parliament. A key role might be possible here for the Dutch Permanent Representatives, who will be informing the parliament as soon as in the Commission certain policy is being developed. This way, the parliament will already be informed before the Green and White papers, and thus it will have more time to deliberate and control the efforts of the Dutch government and representatives in Brussel. This solution might be the smallest change, there are several difficulties. The main problems lie with the fact that currently many parliamentarians already have to prioritize their daily tasks. EU policy is often not as salient as the present day topics, thus making it questionable as to what extent parliamentarians will make use of the opportunity to get involved earlier. Secondly, parties face the same problems and the Dutch system has numerous small parties. More information might cause an information overload, which especially cannot be handled by the small parties.

Continuing to the process until the AO, respondents had less point of complaints. The clearest remarks were on the timeliness and quality of both the BNC-fiches and the annotated agenda. A first recommendation could therefore be that the government should send these documents earlier, and include more information. Secondly, if certain information is delicate, or if the government wishes to not share this information in public, the information should be provided behind closed doors. This way, the parliament will be more informed and will be able to scrutinize and control the government better. Furthermore, the use of experts when assessing classified documents could potentially be a large help to parliamentarians, particularly those who are new to a certain topic. Some possible pitfalls of this, however, are that there would need to be sanctions for leaking put in place, and that potential experts would have to be carefully vetted. Additionally, the government should make effort to increase the parliamentary insight into informal documents, such as including them into the delegates portals with relevant reference numbers. Much of this information can also be used ex-post the decision in Council as a way to check if the government acted the way they said earlier on. Having the AO earlier might also contribute to the input of the parliament. Especially in combination with receiving the documents in time, the parliament has more time to voice its opinion to the government and time for a possible VAO, with enough time in between the VAO and the Council meeting. One of the respondents indicated that especially with more salient matters, the extra time in these processes should be a

positive factor for the parliament and also the government, as possible VAOs sometimes occur just hours before the Council meeting.

As explained in the findings, the respondents indicated that more scrutiny is preferred to reach more control. Therefore, no recommendations will be made for control mechanisms, but rather for improved scrutiny. Besides the aforementioned improvements ex ante, the respondents indicated to have several improvements for the ex post phase of the AOs and Council. First of all, after the AO, the negotiations in the Council and in the trilogues are very unclear. As the parliament has no sight on this, more information in this phase should be send to the parliament. Recognizing the fact that there should be levels of secrecy, a balance has to be found here. Furthermore, after the decision in the Council, explicitly stating the Dutch position and Dutch efforts in the decision could contribute in the levels of control the parliament has over the government, as the government has to account for the way they have acted.

Lastly, some suggestions that were made and could contribute to the work of the parliament. First of all, there is currently no secretary of state, or 'staatssecretaris', for European Affairs. A person on this matter could increase the salience of many topics and the activity of the Dutch parliament in European affairs. Secondly, more budget to the parliament for more supporting staff would help with analyzing EU documents and will lead to a better informed parliament. However, this is a matter of money, and a change in budget to public authorities in general might be a difficult sell to the public.

8.2. Limitations

There are a few limitations to this research. First of all, due to the practical reasons given at the beginning of chapter 6, the research had to switch from an in-depth analysis of several cases to a broader interpretation of the information position of the Dutch parliament. On top of this, the due to the same practical reasons the number of respondents is rather low. More respondents might provide deeper insight. A third point is that because the analysis focused on the decision making process as a whole, no deep analysis of specific parts in the process could be analyzed. A specific research on the actual amount of classified documents, or the actual quality of annotated agendas, for example, can be very useful.

This research can provide a good base for further research, as it mapped the Dutch system in a comprehensible way. Further research can, as mentioned, focus on more specific elements in the process. Another option is that further research uses a larger group of respondents. Also, comparative elements such as political orientation or the level of competence are interesting variables that have not been analyzed in the research, but could well be part of further research.

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Appendix 1: translated interview questions

Interview questions

This research looks at the information position of the parliament in EU affairs. After creating a picture of the formal scrutiny and control measures, interviews are used to look at the practical use of these measures. The entire process, from the proposal of the Commission to the decision in the Council, is examined to determine whether the government has upheld the rules surround scrutiny and control, but also to what extent the parliament has made use of the different instruments to gather information. The research topics are divided into different phases.

Personal questions:
1. Who are you, and what are your tasks in the parliament?
2. Do you deal with EU legislation on a regular basis?

