

***National Parliaments in EU Policy-Making: When Do  
They Make a Difference?***

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## **Declaration**

I, Heleen Jitske Jalvingh, confirm that the work presented in this thesis is my own. Where information has been derived from other sources, I confirm that this has been indicated in the thesis.

## **Abstract**

In 2009, the Lisbon Treaty introduced new roles for national parliaments in EU decision-making with the aim of increasing democratic legitimacy in the EU. One key role was deemed to be the ability to ensure governments represented the electorate when negotiating at EU level. This thesis explores under what conditions national parliaments employ their formal powers for this purpose. It does so by using a normative categorisation of political representation to frame an empirical analysis comparing two national parliaments (the House of Commons in the UK and the Second Chamber in the Netherlands). Each deploys its formal powers to control and influence government representatives in different ways – the first operates by empowering them as trustees, while the second tends to treat them as delegates. The thesis compares the impact of these two approaches over a number of case studies. The main theoretical argument suggests that the formal powers of both types are relevant, but their impact varies under different conditions (like party composition, salience and the Lisbon Treaty).

The empirical part of the study consists of applying the descriptive categorisation of Pitkin's political representation theory to the world as it is, and examining to what extent mechanisms of control and influence make NPs part of a delegatory or trusteeship model based upon commonly-used indicators. Secondly, it investigates under what conditions the government is most likely to be responsive to the NP.

The outcome of the case studies shows that, notwithstanding their formal powers, national parliaments can act on either a delegatory or trusteeship model of representation depending on different circumstances.

The conclusions of this research contribute to the literature on institutional adaptation and to the normative debate on political representation, but are equally relevant to EU policy-makers involved in future Treaty changes focusing on further developing the EU's democratic legitimacy.

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## List of abbreviations

ACM	Authority for Consumers and Markets
BBC	Backbench Committee
BPI	British Pharmaceutical Industry
CFP	Common Fisheries Policies
CMO	Common Market Organisation
DEFRA	Department for Environment, Food and Rural Affairs
DEU	Dataset on EU decision-making
DV	Dependent variable
EA	Environment Agency
EAC	European Affairs Committee
EC	European Commission
EFRAC	Environment, Food and Rural Affairs Committee
EMFF	European Maritime and Fisheries Fund
ESC	European Scrutiny Committee
ETCS	European Train Control System
EM	Explanatory Memorandum
EP	European Parliament
ERA	European Railway Agency
EU	European Union
EWM	Early Warning Mechanism
Gov.	Government
HC	House of Commons
I&E	Infrastructure and Environment
IMP	Integrated Maritime Policy
IV	Independent variable
MP	Member of Parliament
NL	The Netherlands
NP	National Parliament
NS	Nationale Spoorwegen (Dutch Railways)
OLP	Ordinary Legislative Procedure
OPAL	Observatory of Parliaments after Lisbon
PS	Port Services
QMV	Qualified Majority Voting
RO	Reasoned Opinion
SC	Second Chamber
S&T	Science & Technology
TEN-T	Trans European Network for Transport
TEU	Treaty for the European Union
TW	Thames Water
UK	United Kingdom
WFD	Water Framework Directive

## **Acknowledgements**

In 1992, European leaders signed the Maastricht Treaty which signalled the start of the EU. I was 17 years old at the time and my fascination for this ambitious project was born. For the duration of my whole career I have been involved in the development of EU integration, either by studying its public policies or via several jobs. The issue of continued integration combined with further developing its democratic legitimacy has always been the focus of my interest. This PhD is the cherry on the cake of this enduring interest, published as it is during a time when the EU is confronted with many challenges including the loss of trust of many citizens, culminating in the referendum in the UK on 23<sup>rd</sup> June 2016 in which the majority of voters supported its departure from the EU.

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# Chapter 1

## Introduction

### 1.1 Background

Growing concerns about the democratic deficit following several European Union (EU) Treaty changes involving more EU integration led to the call for more influence for national parliaments (NPs). That was mainly because the increase in the EC's powers over previous decades was responded to with an increase of the EP's control.

Increased EU competences have enhanced the power of governments too within EU affairs, for example via qualified majority voting (QMV). This has led to calls for the executive authority to be held to account by enhancing the EP's powers.

Increasing the powers of the EP, however, proved to be unsatisfactory, as EP elections were considered second order elections.<sup>1</sup> Besides, the Council as a whole is not subject to the control of any one political institution, even though its powers have increased as well. This led to the view that it is necessary to enhance the role of NPs.

While some theories argue that the EU is sufficiently democratic because it mainly deals with topics of low electoral salience<sup>2</sup>, public opinion about the EU is shifting from some kind of permissive consensus to constraining dissensus<sup>3</sup> as became clear in the UK's recent referendum.<sup>4</sup>

NPs are considered to be a solution in this area, as was evident from the Lisbon Treaty, which included a protocol regarding more powers for NPs. Besides, David Cameron requested a 'red card' for NPs during his negotiations about EU reform in February 2016.

NPs are able to use their mechanisms of control and influence to ensure that their governments are representing the interests of citizens during EU negotiations.

They have been shown to be pro-active in setting up different mechanisms to influence EU affairs, like the European Affairs Committees.<sup>5</sup> Because of their democratic qualities (accountability and authorisation) as elected representatives, MPs have the

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<sup>1</sup> Hix, 2008, Bellamy and Kröger, 2012.

<sup>2</sup> Majone, 1996; Moravcsik, 2002.

<sup>3</sup> Hooghe & Marks, 2008.

<sup>4</sup> 23<sup>rd</sup> June 2016.

<sup>5</sup> Auel & Benz, 2005, p. 373.

potential to increase the EU's responsiveness to citizens. Furthermore, citizens also have a greater sense of being represented by their national representatives than those in the EP, and parliamentary involvement might give citizens a greater awareness of and ownership over EU decisions.<sup>6</sup>

So far, most scholars who have studied the role of NPs in the EU have done so via comparative studies in the field of their formal powers. This current study looks at a follow-up question, namely whether institutional variety - or in other words, different formal powers<sup>7</sup> - between NPs lead to a different impact on their government's EU policy position or whether the chances of having an effect on government is determined by the different conditions under which they operate, namely partisan composition, topic salience or when they operate under the new Lisbon provisions<sup>8</sup> (the independent variables of this research).

Based upon the work of previous scholars demonstrating a relationship between different types of explanatory factors and the use of parliamentary formal powers, I agree with those who argue that if institutional rights are not used and taken up by MPs, they are worth little.<sup>9</sup> The levels of parliamentary impact not only depend on its formal levels of accountability and authorisation, therefore, but also on other factors, such as its own political agenda. An MP can act differently in different contexts.<sup>10</sup> Formal rules are important but not sufficient by themselves to guarantee greater substantive impact on EU policies. It is therefore important to look beyond them at real 'influence' rather than 'power'.<sup>11</sup>

## 1.2 Aim of this research

To answer my research question '*under what conditions can NPs have an impact on their government's policy on the EU?*', I developed a theoretical framework which uses a normative categorisation for the empirical analysis.

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<sup>6</sup> Auel & Raunio, 2012a:11; EU Barometer, 2012; Pew Institute, 2013.

<sup>7</sup> As laid down in constitutions or rules of procedure.

<sup>8</sup> Whereas the provisions allocated to NPs in the Lisbon Treaty are also formal powers, they are European formal powers directed to the relationship between NPs and the European Commission. With regard to the relationship between the government and NP it is an external factor, of which the outcome can vary.

<sup>9</sup> Pollak & Slominski, 2003, p. 708.

<sup>10</sup> Blomgren & Rozenberg, 2012, p. 9.

<sup>11</sup> Russell & Benton, 2009, p. 15.

My overall theoretical argument is that institutional design shapes parliamentary impact on the government's position on EU policies via the mechanisms of influence and control, but this occurs only under certain conditions (see above).

The aim of this thesis is therefore two-fold: it looks at different ways of conceptualising the operation of institutional arrangements in a representative democracy (analytical part) and secondly, it looks at any possible connections between such institutional powers and the impact they can have on their government's EU policy position when operating under different conditions (empirical part).

This research adds to a vast amount of comparative studies in the field of NPs before and after the Lisbon Treaty came into force. Although many researchers welcomed the new provisions on NPs<sup>12</sup>, and considered them to be a positive step towards greater democratic legitimacy of the EU, others hypothesised that the new powers of the NPs might not work in practice because of the tight timetable and busy domestic agendas of MPs.<sup>13</sup> It was also argued that the Lisbon Treaty would not make any change to the democratic deficit<sup>14</sup> or that NPs did not need a new Treaty to defend the principle of subsidiarity.<sup>15</sup> These preliminary hypotheses on the outcome of the new article regarding the role of NPs in the EU was followed up by many comparative research projects, often bringing observations from the 28 NPs of the EU.

However, comparative studies of the role of NPs in the EU should not focus solely on what they 'can' do (i.e. their formal rights), but rather on what they really do.<sup>16</sup> In other words, in order to explain the real impact of NPs, it is necessary to look at formal parliamentary institutions in relation to the external conditions under which they operate (the independent variables of this research).

Hence, the objective of this research is to find out *when* NPs are most influential in EU legislative files via their government. This thesis is crucial, therefore, for those interested or participating in future EU Treaty changes as the normative standards will help them to know whether and under what conditions NPs are able to contribute to the levels of political representation in the EU. The outcome of the empirical part of the thesis will furthermore be of interest to political scientists working in the field of EU

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<sup>12</sup> Cooper, 2006; Yevgenyeva, 2009.

<sup>13</sup> Raunio, 2007; Dougan, 2008.

<sup>14</sup> Sieberson, 2008; Best, 2008; Hellström, 2009.

<sup>15</sup> Kiiver, 2006.

<sup>16</sup> Saalfeld, 2005, p. 349.

institutional design. The thesis can therefore be considered to be empirically innovative because of its original choice of dependent variable, where it offers a more nuanced understanding of impact, which is combined with inherent data collection<sup>17</sup>.

More specifically, this research is about exploring the ways in which the efforts of an NP (as the represented) are most likely to have success when scrutinising their government (as the representatives) in EU policies. By looking at the formal powers of NPs based upon previously used indicators, I began by establishing whether an NP has few or many formal powers by creating a table in which I divided all 28 EU NPs in different clusters according to these formal powers. Those NPs that instruct their governments before a meeting with the Council of Ministers on the basis of their formal procedures are hereby referred to as conforming to the ‘delegatory model’, because they treat their governments as delegates. In contrast, NPs that give more leeway to their governments to act as trustees during the Council of Ministers – in the absence of ex ante formal procedures to instruct them – but which still exercise ex post control regarding government input into the Council afterwards, are referred to as conforming to a ‘trusteeship’ model.

However, to investigate whether or not the impact of NPs really depends on these ex ante or ex post institutional settings, or if the impact they have relies on whether and to what extent NPs use their mechanisms depending on certain external factors, I looked at how both weak and strong NPs exercise influence and control mechanisms while acting under certain conditions. Impact in this instance is assessed as NPs using their influence and control mechanisms to achieve a visible contribution to the positions on European legislative proposals formulated by their governments.<sup>18</sup>

For the analysis in the empirical part of my research, I investigated the research question through a small-N comparison. This enabled in-depth empirical analysis, showing a deeper understanding of the relationship between the NP and government in EU affairs. For these case studies, a huge amount of new data has been collected in the form of meeting documents, correspondence between government and NP and interviews.

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<sup>17</sup> Meeting documents, governmental memoranda, correspondence between the NP and the government, and transcripts of interviews.

<sup>18</sup> This research looks only at the impact of NPs on governmental EU policy and not at the final outcome of the EU dossier agreed in the Council. In other words, an NP could have a large impact on their government, but it may be that the government does not negotiate successfully with others in the Council (Cygan, 2013, p. 84).

A total of 16 cases (eight cases are added by eight shadow cases) consisting of EU legislative files have been used for the analysis. I traced the scrutiny processes of these EU legislative files and compared their parliamentary activities during the Ordinary Legislative Procedure (OLP) in two different NPs (the House of Commons (UK), conforming to a trusteeship, and the Second Chamber (NL), conforming to the delegatory model) when operating under different conditions (multiparty composition, salience and the Lisbon Treaty).<sup>19</sup>

In other words, this research compares possible differences within one of these two NPs when operating under these conditions, and does not include a cross-country comparison.<sup>20</sup>

### **1.3 Research contribution**

Using a normative categorisation for an empirical study about a possible role for NPs in the EU's representative democracy has rarely occurred in the literature. Yet, the use of normative standards allows the empirical findings to be placed in a wider context regarding the values of political representation. Political representation in normative theory has often been claimed as shifting and nuanced<sup>21</sup>, which shows that comparative research of formal powers consisting of a classification of NPs as strong, moderate or weak - as has happened in previous literature<sup>22</sup> - proves not to be sufficient. We therefore need a theoretically-driven and empirically-viable method in order to analyse political representation in practice.<sup>23</sup> In other words, there is a lack of empirical analysis of representation in the EU that goes beyond the description of delegation channels and accountability as laid down in the Treaties.<sup>24</sup>

Based upon Pitkin's theory which describes the relationship between the representative and represented as being one that shifts along a sort of continuum between the trusteeship and delegatory model depending on the circumstances, this study applies her categorisation to the relationship between the NP and government when operating on EU issues and connects the use of parliamentary formal powers to external conditions. This study thereby adds to the existing literature on institutional adaptation, but in a less

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<sup>19</sup> Both NPs tend to be classified as 'moderate' players in empirical research about NPs (Neuhold & Smith, 2015, p. 668).

<sup>20</sup> As the NPs in the EU vary greatly with regard to their formal powers and ways of scrutiny, comparing NPs would be too difficult.

<sup>21</sup> Rehfeld, 2009, p. 216.

<sup>22</sup> E.g. Norton, 1999.

<sup>23</sup> De Wilde, 2013, p. 280.

<sup>24</sup> Ibid., p. 282.

rigid way, as it assumes that the relationship between the NP and its government is not a static one.

On the other side, the study also adds to normative theories of political representation. Normative theorists tend to describe political representation in a more abstract way, whereas empirical scholars deal with representation issues with precision: the concept of representation is reduced to ‘responsiveness’ or ‘correspondence’.<sup>25</sup> However, this study looks at representation in the EU in practice, as opposed to formal legal representation<sup>26</sup>, which is relevant in order to understand the developing process of EU integration and the accompanying concerns of citizens not feeling represented by EU institutions and how NPs could be involved in this.

Secondly, empirical literature on EU policies normally deals with the impact of the EU on member states and NPs (in other words, top-down research). My own research, in contrast, will consist of the rarely-used *bottom-up* approach. It starts, therefore, at domestic level, for example, institutional arrangements or salience of EU topics (which is one of the independent variables) and tracks down the substantive impact of these issues on government EU policy-making (the dependent variable). In adopting a *top-down* approach, most research to date has studied the impact of European integration on domestic policies.<sup>27</sup> In so doing, however, this perspective describes the role of NPs as solely passive. Indeed, NPs are said to have no direct control over European policy-making. A *bottom-up* approach, by comparison, might help to analyse first of all whether NPs are capable of making an impact on the different democratic levels in the EU and secondly, if so, how they do this. This is in line with different theories, arguing that the role of NPs in EU decision-making should be described as a set of intervening variables, as their role consists of an interaction between different players who all influence some level of EU decision-making.<sup>28</sup>

Thirdly, although there have been many comparative studies about the influence of NPs in the EU, they are entirely focused on comparing NPs’ formal powers and institutional arrangements.<sup>29</sup> To date, no attempts have been made to measure the actual impact of

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<sup>25</sup> Rehfeld, 2009, p. 216.

<sup>26</sup> De Wilde, 2013, p. 281.

<sup>27</sup> Radaelli & Pasquier, 2008, p. 40-41.

<sup>28</sup> Goetz & Hix, 2001, p. 20.

<sup>29</sup> Russell & Benton, 2009; Auel & Raunio, 2012a.

these formal levels of control and influence.<sup>30</sup> Raunio argues ‘[t]here is a demand for more theory-driven analyses of actual behaviour that extends beyond describing formal procedures’.<sup>31</sup>

#### **1.4 Main findings**

After the process-tracing and pair-wise comparisons of the cases, it has become clear that strictly categorising NPs according to trusteeship or delegatory models or as strong, moderate or weak (as is normally done in empirical studies) is not sufficient.

Different conditions have proven to increase parliamentary activities which were resulted in increased feedback by the government in every case. It was therefore noticeable that salience was the main condition in which MPs were most likely to be effective. Real impact was thus only measured in those cases where topics were either politicised (cutting along the left/right cleavage) or Europeanised (discussing issues involving further EU integration). Although the salience condition was the most obvious condition to increase the use of parliamentary activities, the others were also present to some extent. The partisan composition condition could not be linked to the increased use of formal powers by the NP, but a cautionary note must be made here, namely that the scrutiny of the cases took place during the Cameron-Clegg coalition government which was an outlier in the normal single party governments. The Eurosceptic condition did seem to be present in those cases analysing the partisan condition, but there was no link found between the dependence on a Eurosceptic government in the Netherlands and the increased use of formal powers and its impact in the very scrutiny of these cases. Although the findings reject the posited mechanisms which link the dependency of a government on a Eurosceptic party to the increased impact of the NP on government EU policy positions, but do establish a link between the increased use of formal powers and the fact that the NP has been scrutinising a minority government. In other words, the partisan composition is present in these cases. With regard to the last explanatory factor, namely the use of Lisbon provisions, in this research it translated as sending a RO to the EC when the NP is of the opinion that the EC legislative proposal is breaching the subsidiarity principle, it can be argued that the RO is not considered to be a condition upon which the NP would increase the use of its

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<sup>30</sup> With the exceptions of Rozenberg (2002) who uses the variable of ‘impact’ to measure the levels of Europeanisation of NPs, and Saalfeld (2005) who quantitatively links institutions to outcomes.