Initiation of EU proposals

Goal: to discuss input surrounding the initial EU legislative phase
1. The European Commission often asks for input surrounding new legislation, what do you think the importance of this input is?
    a. Does this happen often?
    b. What is the impact?
2. What is your stance on the joint positions (parliament/government) on green and whitepapers?
    a. How important are joint positions?
    b. How often are these positions reached?
3. The parliament can indicate on a yearly basis what upcoming dossiers are considered a priority, based on the yearly agenda of the Commission, do you think this system brings these dossiers closer to your attention?
    a. Is it effective? Does it provide grounds for discussion?
    b. How valuable are indicating these priorities?
    c. What is the use of 'procedurevergaderingen' in this process?

Filtering of information

Goal: to discuss the quality of the filtering of information surrounding the EU information process.
1. Filtering of Commission proposals starts with the government, by processing them into BNC-fiches. What is your opinion of the BNC-system? Are you satisfied with it?
    a. Quality, quantity, timeliness?
    b. Limitations?
    c. Missing information?
2. The European Affairs Commission (EAC) also plays an important role in filtering and organizing EU proposals. What is your opinion of this commission?
    a. Appropriate size to do tasks in a timely manner?
    b. Is the composition diverse enough?
    c. IS there room for discussion?
    d. What are the results?
3. At times there are special technical briefings held by the European Commission or the permanent representation, how would you asses these briefings?
    a. Is confidentiality an issue?

    b.   What is the quality and quantity of information like?

Deliberation

Goal: to assess the quality and effect of discussions surrounding the EU process
1. Before there is a Council meeting, there will typically be an AO. What is your opinion about the following aspects of these AOs?
   a. Do you think you receive enough information during these AOs? (Quality and quantity)
   b. Is relevant information delivered in a timely fashion?
   c. If the quality of the AO is mixed, do you have concrete examples of positive and negative cases regarding the information flows surrounding AOs?
2. Do you consider yourself aware of the instruments regarding scrutiny and control that can be used to gather information from the government or other sources?
   a. Do you often use these instruments?
   b. Does the government provide qualitative and timely information?
   c. Are the instruments sufficient to gather the information that you would like to receive?
   d. Are parliamentarians, in general or in a specific sense, active enough in scrutinizing and controlling the government? Why or why not?
3. The government does not have to inform you of the developments of a EU proposal after the BNC fiche, has the government done this regardless?
   a. Do you think the government should inform you more, even without you actively asking for information?
   b. Does it occur that you receive extra information from this phase, even though officially the government is not obliged to do so?

Control

Goal: to determine the amount and the effectiveness of control mechanisms of the parliament during the EU process. (Control in this sense means to steer.)

1. During an AO a vote can be called for in a VAO. What is your opinion on this mechanism? Do you think it influences the behavior of the government in the Council?
2. Do you have the idea that you can influence the government's behavior in the Council?
3. The parliament possesses a scrutiny reserve in European affairs, in which a special debate has to be tabled before the government can assume a position, what do you think of this mechanism?
   a. Does this lead to more control?
   b. Does it have a desirable effect?
   c. Is this mechanism often used?
   d. Do you find this mechanism useful?
4. Do you know of any other instruments to influence or control the government?
5. Would you like to have stronger control mechanisms, in order to force the government to adopt a certain position in the Council or otherwise?

Ex post scrutiny

Goal: to determine the amount of information the parliament receives at the end of the EU process.

1. In general, do you know what the government voted in the Council?
2. Does the government keep the parliament up to date of the developments in the EU process?
3. Did you, in case information was unclear at any point, undertake action to receive more information from the government?

Miscellaneous questions:

1. Are you aware of EU laws surrounding secrecy and the types of documents the government can and cannot send to the parliament?
   a. Do you think the government should pass on more limité or restreint documents to the parliament? What is your opinion on the current guidelines surrounding these?
2. Do you feel that the current system often forces you to search for alternate information sources, like research institutions, the media, or contacts within the European Parliament?
3. If you could change something in the current system, what would it be?
4. Do you have examples of where x or y went wrong? (Fill in x and y according to interview, such as timeliness, quality etc.)

Appendix 2: list of respondents

Respondents and political affiliations, experience and, where applicable, policy fields will be listed below, in order of date interviewed.

Name:	Party:	Function:	Experience:	Policy fields including:
Roelof Bisschop	SGP	Parliamentarian	4 years	European affairs, internal affairs, housing, infrastructure, environment, external relations.
Maaike Zeeuw, Micheal Vos	D66	Policy advisor	4 years	European affairs, migration, and agriculture.
		Trainee	-	International European Governance
Anne Mulder	VVD	Parliamentarian	7 years	European affairs, defense, finance, infrastructure and environment.
Dirk Slieker	PvdA	Policy advisor	3 years	Finance, European affairs.
Renske Leijten	SP	Parliamentarian	11 years	Healthcare, elderly care, health insurance, finance, European affairs.