<sup>31</sup> Raunio, 2009, p. 4.

formal powers, as it purely used as a legal instrument. However, after sending the RO, the NP did increase the use of formal powers, just because it is a topic in which it argues that it, at the domestic level, should be involved.

In conclusion, the outcome of the case studies gives a very clear signal that in order to involve NPs in EU issues, allocating either ex ante or ex post formal powers is not essential. The topic of debate is decisive for the NP to determine whether using its formal powers is most likely to have an effect. In other words, whereas based upon its formal powers the NP is part of either the trusteeship or delegatory model, its use of formal powers is dependent on the contents of the topic. A NP, which based upon its formal powers is considered to form part of the trusteeship model, can still act as part of the delegatory model so long as the topic is salient to the NP and vice versa. A cautionary remark is thereby necessary. Using ex ante influence powers has proven to be more effective in creating an impact on the government's EU policy position than when this is done ex post. More specifically, external conditions decide the use of formal powers by the NP, but in order to have an impact, it is still necessary to have powers to influence its government ex ante the Council meeting.

### **1.5 Plan of the thesis**

Chapter 2 provides an overview of the normative literature on political representation, the role of NPs in this, and the challenges posed by European integration to political representation. It compares the work of other theorists in this field and explains the background of the main theoretical argument of this thesis. It furthermore explains two tables (table 1 and 2), one matrix of which shows the formal and substantive forms of political representation and the position of NPs according to their formal powers. The second table gives an overview of all EU NPs ex ante and ex post formal powers. These two tables are helpful in understanding how the normative theory of political representation, such as that of Pitkin, can be translated to the empirical world, and specifically to NPs in the EU. These tables have furthermore enabled the case selection for this thesis, as table 2 clearly distinguishes between NPs with stronger ex ante influence powers and those with an emphasis on ex post control powers. Selecting a NP with stronger ex ante influence powers (the Second Chamber in the Netherlands) and one with stronger ex post control powers (the House of Commons in the UK) has been useful in order to establish whether there is a different outcome depending on the use of

formal powers or whether external conditions determine the outcome of the NP's use of formal powers when scrutinising its government over an EU legislative file.

Following on from this, Chapter 3 introduces the empirical side of the research by giving an overview of existing theories in this field and how the hypotheses are embedded within them.

Chapter 4 explains the methods used for the empirical research, including the operationalisation of the variables, an overview of the data collection, the type of analysis, and the case selection.

It also explains the choice of impact as the dependent variable, how other scholars have used this and what will be done to overcome its difficulties.

The following Chapters, namely 5,6,7 and 8 are the core of this research in that they deal with the outcome of the analysis of the different independent variables. During each step of the OLP, the use of formal powers will be studied per case when operating under different conditions and it will be investigated as to whether the use of their powers correspond to the expected causal processes.

Chapter 5 discusses the independent variable of partisan composition by looking at two cases which are two legislative files, one being the single party government of Labour (2010-2015), and the other being the multi-party government of the Conservative-Liberal Democrats (2010-2015) in the United Kingdom (UK). Through a pair-wise comparison, the Chapter compares the levels of impact as a consequence of the use of parliamentary formal powers via process-tracing and elite interviews.

Chapter 6 discusses findings for the Eurosceptic government independent variable which compares the levels of impact in a case where the Dutch government depends upon the support of a Eurosceptic party to a case in which the government does not depend on any Eurosceptic support in order to achieve a majority in parliament.

Chapter 7 deals with the salience independent variable, and compares two cases by the same (multi-party) government in the UK where one case is considered to be a salient EU legislative file and the other is non-salient.

The final Chapter in the core section of the research (Chapter 8) looks into the variable of the Lisbon provisions and compares a case wherein the Dutch parliament decides to send a reasoned opinion to the EC as it believes that the EU legislative proposal conflicts with the subsidiarity principle to a case where the NP scrutinises its government without making use of reasoned opinion.

The concluding Chapter compares the different case outcomes as described in the core chapters and places them in a wider context and within the wider literature in this field. The outcome of the comparison will contribute to establishing the extent to which NPs can best contribute to EU policies and under what conditions they will have most impact on their government's EU policy position.

The conclusions of the empirical research are furthermore linked to the normative debate on political representation and the extent to which the role of NPs can increase representation levels in the EU; this is relevant for the debate on EU levels of democratic legitimacy and to what extent the NPs are able to increase these when using their formal powers or whether this depends on the conditions under which they operate.

## Chapter 2

### Conceptualising political representation in the European Union

#### 2.1 Introduction

With an increasing number of decisions taking place at EU instead of national level, there are consequences for the political representation theory and the role of national parliaments (NPs).

When governments make non-domestic decisions at intergovernmental level, they are often considered to have a lot of discretion. In the vast literature about the EU, this is referred to as a ‘democratic deficit’. However, as governments must often decide on EU legislation with domestic consequences, NPs need to play a role in order to control what their governments are doing and whether their EU policies are in line with the views of the electorate at home.

In much of the normative literature, NPs are described as the representatives of the electorate, but in this case governments represent their NPs. This can be described as a second stage of representation. Part of the role of NPs as the represented (the principal) of their government (the agent), is to instruct and control what their government is doing. This Chapter will explain the theory of representation and categorize both how NPs as principals are able to hold their government to account and to authorise it, and how these processes work at EU level.

In order to undertake the empirical part of this research - examining the conditions in which NPs are most likely to have an impact on their government’s EU policy position - an understanding of the normative standards of political representation is essential to better explain the processes of authorisation and accountability. In addition, this helps the researcher to identify whether the NP can be considered as being part of a trusteeship or delegatory model according to the tools by which influence and control is exerted on their governments in EU policies.

This Chapter will begin by explaining why the conceptualisation of political representation in this research is based upon Pitkin’s theory. It will thereby describe the relationship between the government as representative and NPs as the represented, and

this can either form part of a ‘delegatory’ or ‘trusteeship’<sup>32</sup> relationship. In order to explain this relationship, which can alternate depending on external factors, a matrix has been created which shows a continuum of the trusteeship-delegatory model and what this means in formal and substantive terms.

From there, the Chapter will describe the problems around the democratic legitimacy in the EU and the possible role of the NPs. It will continue to describe NPs’ formal powers, including a table which gives an overview of the formal powers of EU NPs. This table will identify which NPs can be allocated as NPs with more ex ante influence powers and those which can be allocated as NPs with an emphasis on ex post control powers. This will help with the selection of NPs for the empirical research, during which an attempt will be made to measure the impact exerted by NPs on their government’s EU policy position and the extent to which this can alter when they operate under different conditions.

The final section of the Chapter highlights some important formal powers of NPs in EU decision-making, namely the European Affairs Committees (EACs) and other sectoral or specialised committees which deal with EU legislative files in some NPs. Although there exist huge variations in the extent to which NPs can make use of them, these committees are among the parliamentary tools most frequently used to authorise the government (if the committee meets before Council meetings) or to hold it to account (where the committee meets after the Council meeting).

## **2.2 Delegatory and trusteeship models and national parliaments**

The following section discusses the role of NPs in political representation theory and whether the NP can be considered as forming part of the delegatory or trusteeship model in its relationship with the government depending on its formal powers. Pitkin’s theory is thereby relevant as it shows how the relationship between the representative and the represented alters according to external factors, which is the crux of this research.

In formal terms, representation is referred to as the means by which one individual takes the place of another (where representatives are authorised by the represented who hold

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<sup>32</sup> These terms will be explained in section 2.2.

them to account).<sup>33</sup> Although political representation begins with elections (first level of representation) via the equal distribution of votes, once the government is authorised, it will be stimulated to act by those who can hold it to account<sup>34</sup>, namely the NPs (second level of representation). Authorisation and accountability are the key elements of political representation, therefore.<sup>35</sup> NPs are institutions that not only represent the electorate but, in authorising their governments and holding them to account, are also the represented where the government in this case is the representative. Representative democracy can therefore be considered a type of government that starts with elections, but develops beyond them<sup>36</sup>, on different levels.

Parliamentarism is also described as a chain of delegation from voters to policymakers. Citizens, as the principals, authorise their representatives (the agent) to make political decisions. The chain of delegation is paralleled by a set of accountabilities operating in reverse<sup>37</sup>: via the process of accountability, citizens can use control and via authorisation, they can use influence.<sup>38</sup> The same chain of delegation can be applied to the relationship between NPs and government whereby the NP authorises the government to execute certain policies and, conversely, the NP possesses a number of accountability tools to check whether the government acts according to the wishes of the electorate (the process of double delegation).

NPs vary internally in their formal powers to achieve accountability and authorisation and in the extent to which they are able to use those functions. Accountability is a type of ex post control as it is based upon the monitoring and reporting of representatives.<sup>39</sup> Whereas accountability takes place ex post, authorisation is a form of ex ante influence where there are procedures through which Y selects and directs X with respect to Z, while responsibility for those actions and decisions of X rests with Y.<sup>40</sup>

Pitkin argues that formal political representation determines the levels of authorisation (influence) and accountability (control).<sup>41</sup> The levels of formal representation depend on

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<sup>33</sup> Pitkin, 1967:58; Bellamy & Castiglione, 2013:208.

<sup>34</sup> Urbinati, 2011:24-25.

<sup>35</sup> Bellamy & Castiglione, 2011:120, Kröger & Friedrich, 2013:175.

<sup>36</sup> Urbinati, 2011:26.

<sup>37</sup> Bergman et al. 2000:257.

<sup>38</sup> Ibid.

<sup>39</sup> Bovens, 2007:453-454.

<sup>40</sup> Castiglione & Warren, 2006:6.

<sup>41</sup> Ibid., 7-8

the legal consent to act for others.<sup>42</sup> She argues that the greater the authorisation and the stronger the accountability mechanisms, the more likely the represented (the principal) is to act according to the ‘delegatory model’.<sup>43</sup>

In other words, formal powers are necessary to establish the extent to which the principal can authorise or hold the agent to account, and whether the relationship between the principal and the agent is either a mandating or independent one, better known as trustee and delegates in normative theory.<sup>44</sup> In cases where the represented has few mechanisms and the representative has therefore more freedom to follow its own judgement, we speak of a ‘trustee model’.<sup>45</sup> More specifically, in the delegate scenario, authority is concentrated on the principal whereas with the trusteeship, authority lies with the agent, the representative him/herself. The delegate is, therefore, less autonomous and less independent than the trustee.<sup>46</sup> Historically, the trustee is a representative who is free to follow his or her own opinions.<sup>47</sup> Delegates, on the contrary, follow the opinion of those they represent and act as a ‘subordinate substitute for those who sent them’.<sup>48</sup>

As described in the introduction above, in this research NPs with few formal powers are referred to as conforming to the trusteeship model, whereby the government has more freedom to act according to its own judgement; and NPs with more formal powers are considered to be conforming to a delegatory model, in which the government is more restricted to act according to NP’s wishes.

The strict division between trustee and delegate has been widely criticised<sup>49</sup> as being abstract and over-simplified. Representatives are often partial delegates and partial trustees, depending on different contexts.<sup>50</sup> According to Rehfeld, the debate about delegate/trustee is not all about the location of authority between principals and agents and in some cases the delegate (as the representative) has the freedom to follow its own

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<sup>42</sup> Pitkin, 1967: 133-34.

<sup>43</sup> In the delegatory model, the judgement of the agent is subordinate to the superior authority of the principal (Saalfeld 2011, p.275).

<sup>44</sup> Blomgren & Rozenberg, 2012:12.

<sup>45</sup> In the trustee model, the agent is free to follow his/her own judgement based upon an independent assessment of the issues at stake (Saalfeld 2011, p.275).

<sup>46</sup> Rehfeld, 2009:217.

<sup>47</sup> Blomgren & Rozenberg, 2012: 12.

<sup>48</sup> Pitkin, 1967:134.

<sup>49</sup> Castiglione & Warren 2006:8; Blomgren & Rozenberg, 2012:15.

<sup>50</sup> Pitkin, 1967:154; Rehfeld, 2009:222.

judgement. Conversely, there may be occasions during which the trustee (as the representative) receives tighter instructions from the principal to act in a certain way.<sup>51</sup>

The relationship between representative and represented is one that can alter over different periods of time, whereby the extent to which the representative is authorised and the extent to which the represented holds the representative to account can either increase or decrease according to different factors (and do not, therefore, solely depend on formal powers).<sup>52</sup> Pitkin makes a distinction, therefore, between formalistic representation (institutional arrangements to allow and limit the levels of authorisation and accountability) and substantive representation (the extent to which the representative ‘acts in the interest of the represented’ where the latter is concerned with the activity of representatives).<sup>53</sup> Representation can therefore be defined in terms of either formal arrangements or the nature of the activity itself.<sup>54</sup> The focus on the continuity of the relationship between the representative and represented, rather than interpreting representation as a static one off result of, for example, elections, is used in most normative research since Pitkin published her theory of political representation.<sup>55</sup>

Similarly, when the representative is ‘acting for’ the represented, it can indicate different manners of representation, for example, as a trustee or delegate. This form of representation is about how political agents enact this formal relationship substantively.<sup>56</sup> The mandate-independence controversy does not lead us anywhere, according to Pitkin<sup>57</sup> and creates a false dichotomy as neither end matches well the concept of representation.<sup>58</sup>

‘The representative must really act, be independent; yet the represented must be in some sense acting through him. Hence there must be no serious persistent conflict between them.’<sup>59</sup>

In other words, the representative is a bit of both. Pitkin describes the relationship between representative and represented as a continuum between the two along which

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<sup>51</sup> Rehfeld, 2009:215.

<sup>52</sup> Pitkin, 1967:210.

<sup>53</sup> Ibid., 113.

<sup>54</sup> Pitkin points out two other types of representation, namely a descriptive and symbolic type, which are not relevant for this research.

<sup>55</sup> E.g. Michael Saward, 2006, 2009, 2010; Rehfeld 2006, 2009.

<sup>56</sup> Bellamy & Castiglione, 2013:208.

<sup>57</sup> Pitkin, 1967:154.

<sup>58</sup> Karlsson, 2013:28.

<sup>59</sup> Pitkin, 1967:154.

the representative shifts depending on external factors, such as the message it receives from the principal.<sup>60</sup> This categorisation is more suitable than other political representation theories, such as that by Eulau and Wahlke who add a third category next to delegate and trustee, namely ‘politico’ for whom it depends whether they follow their voters or not.<sup>61</sup> This distinction fails to offer a meaningful understanding of the relationship between the represented and their representatives<sup>62</sup>, whereas Pitkin distinguishes different types of representation such as formalistic and substantive.<sup>63</sup>

The principal-agent model of representation as delegation<sup>64</sup> is for similar reasons inadequate according to the political representation models of Mansbridge and Rehfeld.<sup>65</sup> According to these normative standards, the relationship between representative and represented is an ongoing one and the role of the latter continues even after elections. It is through the act of representation itself that representation is not only about the expression of will, but also of judgement.<sup>66</sup> The representative must pursue the wishes of the represented in a way that is responsive to such wishes.<sup>67</sup> However, the principal-agent theory is based upon a chain of delegation and accountability (in both directions) between delegates and agents.<sup>68</sup> According to this delegation theory, accountability follows a single line between agents and principals whereby parliament is accountable to its voters and government is accountable to parliament.<sup>69</sup> However, representation is more than a single action by one participant, but rather refers to a whole structure and the functioning of a system; it deals with patterns that are a consequence of the multiple activities of many people.<sup>70</sup>

The interpretation by Pitkin will be applied to this thesis in order to establish the extent to which NPs (as the represented) shift along this continuum depending on different explanatory factors when scrutinising their government (as the representatives) in EU affairs. While Pitkin discusses political representation as being the relationship between legislature and voters, in this thesis her interpretation of political representation will be

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<sup>60</sup> Bray, 2011:91.

<sup>61</sup> Eulau & Walke, quoted in Andeweg & Thomassen, 2005:507.

<sup>62</sup> Andeweg & Thomassen, 2005:509.

<sup>63</sup> According to Pitkin, there are four types of representation: next to the formalistic and substantive form of representation, there also exist descriptive and symbolic forms (Pitkin, 1967), but the latter are not relevant for this research.

<sup>64</sup> Bergman et al. 2000.

<sup>65</sup> Piattoni, 2013:224-225.

<sup>66</sup> Ibid., 225.

<sup>67</sup> Pitkin, 1967:213.

<sup>68</sup> Piattoni, 2013:230.

<sup>69</sup> Wessels, 2011:108.

<sup>70</sup> Pitkin, 1967:221-222.

applied to NPs in their relationship with their governments, whereby they are the represented and the government is the representative. The relationship between the represented and its representatives is considered to be one of representation run from above<sup>71</sup> in which the representative (in this case the government) has an active role and where the role of the principal is translated into one of accountability and authorisation. In other words, the government receives a mandate which authorises it to execute certain policies, and accountability implies approval from the represented *after* the execution of such policies.<sup>72</sup>

Pitkin's interpretation of the democratic representative 'who does not always have to be in agreement with his or her constituents, but must not come into conflict with their will when they have an express will'<sup>73</sup> is the most accepted in political representation literature.<sup>74</sup> When applying this trustee-delegate model to NPs, it can indeed be seen in its relationship with the government that NPs continuously shift along a delegate-trustee continuum in legislative decision-making in response to different situations or constituencies.<sup>75</sup> A Member of Parliament (MP) may act differently in different contexts.<sup>76</sup> With their mechanisms of control and influence, NPs can hold their governments to account and also authorise them in the field of EU affairs. The level, to which they decide to do so, depends on different situations.

Pitkin's influential study on political representation is particularly useful in this field as it distinguishes between different types of representation<sup>77</sup> and shows that the relationship between the principal and the agent is not static but fluctuating along a continuum of greater or lesser authorisation and accountability, depending on different circumstances. If the topic is of particular interest to the principal, he or she may use more formal procedures to clearly authorise and hold the agent to account, whereas if the principal does not know a lot about the topic, the agent may obtain more leeway to act according to its own judgement. The same can be said about the relationship between the government and NP. For example, in instances where the represented expresses a clear wish for their representatives to act in a particular way, such as in a salient case, the representative may behave differently from the instance in which the

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<sup>71</sup> Andeweg & Thomassen, 2005:511.

<sup>72</sup> Ibid.

<sup>73</sup> Pitkin, 1967:163.

<sup>74</sup> Rehfeld, 2009:219.

<sup>75</sup> Bray, 2011:91.

<sup>76</sup> Blomgren & Rozenberg, 2012:9.

<sup>77</sup> This study will concentrate on the formal and substantive representation strand.

represented does not express any explicit wish. In cases where the government is the representative and the NP is the represented, it might be expected therefore that the NP would use less formal powers to authorise and hold the government to account when the topic is not salient to it - the NP. How the representative behaves must be responsive in some way to the principal's wishes, in other words.<sup>78</sup> It is therefore necessary to not only concentrate on the composition of NPs (formal representation), but also on the impact of their activities under certain conditions (substantive representation).

Representatives could, in different contexts, claim to represent a geographical unit, the nation, a party, an interest group, ideology, or ministry and so on.<sup>79</sup> This will impact upon the manner in which it is able to be responsive to the represented and can adapt its position on the continuum for delegates/trustees. In other words, the higher the responsiveness of the representative to the represented, the more the relationship is expected to be a delegatory one.<sup>80</sup>

The same can be said about the different conditions under which the representative operates. For example, according to Lijphart, consensus democracies perform better in achieving higher levels of public deliberation than majoritarian democracies and should, therefore, be considered more democratic.<sup>81</sup> Lijphart's main argument is that there is a correlation between the number of parties and the number of salient issues discussed. Put another way, the greater the number of parties represented in parliament (other than government parties), the higher the chances of reasonable disagreement and the more the government must take these different opinions into account, since it will be faced with stronger control mechanisms by opposition parties.<sup>82</sup> In the next Chapter, different conditions as applied in empirical research will be described and used as explanatory variables.

The conceptualisation of this thesis is thus based upon the political theory of Pitkin and the main theoretical argument of this research is a conditional one: institutional design affects the impact that NPs have on their national government's position on EU policies when using their formal mechanisms of influence and control, but this impact is conditional upon other external conditions (partisan composition, salience of EU issues and the Lisbon provisions).

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<sup>78</sup> Pitkin, 1967:155.

<sup>79</sup> Bray, 2011:91.

<sup>80</sup> Bowler, 2016:2.

<sup>81</sup> Lijphart, 2012:295.

<sup>82</sup> Ibid., 241-242.

In order to determine whether NPs can make a difference to the outcome of an EU legislative file, it is indeed necessary to establish whether the NP has many or few formal powers in order to prevent the representative from acting in a manner contrary to the wishes of the represented.<sup>83</sup> This allows for the establishment of whether the NP can therefore be considered as conforming to the trusteeship or delegatory model<sup>84</sup>, as described in the section above.

Once the formal powers of the NP have been established, the focus moves to whether the outcome differs when operating under different conditions.

However, the mandate-independence controversy has received much criticism, not least by empirical researchers who have had trouble to operationalise this relationship.<sup>85</sup> In order to be able to apply these political representation standards by Pitkin for the empirical research in this thesis, a matrix has been created (table 1) which gives an overview of formal and substantive forms of representation (normative standards), including the different influence and control mechanisms of the NP depending on these forms of representation (empirical application). Based upon this matrix, the NP can be classified as conforming to a trusteeship or to the delegatory model according to its formal powers which are static. In other words, based upon the classification of NPs according to its formal powers, it is either a NP with many formal powers or one with few. It, however, also adds information on the NP as a *substantive* representative which makes the position on the trusteeship-delegatory continuum a fluctuating one. Furthermore, the matrix indicates what competences and mechanisms can be associated with the different positions on the continuum. This matrix will serve as a bridge between the normative standards on political representation and the empirical research which will be set out in the next Chapter.

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<sup>83</sup> Andeweg & Thomassen, 2005:510.

<sup>84</sup> This model looks most like that of the ‘policy shaper’, whereas the trustee model comes closest to the ‘government watchdog’ model (Rozenberg & Heffler, 2015:31).

<sup>85</sup> Andeweg & Thomassen, 2005:508.

**Table 1 Matrix of Political Representation**

<b>Continuum Trusteeship-Delegatory model</b>	<b>Trusteeship model</b>	-----	-----	-----	<b>Delegatory model</b>
Formal representation	Weak authorisation /Weak accountability	Weak authorisation/ Strong accountability	Levels of authorisation and accountability depend on topic	Strong authorisation/ Weak accountability	Strong authorisation/ Strong accountability
Substantive representation	Acting For  (e.g. as an expert)	Acting For  (acting in 'the interest of')	Acting For  (as a 'mere' agent or as a 'free' agent)	Acting For  (as a kind of substitution)	Acting For  (to do something specific)
Definition	X authorises Y without any further specification	X authorises Y but will control its actions ex post	X authorises Y and levels of control and influence depend on importance of the topic	X authorises Y, but with clear ex ante instructions on what to do.	X authorises Y, but with clear instructions ex ante and strong ex post control
Competences X	Possibility of electing/ appointing	X has got strong control levels, e.g. the possibility to ask questions and participate in debates ex post.	Levels of influence and control by X depend on the topic. Although X might have formal ex ante and ex post rights, whether it will use them, depends on the topic.	X has got strong levels of influence, e.g. the possibility of getting information ex ante and it has the possibility of negotiating bargaining positions and issuing resolutions.	X has got the possibility of being involved ex ante and ex post and will influence debates and have the right to check them afterwards.
Mechanisms X	X has the right to (re)-elect or (re)-appoint	X can ask parliamentary questions after the meeting.  X can organise hearings after the meeting.	EAC deals with it in first instance and decides whether to delegate to sectoral committee.  Number of meetings	X gets information as early as Y.  X is allowed to get information independently from Y.  Y is obliged to	Y has to attend ex ante meetings of X and give explanations.  High implementation rates.  X has control

		X can raise motions of confidence. All EU matters are dealt with in EAC.	increases.  Time of discussions increases during plenary.	provide information.  Y is bound to decisions of committees  X can use mandating rights.	over legislative agenda.  Resolutions on X are binding.  Involvement of sectoral committees.
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Overview of different forms under which representatives operate in a representative democracy, whereby X = the principal (the NP) and Y = the agent (the government). This matrix, based upon Pitkin's concept of representation, is limited to the substantive and formal forms of political representation.

### 2.3 (The lack of) democratic legitimacy in the EU and the role of NPs

Although the Lisbon Treaty refers to the EU as a 'representative democracy' committed to 'political equality' (art. 9 and 10 TEU), the possibility of a representative democracy in the EU has led to many discussions. Since the nineties, when the Treaty of Maastricht was adopted, scholars have written about how to improve democratic legitimacy in the EU and whether NPs can play a role in this by holding their governments' actions in the Council to account.

The powers of the EP have been strengthened during many Treaty changes in order to approve the proposals of the European Commission (EC). This benefits the democratic legitimacy of the EU. However, the Council decides on an increasing number of topics, often by QMV. This prevents domestic democratic systems to control their governments in these issues.<sup>86</sup> This part of the chapter describes that, in order to be sure that governments reflect the general preferences of the electorate, NPs have a potential role to play.

Much of the criticism about the lack of the democratic legitimacy of the EU is related to its mode of political representation.<sup>87</sup> According to Lord and Pollak, political representation is absent at EU level because there is no distinct audience as at national level.<sup>88</sup> The electoral relationship between the representative and the represented is

<sup>86</sup> Bellamy and Kröger, 2014: 443.

<sup>87</sup> Moravcsik, 2002:606.

<sup>88</sup> Lord & Pollak, 2013b:518.

therefore unclear.<sup>89</sup> Besides, there are no clear accountability structures in place. According to Lord and Pollak, this is a consequence of the distance between EU citizens, the European Parliament (EP) and the elementary stages of political parties at EU level.<sup>90</sup>

Others do not doubt the quality of representation between EU institutions and European citizens as such but see a problem with the current structure in the EU, as representation takes place on different levels and citizens have no overview of who decides what. This is the main cause of the democratic deficit since it implies that many citizens no longer feel represented. According to Bellamy and Castiglione, however, this is not necessarily due to the compound polity<sup>91</sup> of the EU but to the fact that the three different levels of representation in the EU are not linked.<sup>92</sup> Although the Lisbon Treaty distinguishes between four different channels of representation - namely an electoral, territorial, functional and direct channel of representation - it does not mention the relationship between them anywhere.<sup>93</sup>

Some theorists<sup>94</sup> are of the opinion that all these different channels create the democratic legitimacy of the EU, others consider the compound polity of the EU and particularly the lack of a link between different levels of governance - or at least the lack of a clear division of competences between these different channels - to be the main reason for the democratic deficit in the EU.<sup>95</sup>

Some, like Moravcsik and Majone, are of the opinion that the EU deals with *expert* decision-making which is superior to *political* decision-making in the sense that it is better to take into account long-term decisions, while politicians are more focused on short-term re-election objectives.<sup>96</sup> Majone states that for certain EU competences the solution lies in allocating powers to non-majoritarian institutions which are not directly accountable to any represented groups but are experts in dealing with the technicalities

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<sup>89</sup> Ibid.

<sup>90</sup> Ibid.

<sup>91</sup> A compound polity refers to the 'interaction between principals and agents under conditions of shared rule, in which multiple agents compete for and share authority in overlapping jurisdictions and are accountable to multiple constituencies' (Brzinski et al.:1999:10).

<sup>92</sup> Bellamy & Castiglione, 2013:207.

<sup>93</sup> Kröger & Friedrich, 2013:172.

<sup>94</sup> Ibid.,172.

<sup>95</sup> It is beyond the scope of this research to elaborate on this theme, but more information on the compound polity can be found in the work of Hooghe and Marks (2009).

<sup>96</sup> Quoted in Mair, 2006:27.

of modern decision-making, such as the EU.<sup>97</sup> Moravcsik is of the opinion that the EU has enough checks and balances and that indirect parliamentary control via national governments and the powers of the EP are sufficiently democratic.<sup>98</sup> Further, national representatives such as ministers and civil servants who attend the Council meetings are under constant instruction from their executives back home, just as happens in domestic politics.<sup>99</sup> With regard to the lack of transparency of Council meetings, Moravcsik is of the opinion that at national level there are also meetings that take place behind closed doors which makes it harder for NPs to hold their governments to account.<sup>100</sup> Majone and Moravcsik's theory received much critical response, particularly in the late 90s when scholars were more sceptical and there were more question marks regarding the EU's democratic deficit.

Most critics attribute the weakness of the EU's democratic legitimacy to the absence of a European demos. They argue that the EU can never become a proper democracy because there is no such thing as a European demos.<sup>101</sup> Other scholars contradict this theory, however, pointing out that in a representative democracy the idea *demos* (agreed as homogeneity) is substituted by the acceptance that there is plurality of wills.<sup>102</sup> According to Zürn and Walter-Drop, a demos is never externally attributed but always a result of political institutions, such as for example, a state.<sup>103</sup> It is Christiano who links democracy to a common world and argues that people who share a common world conceptually do not have to share the same culture or even the same nationality, and that many common worlds are a consequence of arbitrary causes.<sup>104</sup>

Nicolaïdis sees a solution in the EU developing towards a form of democracy representing the different European identities.<sup>105</sup> Whether the EU requires one demos or a plurality of demoi, the importance of public discourse remains the same, however. This requires the development of institutions capable of guaranteeing opportunities for

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<sup>97</sup> Ibid., 27.

<sup>98</sup> Moravcsik, 2002:605.

<sup>99</sup> Ibid., 612.

<sup>100</sup> Ibid., 613.

<sup>101</sup> Amtenbrink, 2007; Hix, 2008.

<sup>102</sup> Alonso, 2011:170.

<sup>103</sup> Zürn & Walter-Drop, 2011:265.

<sup>104</sup> Christiano, 2006:86-87. Christiano does argue in his article that the state is the only legitimate instrument to achieve public equality (2006:91-92).

<sup>105</sup> Nicolaïdis, 2004:5-6.

political participation, influence and control.<sup>106</sup> These institutions in the EU are both the EP and NPs.

However, most studies in this field analyse the evolution of the EP and national parliaments separately.<sup>107</sup> The opinion being that representation by actors at different levels in the EU may be colliding<sup>108</sup> or at least insufficient to compensate for the absence of shared communication and identity which allows for majoritarian politics.<sup>109</sup> According to Bellamy and Castiglione, this is exactly where the problem lies. The EP represents the European voice whereas the NPs and governments in the Council represent various European voices, the different *demos*. So, these different channels represent a different public with potentially different interests which are incompatible.<sup>110</sup> The different voices were reflected, for example, in the EU Budget negotiations 2014-2020 in February 2013. The voice of the EP represented the EU interest in a higher EU budget, whereas most governments and their parliaments defended the need for budget cuts in line with their national budget policies. However, according to Crum and Fossum, domestic and European parliamentarisation are interdependent because the EP and national parliaments co-exist in the same political environment. They share a common focus on democratic representation in the EU's multilevel parliamentary field.<sup>111</sup> Both levels of representation have some of the concerns of citizens represented, one at national and the other at EU level. This form of dual legitimacy complements one other and cannot be viewed in isolation from one another. Recognising this is a way of acknowledging the role of the NP in the EU multi-level political system.<sup>112</sup> It serves as a way to bridge the gap between the policy-making level and citizens, the ultimate holders of the right to justification.<sup>113</sup>

By increasing the powers of the EP in different EU Treaty changes, it can be argued that the voice of the European *demos* has increased its representativeness and with the Lisbon Treaty, for the first time, the voice of the different '*demos*' are also recognised, through the voice of NPs. As argued by Christiano, even though a common world does not require one homogeneous culture, the diversity of interests does require that all those different interests from different people get an equal chance of collective

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<sup>106</sup> Jensen, 2009:1.

<sup>107</sup> Winzen et al. 2015: p.76.

<sup>108</sup> Lord & Pollak, 2010:117.

<sup>109</sup> Kröger & Friedrich, 2013:172.

<sup>110</sup> Bellamy & Castiglione, 2013:207.

<sup>111</sup> Crum & Fossum, 2009:258.

<sup>112</sup> Neyer, 2012:34

<sup>113</sup> *Ibid.*, 37.

decision-making. Collective decisions should therefore be made democratically.<sup>114</sup> All those who are bound to collective decision-making should have an equal say in their making and in controlling those who take the decisions.<sup>115</sup> In other words, those in power must be authorised and held to account for their actions. The lack of inclusion of NPs in the EU decision-making chain lead to many worrying articles. Some scholars have even referred to a de-parliamentarisation due to the increased powers of the European Council.<sup>116</sup>

The inclusion of NPs in EU affairs could help in overcoming the sociological facet of the democratic deficit<sup>117</sup>, especially because the lack of accountability and authorisation has increased in recent years as the Council votes by QMV on a higher number of dossiers. Although QMV benefits the EU's effectiveness in decision-making, it also means that the voting system in the Council becomes less transparent. This makes it harder for sovereign states to defend their own interests.<sup>118</sup> The lack of transparency is further increased by decision-making in the Council being made behind closed doors, making it difficult for both the EP and NPs to control the Council and their governments and justifying an increase in their powers. NPs are the national bodies through which citizens have equal rights (one voice one vote) which responds to the political equality principle necessary to justify democracy. Involving them in EU affairs could therefore imply higher levels of representative democracy in the EU. NPs are different from other institutions in that they are neither nationally-elected executives, like the Council, or transnationally-elected representatives, such as the EP.<sup>119</sup> Including them evolves the EU indeed into a 'demoicratic' political system whereby representation takes place at different levels<sup>120</sup>, the so-called multi-parliamentary field.<sup>121</sup> The EP is a directly-elected legislator whereas NPs have developed different formal powers, such as the EACs in order to limit their governments' freedom in Council meetings.<sup>122</sup> Besides, EACs support domestic communication of EU affairs.<sup>123</sup> Including the NPs is a way to overcome the democratic disconnect between EU

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<sup>114</sup> Christiano, 2006:87-98.

<sup>115</sup> Kröger & Friedrich, 2013:174.

<sup>116</sup> Raunio & Hix 2001:143; Bellamy & Kröger, 2011:488; Auel, 2013:2.

<sup>117</sup> Sprungk, 2013:550.

<sup>118</sup> Kröger & Friedrich, 2013:180.

<sup>119</sup> Cooper, 2012:537.

<sup>120</sup> Winzen et al.2015:75.

<sup>121</sup> Crum & Fossum, 2009:250,

<sup>122</sup> Winzen et al., 2015:75.

<sup>123</sup> Kröger and Bellamy, 2016:141.

decision-making and EU citizens via the processes of authorization and accountability at the member state level.<sup>124</sup>

A representative democracy including NPs could therefore also be a way to overcome the problem of a joint demos and the distance between voters and institutions which, as we have seen, is used as the main explanatory factors for the democratic deficit in the EU.

Representation in the EU occurs via a two-track system with citizens represented by the European Parliament and by national governments accountable to national parliaments (see Article 10(2) of the Lisbon Treaty).<sup>125</sup> In addition, the Lisbon Treaty includes in its Protocol that NPs must be more fully informed about the EU legislative process and gain more rights in controlling subsidiarity (more about this in Chapter 3.2). Equal access to information, combined with stronger control by national parliaments, can increase the levels of political equality by strengthening domestic democratic institutions.<sup>126</sup> In other words, from a normative point of view, the role of NPs in EU legislation is now acknowledged.<sup>127</sup>

Although NPs are referred to in the Treaty of Lisbon (2009) for the first time in the main text, a clear division or hierarchy of competences is absent. The EU's representative democracy is based upon two different normative subjects: the individual and the state. Normally, political equality refers to the right of the individual to vote, control and sanction the government. However, the state is the subject of political equality within international organisations. They deliver rights and obligations. In other words, the two different subjects relate to political equality in different ways.<sup>128</sup>

Next to this lack of hierarchy, many scholars worry about practical issues when involving NPs in EU affairs, such as their lack of resources and full agendas.<sup>129</sup> The involvement of NPs in EU affairs has been described, furthermore, as actually threatening political equality in the EU.<sup>130</sup> According to Lord, NPs have different interests and EU salience differs between them, as we have seen during the development of the financial crisis. This increases the role of some NPs, but decreases

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<sup>124</sup> Ibid., 138.

<sup>125</sup> Winzen, 2010:1.

<sup>126</sup> Bolleyer & Reh, 2012: 485,

<sup>127</sup> Benz, 2005:508.

<sup>128</sup> Kröger & Friedrich, 2013:184.

<sup>129</sup> Raunio, 2009:16.

<sup>130</sup> Lord 2011, writing in *European Voice*.

the role of others, which overall strengthens political inequality. For that reason, the EP should be the only institution to play a larger role.<sup>131</sup>

Nonetheless, while NPs have different formal rights to achieve accountability and authorisation, which implies different levels of control and influence over their government, they still *represent* their *demos*, whereas the EP cannot. NPs are authorised by their citizens and hold their national governments to account. In this regard, their involvement increases political equality in the EU (all NPs use a one person one vote system). This is in accordance with the Lisbon Treaty's meta-democratic principle of equality, referring to a form of political representation, which pays equal attention to citizens of the EU.

Besides, empirical research shows that voters feel closest to NPs as their representatives.<sup>132</sup> Increasing their role in EU politics can contribute, therefore, to higher levels of representation in the EU, as suggested by Bellamy and Castiglione<sup>133</sup> as a solution to overcoming the democratic deficit caused by the triple form of unconnected representation. Supranational level of representation (EP), Bellamy and Castiglione suggest, corresponds to the *thick* concept of democracy.<sup>134</sup> In other words, it promotes the common good, but pays less attention to pluralism. The intergovernmental level of representation (via the member states and their NPs) relates to a *thin* concept of democracy, on the other hand, which defends individual rights but has less focus on the common interest. Because of the unequal distribution of political resources<sup>135</sup>, the thin concept of democracy might not fulfil the meta-standard of democracy, namely political equality.<sup>136</sup> At the moment, the EU is characterised by the thick concept and in order to add some more of the thin concept, NPs would need to play a role. By doing this, the EU would be better able to represent its different *demos* with their pluralist identities. This would lead to a space of reasonable disagreement due to increased electoral competition which characterises the thick concept of democracy. Additionally, the NPs are able to overcome the increasing tension between European integration and the need for self-rule by connecting the two together. According to Kröger and Bellamy, they can do so by *normalising* and *domesticising* EU policy

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<sup>131</sup> Ibid.

<sup>132</sup> Maurer, 2001:402-403; Schmidt, 2006:21.

<sup>133</sup> Bellamy & Castiglione, 2013:220.

<sup>134</sup> Ibid., 220.

<sup>135</sup> Dahl, 2006:50-51.

<sup>136</sup> Lord & Pollak, 2010:126.

making.<sup>137</sup> In other words, when EU topics gets discussed by MPs, they are discussed at a domestic level by those who directly represent the electorate. When regularly discussing EU topics, MPs can develop competing EU policies, which is a way to normalise the politicisation of EU issues.<sup>138</sup>

In summary, different opinions from both left and right wing perspectives could be discussed in NP committees or plenary debates, which increases policy choice.<sup>139</sup> Besides, the use of mechanisms like control and influence would help the EU to further shape its democratic legitimacy. As a result, the EU would be a proper representative democracy which is the best way to guarantee its principle of political equality. The Lisbon Treaty and the new Protocol for NPs have led to a change in representative democracy in the EU<sup>140</sup>; this has created the possibility of a ‘demoicracy’. The next section will explain what tools NPs have to contribute to this ‘demoicracy’.

## **2.4 The formal powers of NPs**

Following on from the previous section, NPs have formal powers in order to represent the different demoi in the EU and control what their governments agree at EU level and decide whether this corresponds to the views of the electorate. We have seen that, in order to determine whether NPs can make a difference to the outcome of an EU legislative file, it is indeed necessary to establish whether an NP has many or few formal powers in order to prevent the represented from acting in a manner contrary to the wishes of the representative.<sup>141</sup>

Now that we have seen the development of NPs being introduced into the EU decision-making process via different EU Treaty changes and the combination of supporting and opposing academic responses to this, it is worth looking at the different formal powers NPs can have and the extent to which they are able to hold their governments to account and authorise them in EU legislative files.

As we have seen, the normative motivation behind the matter of formal powers and NPs is related to the delegation theories of parliamentary democracy.<sup>142</sup> This approach

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<sup>137</sup> Kröger and Bellamy, 2016: 2.

<sup>138</sup> Ibid. p.19.

<sup>139</sup> Ibid., p.3.

<sup>140</sup> Cooper, 2013:534.

<sup>141</sup> Andeweg & Thomassen, 2005:510.

<sup>142</sup> Winzen, 2013:298; Rozenberg & Heffler, 2015:18.

recognises different steps in the chain of delegation between voters and EU Institutions, from voters to MPs to cabinet ministers and prime-ministers.<sup>143</sup> The lack of democratic legitimacy in the EU and the possible involvement of NPs to reduce this has led to a wide-ranging number of academic articles into the use of formal powers by NPs in the field of EU policies, often related to the delegation theory.

NPs have formal powers in order to influence, amend or, occasionally, reject policy proposals from government<sup>144</sup>; they all have different powers to do so. NPs have similar rights to transform bills into law, amend government bills, and control ministers, but their ways of doing so differ greatly.<sup>145</sup> In the past many scholars have made attempts to classify NPs depending on the kinds of formal powers they had as set out in their Rules of Procedure or Constitutions.<sup>146</sup> Mezey distinguished three layers of policymaking powers: ‘strong’ (if they can modify and reject executive proposals), ‘modest’ (legislatures that have no capacity to reject policy proposals but can modify them) and ‘little or no policy making power’ (legislatures that can neither modify nor reject policy proposals.<sup>147</sup> Norton builds on this classification, but adds to the first, ‘strong’, legislature the capacity to formulate policies.<sup>148</sup>

Based upon the different functions that NPs fulfil in EU decision-making, later research has classified NPs according to the different types of involvement: *policy shaper*, *government watchdog*, *public forum*, *EU expert* and *European player*.<sup>149</sup> The first three categories correspond to the main parliamentary roles (legislation, control and communication) while the last two are more specifically focused on EU issues, such as gathering EU information (*expert*) and having direct dialogues with EU institutions - *EU player*.<sup>150</sup> Other ways of ranking as set out by Karlas<sup>151</sup>, Winzen<sup>152</sup>, in addition to Auel, Rozenberg and Tacea<sup>153</sup> show a division between a group of strong, mainly North European, parliaments including those of Denmark, Sweden and Finland, but also Germany, the Netherlands and Austria, and a group of rather weak parliaments (in

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<sup>143</sup> Rozenberg & Heffler, 2015:18.

<sup>144</sup> Winzen, 2010:2.

<sup>145</sup> Rozenberg & Heffler, 2015:4.

<sup>146</sup> Mezey, 1979; Norton, 1996.

<sup>147</sup> Mezey, 1979:26-27.

<sup>148</sup> Norton, 1996:5.

<sup>149</sup> Rozenberg & Heffler, 2015:28.

<sup>150</sup> Ibid.

<sup>151</sup> 2012.

<sup>152</sup> 2012.

<sup>153</sup> 2015a.

Southern member states such as Greece, Malta, Cyprus, Portugal and Spain, but also in Belgium and Luxemburg). France, Italy and the UK fall somewhere in between.<sup>154</sup>

This research adds another classification of NPs and their formal powers in table 2. This table shows all 28 EU NPs, indicating their formal levels of influence and control mechanisms, depending on previously agreed indicators<sup>155</sup> (as laid down in the national constitution or Rules of Procedure of the NP). These formal instruments can either precede the representative relationship via ex ante influence mechanisms or follow it via ex post control mechanisms.

NPs with a greater number of ex ante influence mechanisms in table 2 are classified as conforming to the delegatory model (for example, Denmark, Finland, Germany, the Netherlands and Sweden). Those with more mechanisms to control their government are considered to be conforming to a trusteeship model (Belgium, Spain, the Czech Republic and the UK). That is, in a delegatory model, the opinion of the NP is superior to that of the government and NPs have stronger formal powers in the sense that they are able to adapt their government's position.<sup>156</sup> In the trusteeship model, by contrast, the government has more freedom to follow its own judgement.<sup>157</sup>

Previous research has shown that if NPs really want to make a difference to EU policies, they must have powers to influence their government before the Council meeting.<sup>158</sup> However, it has also been shown that increased use of QMV in the Council has complicated the ex ante commitments of governments to their NPs, as the decisions are taken based upon a majority.<sup>159</sup>

Table 2 will be helpful in the empirical research by allowing for a comparison between those NPs with more formal powers and those with fewer, and to measure their impact on EU governmental policies when acting under different conditions. Both table 1 and 2 are based upon Pitkin's formal representation strand, which consists of the levels of accountability (control mechanisms) and authorisation (influence mechanisms). In that

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<sup>154</sup> Auel & Christiansen, 2015:268.

<sup>155</sup> Rozenberg, 2002; Maurer, 2003; Raunio, 2005.

<sup>156</sup> Saalfeld, 2011:275.

<sup>157</sup> Empirical research shows that when an NP wants to impact EU policy, it has to do so ex ante, ex post control mechanisms are too late in order to implement change (Auel, 2007:502).

<sup>158</sup> Auel, 2007:488; Kiiver, 2007:69.

<sup>159</sup> O'Brennan & Raunio, 2007:3.

sense, therefore, Pitkin serves as a bridge between the normative and empirical part of my research.<sup>160</sup>

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<sup>160</sup> Pitkin's normative standards of political representation will be combined with empirically-measurable indicators in order to establish the formal powers of NPs based upon which they can be either classified as conforming to a trusteeship or to the delegatory model.

**Table 2 Formal powers of National Parliaments**

<b>Ex ante powers</b>		<b>Ex post powers</b>	
<b>Strong</b>	Austria, Denmark, Estonia, Finland, Germany, Netherlands	<b>Strong</b>	Austria, Belgium, Bulgaria, Czech Republic, Germany, Hungary, Ireland, Italy, UK
<b>Modest</b>	Belgium, Croatia, Czech Republic, France, Greece, Italy, Latvia, Lithuania, Portugal, Romania, Slovakia, Slovenia, Sweden	<b>Modest</b>	Croatia, Cyprus, Denmark, Estonia, Finland, France, Greece, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Romania, Slovakia, Spain, Sweden
<b>Weak</b>	Bulgaria, Cyprus, Hungary, Ireland, Luxemburg, Malta, Poland, Spain, UK	<b>Weak</b>	Slovenia

Ex ante influence indicators

Strong: 3 or more ex ante formal powers

Modest: 1 or 2 ex ante formal powers

Weak: less than one ex ante formal power

Ex ante influence indicators used:

The involvement of sectoral committees in EU affairs, mandating rights, the right to add items to the agenda of the meetings with PM/Minister, and the attendance of the PM/relevant minister at an EAC/sectoral committee before the Council meeting.

Ex post control indicators

Strong: 3 or more ex post formal powers

Modest: 1 or 2 ex post formal powers

Weak: less than 1 formal power

Ex post control indicators used:

The right to ask parliamentary questions, confidence votes, attendance of the PM/relevant minister at the EAC/sectoral committee after the Council meeting.<sup>161</sup>

<sup>161</sup> The choice of indicators is based upon data from Strøm, Müller and Bergman (2006), Raunio (2005), 19<sup>th</sup> Bi-annual Report of COSAC (2013), Auel and Raunio (2012), Wessels and Rozenberg (2013) and author's own data.

### 2.4.1 Parliamentary committees and the EAC

The above mentioned formal powers that NPs can have are based upon indicators used in previous empirical research in this field<sup>162</sup> and the list is non-exclusive. Many NPs have different tools by which to hold their government to account (for example, the scrutiny reserve, reference to plenary). However, some formal powers are accessible to all NPs, such as the right to information and the right to ask questions. However, this right is used differently within the NPs. For example, since the Lisbon Treaty has come into force, all NPs will receive information directly from the EC. However, there exist huge differences in the timing and contents of government information to NPs, such as their own opinion on EU policy positions.<sup>163</sup>

The next Chapter will elaborate in more depth on the empirical work that so far has been done in the field of parliamentary institutional powers. However, before moving there, it is useful to look at the different formal powers NPs can have.

One other formal tool that all NPs have, but which varies amongst them regarding their use, requires some particular attention. It is the most important institutionalised monitoring tool, namely the committee systems.<sup>164</sup>

Committees have been set up by NPs in order to deal efficiently with influence and control of EU affairs. Active committees have become standard in most West-European consensus-based parliaments, as they are used to the embeddedness of committees<sup>165</sup> and to having different parties working harmoniously together to establish a joint approach to a given issue. Committees are also described as compromise arenas, that is, their function is to resolve conflict between different political views.<sup>166</sup> With these compromise decisions taken by the committee, they are able to promote influence. In majoritarian parliaments like Westminster, however, the work of the committees can sometimes cause friction.<sup>167</sup> This is because the executive party is dominant in parliament as well and therefore more likely to simply rubber stamp government

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<sup>162</sup> Strøm, Müller & Bergman, 2006; Raunio, 2005; Auel & Raunio, 2012a; Wessels & Rozenberg, 2013.

<sup>163</sup> Rozenberg & Heffler, 2015:29; Auel et al., 2015b:62.

<sup>164</sup> Saalfeld, 2005:350.

<sup>165</sup> MacCharthaigh, 2007:38.

<sup>166</sup> Lees & Shaw, 1979, quoted in MacCharthaigh, 2007:37.

<sup>167</sup> MacCharthaigh, 2007:37-38.

proposals. Consequently, some theorists argue that proportional systems are more democratic than majoritarian ones.<sup>168</sup>

All NPs in the EU have set up their own EACs. These are created to respond to EU issues which require certain levels of sectoral specialisation.<sup>169</sup> EACs have two main tasks: influencing their government position in the Council (proactive) and controlling EU legislation (reactive).<sup>170</sup> They mainly deal with the latter. EACs across the EU have different mandates and different control and influence mechanisms when it comes to submitting issues to the chamber(s) for deliberation during plenary debates, in addition to the degree to which the process of scrutiny is considered to be binding on government.<sup>171</sup> Some EAC models are used to centralise all EU affairs (for example, the House of Commons in the UK), whereas others delegate different proposals to relevant sectoral standing committees depending on the topic – for example, the Finnish and Dutch parliaments.<sup>172</sup> The EAC is often considered to be more generalist with regard to the contents of the topics dealt with in EU legislative files, as they often have knowledge on EU affairs, but lack the technical expertise.<sup>173</sup>

Delegating EU issues to sectoral committees is a way of decentralising EU issues and involving those with expertise in the respective topic. In addition, it stimulates all MPs to become routinely involved in EU affairs.<sup>174</sup> Generally, those NPs using decentralised sectoral committees are considered to be the more active<sup>175</sup>, as they show that ‘Europe is everywhere’<sup>176</sup>. However, it has as a disadvantage the fact that EU issues could easily become fragmented<sup>177</sup>; although in some NPs the EAC is responsible for the coordination of EU issues, whereas the sectoral committees deal with the actual scrutiny of the relevant EU legislative files (for example, the parliaments of Finland and the Netherlands). Besides, MPs in the sectoral committees are not often experts on EU affairs. In contrast to the EAC, the role of the plenary has so far been limited in

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<sup>168</sup> Lijphart, 2012:295.

<sup>169</sup> Kiiver, 2006:47.

<sup>170</sup> Bengtson, 2003:6.

<sup>171</sup> Bergman, 1997:378.

<sup>172</sup> Kiiver, 2006:47.

<sup>173</sup> *Ibid.*, 49.

<sup>174</sup> Raunio, 2005:321.

<sup>175</sup> MacCarthaigh, 2007:37.

<sup>176</sup> Kiiver, 2007:69.

<sup>177</sup> *Ibid.*

European issues (with the exception of the UK which is a debating parliament, and plenary is more important).<sup>178</sup>

## **2.5 Concluding remarks**

This Chapter has conceptualised political representation and the role of NPs in the EU via the use of its formal powers, and it has classified NPs as forming part of the delegatory or trusteeship model based upon these powers. This classification, however, describes the relationship between the NP as the represented and the government as the representative as a static one, one that does not move. Pitkin's political representation theory, however, shows how the relationship between the representative and the represented is not static, but rather can alter depending on different factors. She thereby distinguishes substantively from the formal model of representation.

The next Chapter will discuss the different empirical theories of previous research in the field of institutional adaptation by NPs, and the extent to which NP powers can be influenced by the different conditions under which they operate, making their position on the delegatory/trustee matrix a fluctuating one. Chapter 2 will indicate that NPs are expected to operate on a continuum and that their position upon this depends on various factors and not solely on the formal powers as laid down in their Rules of Procedure. In other words, the strength or weaknesses of a NP cannot solely be considered to be one that is fixed and dependent only on formal powers, but rather the focus must be on the external conditions under which the NP operates as well.

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<sup>178</sup> Auel & Raunio, 2012a:15.

## Chapter 3

### The use of formal powers under different conditions: the theories

#### 3.1 Introduction

Following on from the conceptual debate as addressed in the previous Chapter, the attention turns to the theoretical discussion which will be used to examine whether the norms applicable to representative democracy are also empirically-operationable via the involvement of NP involvement in EU policy-making. Over the past decade, and especially since the Lisbon Treaty, the possible role of NPs in reducing the EU's democratic deficit has been a point of contention in both normative and empirical studies and this thesis, therefore, follows a deductive approach, based upon these previous theories.

The aim of this Chapter is to explain the choice of impact as the dependent variable (DV), build on existing literature in the field of NPs and their use of formal powers in decision-making in EU legislative policies. These will be linked to a selected number of conditions under which NPs operate, which are the explanatory factors of this thesis.

The theoretical perspectives will lead to arguments for each explanatory factor which will explain how the use of formal powers is expected to alter under certain conditions and their expected effectiveness (leading to impact). The hypotheses will result from these arguments and will be followed by a description of the expected causal process when the variable to be measured varies. The empirical part of the research is linked to the normative standards on political representation as discussed in the previous Chapter in that its aim is to show how the relationship between NPs and their governments during scrutiny of EU legislative files alters continuously and a whole spectrum of possible relationships exists between the trustee and delegate model.<sup>179</sup> The NP can be characterised as either part of a trusteeship model or a delegatory one depending on the situation during which the scrutiny takes place. In other words, political representation is not only formalistic, but also substantive, i.e. referring to how the representative relationship works.<sup>180</sup> More specifically, this research looks at the formal powers of NPs in EU legislative files, with which the NP is able to hold its government to account and

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<sup>179</sup> Bellamy & Castiglione, 2013:209.

<sup>180</sup> Kröger and Friedrich, 2012:267.

authorise it, normatively better known as the formalistic strand of representation (see Chapter 2). Secondly, it will look at the way NPs act when operating under certain conditions (the substantive strand of political representation) and whether this is effective. More specifically, it looks at a certain combination of factors that cause NPs to use their powers and also when governments are most likely to take over the NP's position.

Previous empirical research showed that NPs often chose not to use their formal powers when scrutinising their governments on EU affairs<sup>181</sup>, and in this regard could therefore be considered to form part of the trusteeship model.<sup>182</sup> However, this thesis assumes that in EU issues, the use of formal powers by NPs will vary depending on the conditions under which they operate. When NPs do increase their efforts to have an impact on their government's EU legislative file, which they are expected to do, they have chances of success. These are expected to increase under different conditions, such as a multi-party government or in relation to a salient topic. In these cases it is more likely that the NP acts as a delegatory NP which will give the government less freedom to follow its own judgement when negotiating in the Council of Ministers. However, in different circumstances, for example, when these external conditions are absent, the NP may refrain from using its formal powers, since using them may be ineffective (for example, few chances of the government taking over their position). This in turn could mean that it does act according to the trusteeship model (even if the Rules of Procedure gives it the so-called stronger 'ex ante' influence formal powers) and the government in such cases will have more leeway to act freely during meetings with other EU Ministers.

Although empirical studies on the contribution of NPs to the EU's democratic legitimacy are often more positive than the normative point of view<sup>183</sup>, the discussion on the possible role of NPs in reducing the EU's democratic deficit has equally been a point of contention in empirical research. Broadly, the empirical literature on the role of NPs can be divided into two main prevalent arguments, one which is sceptical<sup>184</sup> and the

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<sup>181</sup> Auel, 2007:493.

<sup>182</sup> Chapter 2 describes NPs with few formal powers as a NP forming part of the trusteeship model and those NPs with many formal powers as being NPs forming part of the delegatory model. Contrary to the traditional 'trustee' and 'delegate' terms, which describe the position of the representative, in this thesis they describe the represented (which in this thesis is the NP).

<sup>183</sup> Auel & Benz, 2007:59.

<sup>184</sup> Raunio, 2007; Amttenbrink, 2007.

other that is more positive.<sup>185</sup> Next to a vast number of articles on whether the involvement of NPs in EU legislative decision-making could contribute to reducing the democratic deficit in the EU, publications examining NPs' formal powers, and the extent to which these have been adapted as a consequence of Europeanisation, is even more extensive.

Research in the field of institutional adaptation of NPs shows first of all that formal powers by NPs are relevant in shaping EU policies<sup>186</sup>, and that the varying impact of NPs across the EU are explained by these differences in formal powers. However, this thesis proposes that such powers are conditional and by adding other variables, the impact on their government's position in the field of EU legislative policies will either increase or decrease.

Secondly, scholars have also shown that other variables can be significant in measuring parliamentary strength on EU affairs, such as the salience of an EU topic<sup>187</sup> and parliamentary provisions in the Lisbon Treaty<sup>188</sup>, but also partisan composition<sup>189</sup> and Euro-scepticism.<sup>190</sup> This Chapter will first give an overview of previous literature relating to formal powers of NPs in the EU, followed by a discussion on the choice of the DV impact. This will be followed by a discussion of other theories in the field of external conditions and how it is expected that the use of formal powers will lead to a variation in impact when NPs operate under different conditions. For each explanatory factor, the argument will be described, leading up to the hypotheses which are followed by the expected causal processes of parliamentary use of formal powers in the case where the variable in question is present and when it is absent.

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<sup>185</sup> Cooper, 2006, 2013.

<sup>186</sup> Rozenberg, 2002; Raunio, 2005.

<sup>187</sup> Saalfeld, 2005; Netjes & Binnema 2007.

<sup>188</sup> Kiiver, 2012.

<sup>189</sup> Raunio, 2005.

<sup>190</sup> Miklin, 2013.

### 3.2 Empirical research in the field of institutional adaptation

The debate on EU integration and the accompanying democratic deficit is often linked to the formal powers of NPs. This link is explained because EU integration is frequently blamed for diminishing parliamentary control.<sup>191</sup> Particularly in cases in which the Council votes with a qualified majority, NPs cannot use any control mechanisms over what their governments decide.<sup>192</sup> Many scholars refer to this development as a ‘de-parliamentarisation’.<sup>193</sup> The increasing EU integration process and the fear that this would lead to further de-parliamentarisation resulted in many empirical studies on parliamentary institutional adaptation which began in the Nineties and continue today.<sup>194</sup> This section gives an overview of the literature in this field.

There are two dimensions to the literature on NPs in the EU: the first relates the formal powers of NPs to the democratic deficit debate in the EU, while the second is a group of scholars who either defend or reject the involvement of NPs in EU affairs.

Roughly three different periods of studies about the formal powers of NPs can be distinguished in the first group. The first focused on institutional powers and any changes made by NPs as a consequence of EU integration, such as setting up EACs<sup>195</sup>, generally showing NPs as slow adaptors to the EU integration process<sup>196</sup>, but most have become better at controlling their governments in EU affairs<sup>197</sup> and are fighting back.<sup>198</sup> This first phase showing that NPs, after a slow start, do matter in EU affairs<sup>199</sup> is also known as the re-parliamentarisation thesis.<sup>200</sup> NPs now have various formal powers with which they can influence EU decision-making. They can influence national negotiation positions in the Council of Ministers and shape final policy outcomes ex-post.<sup>201</sup>

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<sup>191</sup> Winzen, 2010:4.

<sup>192</sup> Ibid.

<sup>193</sup> Maurer & Wessels, 2001:49; Winzen, 2010:4; O’Brennan & Raunio, 2007:2.

<sup>194</sup> O’Brennan & Raunio, 2007:1.

<sup>195</sup> Judge, 1995; Norton, 1996; Maurer & Wessels, 2001.

<sup>196</sup> Raunio, 1999; Maurer, 2001.

<sup>197</sup> Strøm, Müller & Bergman 2006; O’Brennan & Raunio, 2007.

<sup>198</sup> Raunio & Hix, 2001; Auel & Christiansen, 2015:262.

<sup>199</sup> Rozenberg & Heffler, 2015:16.

<sup>200</sup> Goetz & Meyer-Sahling, 2008:6.

<sup>201</sup> Dorrenbacher et al., 2015:2.

Secondly, the approval of the Lisbon Treaty led to a new wave of studies. Whereas the first period dealt with indirect parliamentary influence on EU affairs, this time it covers the real direct influence gained by NPs at EU level. During this wave, research focuses on whether NPs have adapted to respond to the new provisions in the revised Treaty (article 12 TEU) via either a different use of their powers (increase/decrease) or a change in the Rules of Procedure.

The Lisbon Treaty announced concrete changes for NPs, amongst others their collective right to monitor the principle of subsidiarity, better known as the Early Warning Mechanism (EWM). In the case that one third of NPs send a RO to the EC, the threshold of the yellow card has been reached against the EC legislative proposal, meaning that the EC must review it.<sup>202</sup>

The Lisbon Treaty furthermore attempts to strengthen the position of NPs by circulating information regarding new EU legislative proposals directly after publication. In other words, NPs will be less dependent on their governments for information. This empowerment will increase their chances of exercising control over government and ensures better access to EU documents.<sup>203</sup> The NPs will, in addition, be in a better position to hold their governments to account after Council meetings, as the Lisbon Treaty includes an article (I-24(6)) specifying that when examining and adopting a legislative proposal, the Council must meet in public.<sup>204</sup> These new provisions were a result of growing concerns about the democratic legitimacy of the EU.<sup>205</sup> As discussed in Chapter 2, accountability and authorisation are the main processes of NPs in order to achieve political equality which is the core value of EU democracy. By its direct reference to the NPs, the Lisbon Treaty indeed strengthened the accountability process in order to improve the EU's political representation and thereby increases its democratic legitimacy.<sup>206</sup>

The new provisions in the Lisbon Treaty implied that NPs would no longer adapt their formal powers solely at national level to deal with EU integration, such as setting up EACs, but for the first time a collective right was also formally set up at EU level.

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<sup>202</sup> Mastenbroek et al., 2014:2.

<sup>203</sup> Raunio, 2007:79.

<sup>204</sup> Ibid.,84.

<sup>205</sup> Cooper, 2006:291.

<sup>206</sup> Neyer, 2012:35.

Thirdly, since the Lisbon Treaty has now been in force since 2009, different studies about formal powers have been published which examine two issues; institutional adaptation as a consequence of the Treaty and secondly, the use of the new Lisbon provisions as laid down in Treaty's Protocol. This culminated in the publication of the *Palgrave Handbook of National Parliaments and the European Union* (2015) outlining the results of the collaborative research by the Observatory of Parliaments after Lisbon (OPAL).<sup>207</sup> One of the findings of this book shows that most NPs have their own way of responding to EU integration; however, those that have adapted their mechanisms in such a way as to combine control of their own government together with increased contact with EU institutions have best adapted to the EU integration challenges.<sup>208</sup>

When looking into formal powers, scholars often use the same type of indicators for describing NPs' formal powers, such as asking questions, mandating rights, the use of specialised committees, agenda control, etc. and studies varied between comparing different formal powers of NPs.<sup>209</sup> Andeweg and Nijzink build their classification of NPs on the famous ranking of Anthony King, and argue that there are three different modes of the government-parliament model in which both parties can act in different ways: a non-party mode which refers to the traditional government versus NP interaction, an inter-party mode (interaction between members of one government party and those of other government parties or with the opposition) and, thirdly, the cross-party mode which consists of interaction between ministers and MPs across party lines to defend sectoral interests. The dominating mode depends upon the formal powers of the NP, but also on the context or political agenda.<sup>210</sup> There are, furthermore, many relevant studies about the relationships between NPs and their governments in domestic affairs, such as that by Russell et al. (2015) which has been referred to for this thesis and mentioned in the bibliography.

A second group of studies concentrated on either defending or rejecting an involvement of NPs in EU affairs. Initially, scholars' opinions on the new provisions for NPs in the Lisbon Treaty were mainly hypothetical, varying from scepticism - NP agendas being too full to deal with the new powers and extra information<sup>211</sup>, and the main goal of MPs is re-election which will not happen by focusing on EU affairs since this is not in the

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<sup>207</sup> OPAL constitutes a joint endeavour of the Fondation Nationale des Sciences Politiques (Paris), University of Cologne, Cambridge University and Maastricht University.

<sup>208</sup> Wessels, 2015:xv.

<sup>209</sup> Strøm, Müller & Bergman, 2006; Raunio, 2005; Auel & Raunio, 2012a; Wessels & Rozenberg, 2013.

<sup>210</sup> Quoted in Auel, 2005:310.

<sup>211</sup> Raunio, 2007:83.

interest of voters<sup>212</sup> - to more positive sounds, such as Cooper who expected that the EWM could give NPs the role of ‘virtual third chambers’, as they are now jointly involved in the scrutiny of EU legislative files.<sup>213</sup> Kiiver expected that the Treaty and its provisions for NPs could work as a catalyst for real parliamentary action.<sup>214</sup>

What all these studies have in common is that they almost exclusively focus on comparing institutional provisions, with the exception of Andeweg and Nijzink’s ranking which is more conditional and therefore closer to the normative categorisation on political representation such as those of Pitkin, and Elau’s division of a trustee, delegate and politico representation models (see Chapter 2).

Some studies, however, looked into linking the formal powers to other explanatory variables in order to explain variations between NPs’ use of formal powers, such as the salience of integration, Euro-scepticism within parties and cabinet size.<sup>215</sup> This has led to a huge amount of data on the topic of the formal powers and rankings of NPs based upon any changes as a consequence of EU integration.

However, ranking NPs according to the frequency of committee meetings, levels of decentralisation to sectoral committees or involvement of MEPs in the scrutiny of EU legislative proposals at national level does not say much about political practice.<sup>216</sup> It is for this reason that this thesis looks further than ranking NPs and comparing their formal powers, but rather attempts to discover the outcome of their use. This will be discussed in the next section.

### **3.3 Impact as dependent variable**

As discussed above, most studies about NPs in the EU commonly examine the different institutional powers of NPs and whether they have changed as a consequence of EU integration. Based upon this, we have a clear idea of what NPs can and cannot do in relation to EU issues. This section will discuss why it has chosen impact as the dependent variable (DV) of this research.

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<sup>212</sup> Auel & Raunio, 2012a:14.

<sup>213</sup> Cooper, 2006:283.

<sup>214</sup> Kiiver, 2008:83.

<sup>215</sup> Winzen, 2010:5.

<sup>216</sup> Kiiver, 2007:70.

Whatever the institutional or procedural set-up of the NP, the levels of scrutiny depend to a large extent on the willingness of MPs to spend time and resources to make use of their formal powers.<sup>217</sup> Formal rules and their adaptation, therefore, only tell us part of the story, as until they are used, they are meaningless.<sup>218</sup> There is still significant disagreement about the real impact of differences in formal powers and possible reform.<sup>219</sup>

Pollak and Slominski, for example, show how the Austrian *Nationalrat*, an NP with strong formal powers on paper hardly ever uses them in EU affairs, resulting in minimal impact on EU issues.<sup>220</sup> Other committees which have fewer formal powers are more active, such as the EAC in the House of Commons.<sup>221</sup> For that reason, research must focus on the impact of NP on the EU policy of their governments.<sup>222</sup>

Some scholars have attempted to measure parliamentary behaviour such as the level of involvement of sectoral committees<sup>223</sup>, and the number of EAC meetings<sup>224</sup>. Other research shows that there is a strong correlation between strong institutional rights and the general level of parliamentary activities.<sup>225</sup>

However, although parliamentary behaviour says more about the use of formal powers, it still does not give any insight into the outcome of the use of such powers and whether their use varies when operating under different conditions. In other words, when studying the use of formal powers, we still do not gain any information on whether being active as a NP makes any difference. It does not tell us if it matters whether MPs ask many or few questions, or if they apply a scrutiny reserve.<sup>226</sup> It is possible for a NP to be an active player, but this does not automatically mean that it subsequently has greater control over its government.<sup>227</sup> Winzen, for example, shows how a NP with strong formal powers in the field of information and the use of sectoral committees

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<sup>217</sup> Kiiver, 2007:70.

<sup>218</sup> Auel et al., 2015:65.

<sup>219</sup> Saalfeld, 2005:346.

<sup>220</sup> Pollak & Slominski, 2003:707.

<sup>221</sup> Saalfeld, 2005:347.

<sup>222</sup> Rozenberg & Heffler, 2015:25b.

<sup>223</sup> Karlas, 2012.

<sup>224</sup> Spreitzer & Pigeonnier, 2012.

<sup>225</sup> Auel et al., 2015b:78; Auel & Christiansen, 2015: 261; Auel et al., 2015a:290.

<sup>226</sup> The scrutiny reserve provides that Ministers should not give agreement to EU proposals which have not been cleared by the ESC (House of Commons, ESC, *Reforming the European Scrutiny System in the House of Commons*, 24<sup>th</sup> Report, 2013-14, p.1).

<sup>227</sup> Auel et al., 2015b:74.

might still be confronted with a government that is opposed to having its opinion overruled.<sup>228</sup>

It is for this reason that this research continues to drift away from the existing literature on formal powers and instead examines the actual outcome of the use of such formal powers. It has therefore selected the impact of the NP on its government's EU legislative proposal as the DV. Of all the ways to measure the strengths and weaknesses of NPs (such as scope<sup>229</sup>, timing and management), the impact of the scrutiny of EU affairs can be considered to be the most important criterion to establish NP's strength in EU issues. Besides, this is the variable that is most likely to show the highest levels of variation.<sup>230</sup> Using the measurable impact of NPs on their government's EU policy position in this thesis will be achieved by exploring any changes that have occurred in the government's EU policy position as a consequence of the parliamentary use of formal powers. It will furthermore examine whether the level of impact changes when operating under different conditions.

Based upon these scholars demonstrating a relationship between different types of explanatory factors and the impact of NPs on EU affairs, I agree with those who argue that if institutional rights are not used and taken up by MPs, they are worth little.<sup>231</sup> Levels of parliamentary impact do not only depend on formal levels of accountability and authorisation, therefore, but also on other factors such as its own political agenda. An MP can act differently in different contexts.<sup>232</sup> Formal rules are important but not sufficient by themselves to guarantee greater substantive impact on EU policies. It is, therefore, important to look beyond them at real 'influence' rather than 'power'.<sup>233</sup>

By looking at what NPs really do<sup>234</sup> instead of what they 'can' do based upon their formal powers, and assessing whether what they do has a visible effect, it is important to look at the formal parliamentary institution in relation to parliamentary activities when operating under external conditions (the independent variables (IVs) of this research). These will be elaborated upon below.

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<sup>228</sup> Winzen, 2012:661.

<sup>229</sup> The quantity and quality of EU documents available (Auel, 2007:489).

<sup>230</sup> Auel, 2007:487-488.

<sup>231</sup> Pollak & Slominski, 2003:708.

<sup>232</sup> Blomgren & Rozenberg, 2012:9.

<sup>233</sup> Russell & Benton, 2009:15.

<sup>234</sup> Saalfeld, 2005:349.

The operationalisation of the DV and an explanation on how this thesis will measure impact, including how to overcome the challenges of measuring impact, will be discussed in the next Chapter.

### **3.4 The explanatory factors**

Next to comparative studies about formal powers, some scholars have tried to explain variation between strong, moderate and weak NPs according to external factors, such as the North-South condition, the Euro-sceptic sentiment in the NP and its electorate, public opinion, and the Catholic/Orthodox share of the population.<sup>235</sup> Previous empirical studies show that parliamentary majorities often neglect the use of formal powers altogether in the scrutiny of EU legislative files or at least avoid scrutinising their government publicly in EU policies and often support them.<sup>236</sup> Giving the government a mandate that is too strict on EU affairs can limit the government's negotiation position resulting in the NP being criticised for undermining the government's success.<sup>237</sup> Put another way, it would not be in the national interest if the NP tightens the government too much to its position resulting in MPs feeling that they need some freedom to follow their own judgement during their negotiations in Brussels.

However, it is expected that under certain conditions, MPs are more likely to increase their use of formal powers. They are more likely to do so if they believe that using them will be effective (if it will lead to impact). Their efforts will only lead to impact if their government is motivated to take over the NP's position. It is expected that the impact here can even increase if the NP is considered to be part of a trusteeship model according to its formal powers (see Chapter 2).

The overall argument of this thesis, as discussed in Chapter 2.2, looks at when NPs are most likely to use their formal powers and what the effectiveness of this is. The argument assumes that MPs with busy agendas carefully opt to use their powers only when using them is effective and likely to lead to benefit - which is when government takes over their position. Based upon the literature as discussed in Chapter 2, this is most likely to happen with certain incentives, such as policy shaping<sup>238</sup>, vote-seeking<sup>239</sup>

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<sup>235</sup> Raunio, 2005: 326; Kiiver, 2007:70.

<sup>236</sup> Neyer, 2012:30.

<sup>237</sup> Auel & Benz 2007:61; Raunio, 2007:88; Raunio, 2009:5.

<sup>238</sup> Rozenberg, 2002; Raunio, 2005.

<sup>239</sup> Auel & Raunio, 2012a.

and overcoming contestation<sup>240</sup>. This brings us to the next section which is the selection of the conditions embedded in this wider argument.

This thesis has selected the external conditions of partisan composition, Eurosceptic involvement in the coalition government, the salience of the topic and use of Lisbon provisions because it is expected that they most likely lead to different levels of impact and are applicable to a wide range of NPs in the EU (all NPs deal with salient and non-salient topics and many deal with multi-party coalitions). More importantly, these conditions are examples of incentives which in the literature has been described as most likely to be effective (leading to impact), namely by overcoming contestation (this condition is dealt with in the partisan composition and Eurosceptic conditions), policy-shaping and vote-seeking (dealt with in the salience condition). It has added a fourth, external condition, namely the Lisbon provisions.

The next section will explain why it expects that the use of parliamentary powers is likely to vary when operating under these conditions, which could also have a varying impact as a result, even if the NP is considered to be part of the trusteeship model. That is, when discussing the different conditions under which NPs can operate, it looks at the use of formal powers and their effectiveness (impact) when operating under these conditions.

### **3.4.1 Partisan composition**

Most literature on party composition published since the 1990s uses cross-national methods and comes from the neo-institutional rational choice strand on legislature. Literature from this strand argues that NPs whose governments consist of a greater number of parties are more powerful than those in single-party governments since such NPs use their formal mechanisms of influence and control more often and have greater impact on governmental policies.<sup>241</sup> This is because government representatives need parliamentary support to overcome potential contestation in their coalition governments.

Some authors within this strand establish a correlation between the number of parties in government and the number of issue dimensions.<sup>242</sup> In other words, the greater the number of parties in government, the greater the number of different topics and varying

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<sup>240</sup> See Holzhaecker, 2005.

<sup>241</sup> Holzhaecker, 2005:442; Raunio, 2005:333; Saalfeld, 2005:357.

<sup>242</sup> Lijphart, 2012:77.

views on those topics within government. This makes it harder to find a compromise that pleases all members. Where there are more divergent opinions on issues, it is likely that there is more time spent in discussion in both the cabinet and NP. In such cases, the government will be more dependent on MPs from its own party for support because the coalition may be dominated by disagreement.

Other scholars have demonstrated that there is a causal relationship between the number of parties in government and the power of the NP<sup>243</sup>; this has also been shown in research regarding the EU. In a study of opposition parties, for example, Holzhaecker concludes that parliamentary power is strongest in minority governments, less strong in coalition and weakest in single-party governments. He argues that the broader and more diverse the coalition government, the stronger the use of control mechanisms by the NP<sup>244</sup> because the government is more dependent on the NP to discuss and negotiate its position when the governing parties may not agree amongst themselves. In other words, the NP adapts the use of its formal powers according to its government's composition. Raunio similarly argues that the fewer the number of seats held by government parties in parliament, the more the cabinet must take into account the preferences of MPs.<sup>245</sup> Saalfeld concludes that ministers in coalition governments often make deals with other parties in the NP because conflicts of interest increase when there is a coalition government.<sup>246</sup> Multiparty governments are therefore often considered to be more responsive to their NPs than single party governments.<sup>247</sup>

Single party governments may still see disagreements between the government and backbenchers in the NP, but it is more likely that both see themselves as team members since the majority in the NP belong to the government party, with the result that the NP is therefore more likely to support the government. Moreover, the government will be less likely to be dependent on the support of other parties as it does not have to make compromises between different coalition partners. Compromises are often further from the ideal point of the median voter of the various governing parties.<sup>248</sup> This leads to increased use of formal powers by the NP as it is more likely that political parties in the NP are not supportive of the compromise, or the government must find support from opposition parties in the NP in order to gain approval of the compromise in the NP. The

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<sup>243</sup> Bergman, 1997; Rozenberg, 2002; Raunio, 2005; Goetz & Meyer-Sahling, 2008.

<sup>244</sup> Holzhaecker, 2005:442.

<sup>245</sup> Raunio, 2005:333.

<sup>246</sup> Saalfeld, 2005:357.

<sup>247</sup> Bowler, 2016:14.

<sup>248</sup> Saalfeld, 2005:357.

partisan composition of the government, therefore, is likely to influence the impact of the NP on EU policies.

There is a strong connection between party composition and the formal powers of the NP. As Saalfeld argues, in the case of a coalition government, the NP requires extra-institutionalised accountability mechanisms to hold the government to account, as there is more likelihood that government decisions are based upon compromises and do not reflect the view of the median voter.<sup>249</sup> These NPs are thus often considered to be strong or conforming to the delegatory model (Denmark, Sweden, Finland, Germany, The Netherlands). Such NPs normally scrutinise coalition governments which are more likely to consult their NPs in order to retain broad coalitions.<sup>250</sup> The main characteristics of these NPs are their strong formal powers, such as agenda control or the involvement of sectoral committees. In contrast, the best-known example of an NP with frequent single party governments in the EU that is considered to be relatively weak (the House of Commons) has few formal powers to hold its government to account and authorise it.<sup>251</sup> In single party systems, the government holds the majority in the NP and there are, therefore, fewer chances for disagreement. The levels of trust in the NP are expected to be higher in single-party governments as their interests will be more similar.<sup>252</sup> Policies are often considered as ‘status quo’.<sup>253</sup> This also applies to EU policies which are more often left to government in single party governments.<sup>254</sup>

NPs, therefore, need less formal powers to change the position of government and most institutional choices are already under its control, for example agenda control or the committee system.<sup>255</sup> A coalition government, on the other hand, implies less trust and must respect the interests of other political parties, and policies are often based upon compromise. Therefore, the formal powers of the NP have more parliamentary value since for agenda control and committee meetings, for example, compromise between different parties is required which gives MPs more voice.<sup>256</sup>

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<sup>249</sup> *Ibid.*, 357.

<sup>250</sup> Holzacker, 2005:438.

<sup>251</sup> Norton, 1999:54-55.

<sup>252</sup> Auel & Raunio, 2014b:6.

<sup>253</sup> Tsebelis, 1995:96.

<sup>254</sup> Auel & Christiansen, 2015:270.

<sup>255</sup> Döring, 1995:253.

<sup>256</sup> More on this can be found in the consociationalist theory of Lijphart who argues that societies with different sub-cultures need formal rules to ensure that all parts of the community benefit equally from government (Lijphart, 1977; Golub, 2012:1296).

It has been previously argued that NPs in multi-party systems normally have more formal accountability and authorisation powers, as they are often part of a consensus rather than a majoritarian system where MPs are needed to get support for the compromises suggested in government.<sup>257</sup> It might be expected, therefore, that those NPs with many formal powers and which are part of a multi-party system could be considered as conforming to the delegatory model. Going a step further, however, is the still un-researched link between those NPs with few formal powers but a multi-party government and their impact on government position on EU policies. They should have a greater impact on the governmental position in the EU than those NPs with few formal powers and which are part of a single-party government, because a government consisting of several parties is more dependent on parliamentary opinion to gain support for its position.

I therefore expect that NPs will be able to increase their impact on their government's EU policy position once they are part of a multi-party government, since it will be harder for those governments to reach agreement without the support of their NPs. Such governments are obliged, therefore, to take their NP's wishes into account.

My hypothesis is as follows:

*H1 Multi-party government is a favourable condition for NPs to increase their substantive impact on their government's EU policy position.*

#### **3.4.1.1 Causal process**

The following causal process is expected based upon the theoretical argument above:

EU legislative proposal: sent to Council, EP and NPs → Single party government and NP → little discussion in government → one view on EU proposal → no dependence on NP → NP: limited use of mechanisms to influence (majority in NP is government party) → NP agrees with government → no parliamentary impact.

*Versus*

EU legislative proposal: sent to Council, EP and NPs → multi-party government and NP use of formal powers → lots of discussions in government → government cannot

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<sup>257</sup> Lijphart, 2012:79.

agree → compromise → asks for support from different parties in NP → control and influence of government by NP through its formal powers of, for example, asking questions and threat of confidence votes → government must take NP position on board to ensure sufficient support for proposal → few formal powers do not stop the NP from having a say → parliamentary impact.<sup>258</sup>

### 3.4.2 Eurosceptic parties as coalition partners in the government

As with the previous argument, the study of Eurosceptic parties and the manner of obtaining parliamentary majorities form part of the neo-institutionalist rational choice explanation of consensus politics.<sup>259</sup> Recently, post-functionalists have shown that the rise of Euro-scepticism leads to negative opinions in the field of supranational governance.<sup>260</sup>

Until a decade ago, EU topics were hardly discussed in any government or NP in the EU. However, the rise of Eurosceptic parties in different member states has led to a politicisation<sup>261</sup> of the EU and increased political competition.<sup>262</sup> The increased Eurosceptic public opinion will impact the use of parliamentary activities. NPs are elected institutions which grant legitimacy to the EU when participating in its decision-making process. On the other hand, MPs could also use their powers to express the growing lack of confidence in the EU amongst voters.<sup>263</sup>

It is mostly parties on either the extreme right or extreme left that raise issues regarding the EU.<sup>264</sup> They can raise these issues, for example, to criticise their government for failing to defend the national interest during EU negotiations.<sup>265</sup> Parties in the centre or to the left or right of centre normally prefer not to raise EU issues.<sup>266</sup> They consider the EU to be a topic on which they cannot win any votes from the electorate. For these

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<sup>258</sup> See Chapter 4.4, for more information regarding the use of data during each step of the causal process.

<sup>259</sup> Andeweg, 2000:524.

<sup>260</sup> De Wilde, 2012:111.

<sup>261</sup> Politicization in this case refers to the extent that a topic is raised as a relevant object of political contestation within the main arenas of collective decision making within a domestic political system (Bellamy and Kröger, 2016:2).

<sup>262</sup> Hooghe & Marks, 2008:18, Bellamy and Kröger, 2016: 2.

<sup>263</sup> Rozenberg & Heffler, 2015:1-2.

<sup>264</sup> Auel & Raunio, 2012a:16.

<sup>265</sup> Ibid.

<sup>266</sup> Hooghe et al., 2002:968; Parsons & Weber, 2011:384.

parties, EU topics are often more like a liability than an asset and they normally avoid public activities related to EU issues, as they will not gain any votes with such topics.<sup>267</sup>

The Eurosceptic party, on the other hand, depends for its votes upon the discussion of issues related to the EU and thus has an interest in politicising EU issues because this may win more voters - their position on the left/right dimension will most likely limit their potential voters.<sup>268</sup> In other words, only those parties that are in tune with the electorate over EU issues will try to get the item on the agenda.<sup>269</sup> Eurosceptic parties are 'issue owners' on policies related to cleavages about EU integration and will endeavour to make their issue central to the public debate by bringing topics to the table.<sup>270</sup>

Re-election is one of the main goals of MPs and so they are more likely to increase debates on EU issues if the population (their voters) is more Eurosceptic.<sup>271</sup> A Eurosceptic public opinion makes the existence of Eurosceptic parties more likely in the NP. It is expected that the same applies when the coalition government includes a Eurosceptic party: where different opinions on EU integration exist within the very coalition government, is likely to translate into different government members having different opinions on bringing EU issues to the table.

Normally, political parties only begin debates on topics on which they have different positions to their counterparts as there is more to gain from discussions upon which parties show disagreement; further, it is a way for MPs to distinguish themselves.<sup>272</sup> It is therefore also likely that when a Eurosceptic party gains more seats, the level of contention in EU affairs increases as they can raise this issue as one on which they disagree with the opposition in parliament or government. This assumption is supported by Vollaard who argues that the rise of Eurosceptic parties increases the possibility of, and need for, cooperation to obtain a parliamentary majority.<sup>273</sup> That is, the EU becomes more salient in countries with more Eurosceptic support.<sup>274</sup> This will lead to

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<sup>267</sup> Auel & Raunio, 2014b:7.

<sup>268</sup> Auel & Raunio, 2014a:16.

<sup>269</sup> Auel & Raunio, 2012a:16.

<sup>270</sup> De Ruiter, 2013:1197.

<sup>271</sup> Auel & Raunio, 2014a:6.

<sup>272</sup> Sczcerbiak & Taggert, 2008:349; Miklin, 2012:133.

<sup>273</sup> Vollaard, 2012:14

<sup>274</sup> Kriesi, 2005:15; Raunio, 2005:336.

increased scrutiny of EU issues in order to show voters that they defend their interests.<sup>275</sup>

More specifically, NPs have the opportunity to use their formal powers more regularly in establishing their government's EU policy position when a Eurosceptic party enters government, as the topic of the EU will appear more often on the agenda and the coalition may find it harder to find a compromise between the governing parties.

Once a Eurosceptic party joins the government, it and its non-Eurosceptic counterpart together in government must find compromises based upon different views. They are obliged to share power and bridge their disagreements. The Eurosceptic party in the coalition is more likely to add EU issues to the government agenda which may hard to compromise on with other government partners. This activity will show voters that they are doing as promised, increasing the chances of being re-elected.

Once on the agenda, both pro- and anti-EU parties have a chance to influence the EU debate. As coalition partners may disagree on the EU, the government is more dependent on the support of opposition parties in the NP and is more likely to seek backing for its views within parliament. The NP is more likely to use its formal powers, such as tabling more committee meetings on EU affairs and more parliamentary questions, which will give it more opportunity to exercise an impact on EU affairs.

Therefore, I hypothesise:

*H2 The more the government depends on the support of a Eurosceptic party, the more likely the NP will have a substantive impact on the government's EU policy position.*

### **3.4.2.1 Causal process**

The following causal process is expected based upon the theoretical argument above:

Government with Eurosceptic coalition partner → EU issues appear more often on the agenda of the government → contention in government → government requires support from NP → discussions in NP by use of formal powers (committee meetings, plenary meetings coalition partners) → parliamentary parties give advice with either several or few formal mechanisms → Government is dependent on NP for support to gain a

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<sup>275</sup> Auel & Höing, 2015:380; Auel et al., 2015a:290; Winzen, 2013:306.

majority → NP position must be adopted by government to gain support for its compromise → parliamentary impact.

*Versus*

Government without Eurosceptic coalition partner → EU issues hardly appear on the agenda → little contention → status quo → little discussion in government → no discussion in the NP → little advice needed → NP does not give advice → government does not have to take into account NP's position → No parliamentary impact.<sup>276</sup>

### 3.4.3 EU salience

Other factors have also been proven to indicate parliamentary strength in EU affairs, such as issue-specific variables which are more related to the vote-seeking and policy-shaping incentives of MPs in order to use their power, and of the government to take over NP's position (contrary to the previous two hypotheses which reflected examples of incentives to overcome contestation).

Scholars have shown that the more salient the topic in the NP, the tighter the scrutiny. Actors are likely to bargain more keenly when the topic is salient to them<sup>277</sup>, as they expect to gain an electoral advantage by bringing them to the table.<sup>278</sup> If the topic is of a non-salient nature, MPs are expected not to waste their time and are likely not to use their formal powers or, at least, reduce them to a bare minimum since there is no electoral gain to be won. Because of the high quantities of EU legislative proposals, MPs will weigh the costs and benefits of parliamentary activities before using their formal powers.<sup>279</sup> As we have seen previously, re-election and policy influence are considered the primary goal of most MPs<sup>280</sup> and they are, therefore, more likely to use their formal powers knowing they can make a difference to the debate only if their constituents care about the issues. Saalfeld expects that MPs sometimes choose to grant more discretion to their governments if they believe that this is politically-efficient and they will grant less discretion in other cases.<sup>281</sup> MPs are more likely to grant discretion to the government when the salience of the EU topic is low.<sup>282</sup> This implies that MPs

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<sup>276</sup> See Chapter 4.4 for more information regarding the use of data during each step of the causal process.

<sup>277</sup> Slapin, 2014:35.

<sup>278</sup> Miklin, 2014:80.

<sup>279</sup> Saalfeld, 2003, quoted in Auel & Raunio, 2012a:14.

<sup>280</sup> Auel & Raunio, 2012a:14.

<sup>281</sup> Saalfeld, 2005:347.

<sup>282</sup> Saalfeld, 2005:353.

choose per EU legislative proposal the extent to which they seek to tie the government to a certain mandate or the extent to which they can act freely. Depending on the salience of the topic, the NP shifts thereby between the different ends of the delegatory-trustee continuum as described in Chapter 2.

In his paper on the impact of NPs, Saalfeld has shown a positive link between the political salience of EU integration overall in EU member states and the formal powers of the NP to scrutinise its government over EU issues. He thereby examined both formal powers and the behaviour of MPs.<sup>283</sup> It is expected that this link will also work for the actual attention paid to specific EU issues.<sup>284</sup> That is, when citizens care more about a specific topic dealt with in the EU legislative proposal, MPs are more likely to increase their formal powers.

Miklin suggests that the extra use of parliamentary powers in a salient case will increase the impact of the NP, as the minister is better informed about parliament's preferences.<sup>285</sup> Once a topic receives more attention from the NP, the government will have greater difficulty ignoring the voters' representative (the NP) because it may be punished at the next election.<sup>286</sup> The representative will act differently, therefore, when the wishes of the principal are known.<sup>287</sup> It is in the government's own interest to take the NP's wishes on board during negotiations in Brussels as in ignoring them, it risks being questioned afterwards (and losing credibility). It might furthermore mean that the NP can delay implementation of the EU agreement afterwards.<sup>288</sup>

Acting in accordance with the principal's wishes could result in re-election. Netjes and Binnema confirm this and argue that MPs will use more of their influence and control mechanisms when they feel they can alter voter support in their favour.<sup>289</sup> At the same time, as soon as they know that topics are of low salience to their voters, they will not consider asking questions about them as they normally select topics to discuss which are related to their re-election.<sup>290</sup> EU policies are often of low salience, which is why

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<sup>283</sup> Saalfeld, 2005.

<sup>284</sup> Miklin, 2012:137.

<sup>285</sup> Miklin, 2012:133.

<sup>286</sup> Dür & De Bièvre, 2007:7.

<sup>287</sup> This corresponds to Pitkin's 'substantive' representation strand, as described in Chapter 2 (Pitkin, 1967:164).

<sup>288</sup> Saalfeld, 2005:353.

<sup>289</sup> Netjes & Binnema, 2007:41

<sup>290</sup> Auel & Raunio, 2012a:20.

MPs do not feel they can score any points with voters.<sup>291</sup> This is consistent with Pitkin's argument regarding the formalistic relationship between the agent and principal, where the agent gains more freedom to act according to his/her own judgement when the principal has no explicit opinion on the topic.<sup>292</sup> The represented is less likely to delegate liberally to the representative if salience is high, where this is not an issue if the salience is low.<sup>293</sup>

Based upon research by scholars who looked further than formal levels of accountability and authorisation<sup>294</sup>, NPs can be expected to increase their efforts to influence and control their government if a topic is salient to it or if the issue is highly politicised, as MPs consider it an opportunity to discuss and justify their different views.<sup>295</sup>

MPs will work harder on issues which they believe could influence voter support.<sup>296</sup> When an issue is non-salient, on the other hand, MPs will use less formal or informal mechanisms to influence and control, and the agent has the freedom to follow his or her own judgement. MPs will do more, therefore, to scrutinise the government if the topic is salient to them or their voters.<sup>297</sup> It is important, as a consequence, to look beyond institutional factors and study the different formal and informal strategies used by MPs to have an impact on EU policies. Depending on the topic, MPs will use more than their formal powers to influence their government's EU policy position as it may increase their chances of re-election. For similar reasons, the government is more likely to take over the NP's position since salient topics are more likely to be followed by constituents. More specifically, formal powers, as laid down in the Rules of Procedure, become less relevant when salience comes into play as NPs will use different tools, knowing there are more chances that they will have an effect.

As previous literature shows, even if NPs have a lot of formal powers, their use depends on other factors such as the salience of the topic. That is, salience makes the formal powers of the NP a less significant variable in the sense that NPs may use informal powers to exact an impact on government if the topic is relevant to them or voters.

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<sup>291</sup> Rozenberg & Heffler, 2015:17.

<sup>292</sup> Pitkin, 1967:164.

<sup>293</sup> Saalfeld, 2005:354.

<sup>294</sup> Saalfeld, 2005; Auel & Benz, 2005; Miklin, 2013; Winzen, 2015.

<sup>295</sup> Miklin, 2014:88.

<sup>296</sup> Netjes & Binnema, 2007:41.

<sup>297</sup> Netjes & Binnema, 2007:40; Miklin, 2013:134.

This situation occurs mainly because the primary concerns of politicians (whether in parliament or government) is to be re-elected which will cause them to work harder knowing that that the voters care about a particular topic.<sup>298</sup> NPs' levels of formal influence and control, therefore, are not only a matter of fact decided by their formal representative status, but fluctuate depending on the importance of the topic. The formal powers of the NP are less relevant than the salience of the issue which is being debated. The NP can behave as either conforming to a trusteeship or to the delegatory model depending on the importance of the topic. In other words, the more salient the issue, the more instructions the government receives from its NP to act in a certain way. On the contrary, however, on issues with low salience, a strong NP does not give many instructions. This gives the government more freedom to follow its own judgement and can therefore considered a trustee in this instance.<sup>299</sup>

I thus expect that MPs will work harder in order to influence EU policies if the voters they represent care about the topic and will ensure voters are made aware. At the same time, in cases that are more contentious, government's actions will be more closely observed and scrutinised and greater pressure will be put on its position. Because this pressure tends to be public (as the MP wants their actions to be seen) and the government itself is also motivated by the desire to remain in power, it is more likely to take the wishes of MPs into consideration, resulting in a parliamentary impact on its EU policy position being more substantial.<sup>300</sup>

I therefore hypothesise:

*H3 The more salient an EU issue is to parliament, the more likely the NP will have a substantive impact on the government's EU policy position.*

### **3.4.3.1 Causal process**

The following causal process is expected based upon the theoretical argument above:

NPs dealing with a salient topic → NPs use more than their formal mechanisms to influence and control the government regarding the position of the EU proposal; for example outside of committee meetings, it will use publicity, party meetings or hold informal discussions with civil servants → NPs show high level of *visible* influence and

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<sup>298</sup> Auel & Raunio, 2012a:13.

<sup>299</sup> Blomgren & Rozenberg, 2012:14.

<sup>300</sup> Contrary to the first hypotheses, issue-specific indicators will be used (rather than parliament-specific ones).

control → government wants to show it is willing to respond to its representatives and is put *publicly* under pressure → government more inclined to adopt the NP's position → parliamentary impact.

*Versus*

NPs dealing with non-salient EU topic → NPs do not fully use their formal mechanisms to influence → MPs' actions are not visible → little pressure on government → government responds to EU proposal based upon its own position → no parliamentary impact.<sup>301</sup>

#### **3.4.4 Lisbon Treaty**

Several scholars have predicted different levels of NP involvement in their new roles depending on their institutional settings.<sup>302</sup> Strong NPs are expected to make the most use of ROs, as they are the most active.<sup>303</sup> Other researchers have shown that those NPs scrutinising a minority government are more likely to make use of a RO since the NP might be less worried about having a different opinion than its government regarding EU legislative proposal.<sup>304</sup>

Initially, there were few expectations regarding a direct and concrete impact on EU legislation as a consequence of the EWM.<sup>305</sup> Raunio, for example, expected NP timetables to be too tight<sup>306</sup> to allow involvement in EU policies, and parliamentary resources to be scarce.<sup>307</sup>

However, recently there has been a noticeable increase in positive literature regarding the potential impact of the Lisbon provisions in relation to NPs whereby most theorists expect that these provisions could *indirectly* increase parliamentary impact on EU affairs.<sup>308</sup> Besides, scholars are more positive about the actual motives for MPs to make use of ROs. Although, initially worried about the little time and resources of MPs, later research shows that for political reasons NPs are quite likely to make use of this tool.<sup>309</sup>

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<sup>301</sup> See Chapter 4.4 for more information regarding the use of data during each step of the causal process.

<sup>302</sup> Raunio, 2007:86; Kiiver, 2012:138.

<sup>303</sup> Kiiver, 2012:138.

<sup>304</sup> Gatterman & Heffler, 2015:308.

<sup>305</sup> Kiiver, 2008:81; Raunio, 2009:12.

<sup>306</sup> Raunio, 2007:86.

<sup>307</sup> Gatterman & Heffler, 2015:307.

<sup>308</sup> Cygan, 2013:228.

<sup>309</sup> Gatterman & Heffler, 2015:307.

Whereas the previous three hypotheses - linked to the incentives of overcoming political contestation, policy-shaping and vote-seeking - are more rational, this current debate could be considered more as a functionalist argument. MPs are likely to use the RO, often in combination with other national tools, in order to achieve the desired impact on their government's input to Council.

Several scholars have effectively placed an association between the EWM and the ability of NPs to have an impact on EU affairs, as, the Lisbon Treaty creates for the first time a direct relationship between the NPs and EU institutions.<sup>310</sup> Piedrafita, for example, is confident that the EWM article will give NPs enough tools to improve their capacities to control and influence their own government over EU affairs.<sup>311</sup> Cooper argues that the EWM will influence the final outcomes of EU legislative proposals and expects these to be different than they were pre-Lisbon.<sup>312</sup> He argues that the new powers for NPs will lead to a 'virtual chamber' of parliaments that are mostly in contact with each other via documents on the Internet or email. Although NPs might rarely make use of the EWM, it will increase their indirect ways to levy influence.

Cooper further argues that even if it were difficult for NPs to ever reach the threshold of garnering one third of the votes<sup>313</sup> against a new EU legislative proposal, the EC must respond to each NP upon the expression of its concerns. He therefore expects that the EC will have to take into account the wishes of NPs.<sup>314</sup>

Kiiver is of the opinion that NPs now all get eight weeks to prepare their responses to the EC which gives a standard and equal period to prepare a response to both it and their own governments.<sup>315</sup> Gatterman et al.<sup>316</sup> and Cygan<sup>317</sup> support this and argue that better access to information will help NPs to strengthen their ability to debate EU issues and control their governments in EU affairs. Although the EWM is a voluntary mechanism and the EC is not obliged to adopt opinions expressed by NPs, it is expected that strong opposition from NPs could lead to reluctance in the Council to approve a legislative proposal. Linked to this, Kiiver expects that where an individual government supports a legislative proposal but its NP adopts a negative RO, it may constrain the government in

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<sup>310</sup> Rozenberg & Heffler, 2015:20.

<sup>311</sup> Piedrafita, 2013:8.

<sup>312</sup> Cooper, 2012:443.

<sup>313</sup> 18 out of 54 in the EU-27, 2 per member states (Kiiver, 2012:26).

<sup>314</sup> Cooper, 2012:452.

<sup>315</sup> Kiiver, 2012:128.

<sup>316</sup> 2013:3.

<sup>317</sup> 2013:224.

the Council. The government could, as a consequence, bargain for better terms by referring to domestic opposition.<sup>318</sup>

The EWM will give NPs an extra tool, in addition to their domestic ones therefore, to have an impact on their government's EU policy positions. They are more likely to use this tool if they have political motivations<sup>319</sup>, meaning that they will probably use the RO in combination with other formal powers as well. As we have seen before, the main aims of MPs are re-election and to influence policies, so the RO could be an extra tool to be used if it is considered to make a difference.

The EWM is a new *ex ante* formal right which creates a direct principal-agent relationship between the EC and NPs. However, because I am examining the impact on governmental EU policy positions, I consider the EWM as a conditional variable that may influence the final impact on government positions relating to EU policies *in addition* to formal powers, rather than considering it as part of the formal structure.

The EWM establishes a formal right, creating a direct formal relationship between the EC as agent and the NP as principal. With the EWM, however, the NP can also influence and control its own government, as it not only increases its knowledge EU legislative proposals but can put pressure on its government by sending a negative reasoned opinion (RO) to the EC, even when its own government has initially agreed to the publication of the legislative proposal<sup>320</sup>. In other words, although the EWM is a formal European right for all EU NPs, it also creates a new tool for them to influence their EU policy position of their respective governments, additional to their domestic formal mechanisms. It is more likely to make use of this if there are political motivations to do so. More specifically, if the topic is politicised MPs may have more reasons to use formal powers as the parliament will want to show voters that it acts upon issues close to their interests. This increases the MP's chances of re-election. If the NP uses the RO as a tool to impact its government on an EU issue, it is likely it will also use other formal tools to influence the position of the EU government regarding EU legislative proposals since its incentives are likely driven by political motivation to respond to a salient issue.<sup>321</sup>

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<sup>318</sup> Kiiver, 2012:144.

<sup>319</sup> Gatterman & Heffler, 2015:307.

<sup>320</sup> The publication of a new EU legislative proposal needs to be approved by the relevant Council of Ministers.

<sup>321</sup> Gatterman & Heffler, 2015:309.

Once the NP has sent a negative RO to the EC, it is likely that it will also increase the use of its domestic formal powers to influence government directly. This will not only lead to an increase in topic salience for the NP but, consequently, also for the government. More specifically, if the NP sends a negative RO to the EC stating that the topic should be dealt with at national rather than EU level, it will only do so if the topic is salient to it. It will be motivated by vote-gaining to use all its formal and informal mechanisms to influence and control (see under H3). The resulting increased pressure on its government, in turn, will make that body more likely to adopt its NP's position.

Based upon Kiiver's findings<sup>322</sup>, therefore, I expect that a negative RO to the EC will bind the government even more closely to its NP when it is negotiating in the Council.

I therefore hypothesise that:

*H4 Those NPs opposing an EU legislative proposal in a reasoned opinion under the EWM have greater substantive impact on their government's EU policy position than those that do not oppose the proposal.*

#### **3.4.4.1 Causal process**

The following causal process is expected based upon the theoretical argument above:

EC proposal → sent to EP, Council and NPs → NPs decide to send a negative RO to the EC → domestically: discussion with government → NP uses domestic formal powers → pressure on government because of negative RO → government feels contentiousness of topic → increase of salience for government → government more likely to listen to NP as it fears negative publicity → adoption of NP's position → parliamentary impact.

*Versus*

EC proposal → sent to EP, Council and NPs → NP uses formal mechanisms → NP decides not to send RO to the EC → NP does not attach salience to topic → no need to discuss with government → government is not aware of NP's position → government does not adopt NP's position → no parliamentary impact.<sup>323</sup>

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<sup>322</sup> 2012:144.

<sup>323</sup> See Chapter 4.4 for more information regarding the use of data during each step of the causal process.

### **3.5 Concluding remarks**

This Chapter has shown the relevance of NPs' formal powers and their elaborate coverage in the academic literature. We have also seen the extent to which the outcome of the use of these formal powers is likely to vary when NPs operate under different conditions. Ranking NPs' formal powers can be useful in order to understand whether it can be considered to be a strong, moderate or weak player regarding EU issues, and allows for measuring changes in these formal powers during the different steps in the development of EU integration. However, measuring formal powers on its own is not enough to discover whether the NP is more or less likely to use these powers and what the outcome of such use is.

This Chapter has also shown that formal powers are not static as such, but that NPs can be ranked differently according to the use of their formal powers. A NP that, based upon rankings can be considered a 'weak' NP, can act as a 'strong' NP when it operates under different conditions, for example, when it deals with a salient topic. On the other hand, a NP that can be classified as strong according to its formal powers, can act weakly when operating under different conditions. This brings us back to Pitkin's theory on political representation in which she argues that the relationship between the represented and representative is a continuum between the delegatory and trustee model and can be considered to be a bit of both, depending on external factors. In order to find out whether the NPs act differently according to other conditions, it is necessary to examine the outcome of their use of formal powers and compare these to their use when operating under different conditions. In other words, this research explores the impact of the NPs' use of formal powers and whether one that, according to 'static' formal powers, can be considered part of the trusteeship model can act as though it is part of the delegatory model when the conditions under which it operates vary. It will also look at an NP which, according to 'static' formal powers, can be considered as forming part of the delegatory model but may behave as if it is part of the trustee model when it operates in different conditions.

By testing the hypotheses using the different conditions as explanatory factors, two NPs have been tested in order to establish whether they are more or less likely to impact on the EU policy position of individual governments and secondly, under what conditions they are best able to do so. According to empirical research, NPs have become more

active in EU policy issues.<sup>324</sup> However, whether this activity can be connected to their formal powers or if they are dependent on the conditions under which they operate will be tested by these hypotheses.

Measuring the impact of the use of parliamentary powers under these conditions is a relatively new concept in literature regarding NPs in the EU and will be challenging for several reasons. The manner in which this thesis attempts to overcome these challenges will be elaborated in the next Chapter regarding the research design.

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<sup>324</sup> Auel & Raunio, 2012a:7, 2014:1.

## Chapter 4

### Research design

#### 4.1 Introduction

The previous Chapter discussed the wide variety of studies in the field of parliamentary formal powers, whether or not linked to external variables under which NPs' use of formal powers is most likely to have an effect, such as salience or the number of parties in government. It enabled the selection of explanatory factors and outcome<sup>325</sup> which will be used to test the hypotheses based upon theories.<sup>326</sup> Chapter 3 further explained why, in order to find out whether formal powers matter and whether the outcome varies when NPs operate under different conditions, it is important to look at the actual activities of the MPs and at their outcomes.

Therefore, a qualitative comparative approach has been followed in which NPs form the unit of analysis. A qualitative study seemed appropriate in this research as by a combination of co-variation and process-tracing, the real outcome of NP influence and control mechanisms on government behaviour has been sought. As the object of interest is real (measurable) 'impact' rather than 'power', and this is often informal<sup>327</sup>, a combination of these different qualitative methods was used to overcome the political complexity of this phenomenon. This is a first exploration in a new field of explanatory factors, but quantitative studies can be followed up.

The first section of this Chapter discusses how impact will be measured here, how it is defined and operationalised. It will be continued by a sub-chapter on the difficulties scholars have encountered when measuring impact and what will be done in this thesis to overcome these.

It will continue to explain how the explanatory variables as explained in Chapter 3 will be conceptualised and operationalised, including the expected causal processes. This will be followed by a section regarding case selection and analysis, ending with a sub-chapter on data collection.

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<sup>325</sup> Berg-Schlosser et al., 2009:6.

<sup>326</sup> Ibid.,16.

<sup>327</sup> E.g. the threat of public embarrassment

## 4.2 Dependent variable

In order to establish the levels of formal powers of NPs and to ascertain whether their powers depend on certain conditions, it is important to look more explicitly at the outputs of the NP and at what those formal powers mean in practice.<sup>328</sup> The measurable impact of the NP's influence and control mechanisms on governmental policy positions in the area of the OLP<sup>329</sup> of the EU (henceforth 'government's contribution'), is therefore the DV in this research. The actual result of the use of their formal powers is verified by investigating documents and records associated with government contributions<sup>330</sup> during negotiations in supra-national decision-making in the ministerial council.

### 4.2.1 Definition impact

To study impact, the effects of NP efforts on governmental contributions to an individual EU legislative file have been examined. The choice for this DV is based upon research in the field of both theorists and political scientists. Political pluralism theorists, such as Dahl, Lukes, and Polsby link 'power' - used interchangeably with 'influence'<sup>331</sup> - and in this research with 'impact' to specific outcomes in decision-making. Their focus, therefore, has been on the careful examination of concrete decisions.<sup>332</sup>

Lukes describes different dimensions of power.<sup>333</sup> The first is based upon Dahl's definition: 'A has power over B to the extent that he can get B to do something that B would not otherwise do'.<sup>334</sup> According to Barry, political power is 'the ability of a person or of a group to change the outcomes of a decision-making process from what they would otherwise have been in the direction desired by the person or group, where the decisions made are binding on some collectivity'.<sup>335</sup>

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<sup>328</sup> Russell & Benton 2009:6.

<sup>329</sup> The legislative process of the EU through which the EU legislative proposal is adopted, formerly known as the co-decision procedure.

<sup>330</sup> E.g. official positions or oral statements during the ministerial Council meeting

<sup>331</sup> Lukes, 2005:17.

<sup>332</sup> Ibid.,70.

<sup>333</sup> Quoted in Lukes 2005:16.

<sup>334</sup> Lukes mentions other dimensions of power, which are not relevant for this research.

<sup>335</sup> Barry, 1980: 185.

The indicated dimension corresponds to empirical interpretations of ‘power’, when it is described as ‘control over outcomes’.<sup>336</sup> This is the interpretation used for this research, meaning that the NP, to some extent, has control over the position of its government in relation to the Council. The actor is hereby expected to be capable of shaping a decision in line with his or her position, even if it is (originally) not the opinion of the government. In other words, there is a causal relation between the actor’s position(s), in this case the NP, regarding a possible outcome and the actual outcome itself.<sup>337</sup> To assess the success of an actor, it is necessary to measure the outcome of the legislative process and the positions of the actors.<sup>338</sup>

This approach is also followed by Arregui and Thomson who measure the ‘bargaining success’ of member states by ‘the congruence between decision outcomes and states’ policy positions’.<sup>339</sup> This research, however, looked at the substantive effects of parliamentary efforts on the government’s contribution as a consequence of NP preferences (for example, their position on EU legislative files). In other words, rather than looking at the outcome of the EU policy process, the result of negotiations between the NP and its government during the OLP is studied.

Choosing parliamentary impact on the government’s EU policy position as the dependent variable in this study is relevant, as previous research shows how ‘decisive influence’ is a key to power instead of being just luck. Understanding power is helpful in order to know the extent to which an actor has opportunities to change outcomes in the way you want.<sup>340</sup> In their study of the power of the EP in the EU’s legislative process, Selck and Steunenberg showed how differentiating between capabilities and preferences, and therefore between ‘power’ and ‘luck’, remains crucial in explaining political outcomes.<sup>341</sup> An empirical analysis of the influence of different actors could confuse ‘power in action’ with its preferences.<sup>342</sup> It is therefore important to distinguish between *decisiveness* and *luck*, whereby *decisiveness* can be understood as the *impact* the principal (in this case the NP) has on an outcome.<sup>343</sup> This is why, at the start of each analysis, the different preferences of political parties in the NP on the EU legislative file in question have been set out.

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<sup>336</sup> Dür & De Bièvre, 2007:3.

<sup>337</sup> Dür, 2008:47; Klüver, 2010:8.

<sup>338</sup> Slapin, 2014:25.

<sup>339</sup> Arregui & Thomson, 2009:655

<sup>340</sup> Barry, 1980: 184.

<sup>341</sup> Selck and Steunenberg, 2004:25.

<sup>342</sup> Ibid.,26.

<sup>343</sup> Ibid.,27.

*Luck*, on the other hand, can be understood as *coincidence*.<sup>344</sup> For example, if it is unclear whether the position of the government on the EU file is a consequence of parliamentary input, or if it shared the same position anyway. You can still have the outcome you want without having power; namely by luck.<sup>345</sup> In order to avoid confusing *luck* with *power*, only EU legislative files have been chosen on which different preferences between the government and the NP have been selected. This increases the chances of actually measuring parliamentary power instead of luck. As Barry shows in his article on power and luck the actor might not want to change a position if the position coincides with his or her own.<sup>346</sup> The selection of these EU legislative files is elaborated below.

Previous studies, such as the one by Selck and Steunenberg (2004), followed similar or slightly different paths when trying to distinguish between decisiveness (as an equivalent of power) and luck. They made explicit the mechanism according to which the EP, in this case, could affect the outcomes of EU decision-making in order to indicate the possible cause that had led to the outcome being close to the preferred position of the EP.<sup>347</sup>

Tsebelis also measures the power of the EP, but does so via examining the *outcomes* of decision-making in the three EU institutions (EP, Council and EC) through a quantitative study.<sup>348</sup> All studies of power have not escaped different forms of criticism and Dür and De Bièvre indicate, in their article on measuring interest groups' influence, that it has gradually become more difficult to study power empirically, with the theoretical literature becoming more elaborate.<sup>349</sup> How to overcome the different challenges will be explained below.

Based upon the above, impact is defined here as the concrete outcome of influence and control, that is, the *de facto* results of the input of the NP into its government's EU policy position or the input of the government into a Council meeting. This is achieved by comparing the initial form of the government's position to any possible changes during the scrutiny process. By examining each attempt by the NP to impact this position, it enables the researcher to establish whether their efforts have made any

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<sup>344</sup> Ibid, 27.

<sup>345</sup> Barry, 1980: 184.

<sup>346</sup> Ibid, 28.

<sup>347</sup> Ibid, 27.

<sup>348</sup> Tsebelis, 1994: 128.

<sup>349</sup> Dür & De Bièvre, 2007: 3.

difference. In other words, rather than measuring the abstract concept power, this thesis measures the ‘effect’ of power, namely the effects on actual public policy.<sup>350</sup>

#### 4.2.2 Operationalisation

As indicators, the match between the parliamentary position, that is, its preferences (expressed by the opposition<sup>351</sup> during meetings or via correspondence) on an EU legislative proposal and the government’s contribution during ministerial Council meetings (as reflected in meeting documents and correspondence)<sup>352</sup> are used. More specifically, impact will be recognised if government representatives refer at any point during the different OLP steps to the NP’s position in meeting documents as points that they have contributed to the Council meeting, which were not included in the government’s initial position (often referred to as ‘Explanatory Memorandum’ (EM)).

There are other forms of impact which are not measurable, such as soft forms of impact. These refer to situations in which the NP does instruct the government to do something, but without the intention of changing its actual position (for example in Chapter 8, in which the NP steers the government to attend the Council meetings). These softer forms of impact are not measured in this thesis, but have been noted.

The reflection of the NP in the position of its government is classified into three groups. If *all*<sup>353</sup> of the NP’s positions are reflected in its government’s contribution to the Council, the NP will be deemed to have a ‘strong measurable impact’. If only part of the NP’s positions have been adopted, this is classified as a ‘relatively measurable impact’ and where none of the NP’s positions have been taken into account, the level of measurable impact is assessed as ‘weak’.<sup>354</sup> For example, in Chapter 6.2.4 (step 5), the Dutch Secretary of State, Schulz, reassures the opposition that her efforts in Brussels would focus on the issue that it is up to the member states to decide whether or not they will procure (after various attempts of the opposition to make a point about this). Knowing that this is not the government’s position - it is not reflected in the EM and the

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<sup>350</sup> Ibid.

<sup>351</sup> A position by the opposition taken over by the government is a clear sign of ‘impact’, whereas if the position is taken over by an MP of the government’s own party, it could be seen as just the government’s position as well.

<sup>352</sup> The government can express its views during various stages of the EC consultation period, either via written statements and letters or orally during actual Council meetings.

<sup>353</sup> This may be only one if the NP has only made one point.

<sup>354</sup> Depending on each hypothesis, this classification will allow me to either confirm or challenge my hypothesised arguments.

Secretary of State belongs to the liberal party which is in favour of free market (see introduction of the same Chapter) - it can be considered that part of the NPs' position (other points were not included) has been added to that of the government (relative measurable impact). If the coalition partners are divided, in other words part of the government agrees with the NP and part of the government disagrees with the NP, and the government in that case still decides to take over the NP's position, then the NP is also considered to have an intermediate measurable impact on their government's EU policy position.

There are also cases in which the NP does not try to alter the government's EU policy position (for example in the maritime case, Chapter 8). In these cases, measurable impact has been assessed as weak, but a reference is made to whether there is a possible link between the variable to be measured and an increased use of formal powers. In other words, parliamentary activity can still be increased, for example if the national interest is at stake. The use of these formal powers can be significant, if this is reflected in an increased use of feedback by the government. While the dependent variable of this research is measurable impact, it will still refer to an increased use of formal powers and the response of the government to these.

In cases where the contribution of government refers directly to the different or oppositional stance taken by its NP, the NP's position will be considered to be 'fully reflected'. If the final government position reflects part of the position of its NP, it is considered to be 'partly reflected'.<sup>355</sup> If there is no reference made or no sign of the NP's impact can be seen in the final government position, the NP's stance will be assessed as 'not reflected'. The reference of the government's willingness to take over one or several points of the NP's position must be reflected in one of the relevant meeting documents (so they are not taken into account if only found in a press release). Table 3 gives indications of instances where the NP's position has been reflected.

The analysis focuses on the legislative process of the EU.<sup>356</sup> This is the area in (EU) policy-making where most documentation is publicly available. Furthermore, the OLP has a number of clear stages during which the NP can exercise its mechanisms of

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<sup>355</sup> An example could be if the government adopts an amendment by the NP or if it includes (part of) the same concerns as raised in the NP's position.

<sup>356</sup> Only EU legislative proposals are selected in which there is a clear disagreement between the government and the NP.

control and influence on its government<sup>357</sup>. This facilitates the comparisons, as all cases follow a similar number of ex ante and ex post steps. It is expected that the OLP is the most tangible part of EU decision-making, with a great number of documents available.

**Table 3 Classification of impact**

<b>Level of NP reflection in government's contribution to the Council*</b>	<b>Impact</b>
Government does not refer to any of NP's points or explains why it has been unable to take them into account (not reflected).	Weak
Part of the NP's points (this can be one or several) are reflected, e.g. via a reference in the main position of government or, indirectly, during feedback in the meeting with the NP (partly reflected).	Intermediate
All NP's points are reflected** into government's position (fully reflected).	Strong

\*The position of the NP can consist of only one point or several.

\*\*This also includes if the NP only has one (major) point.

Table 3. This table shows the classification of the impact based upon the level of reflection of the NP's position (consisting of one or several points) into the government's contribution to the Council of Ministers. This classification will enable confirmation of or challenge to the hypotheses.

#### **4.2.3 Challenges of measuring impact and how to overcome those**

Researchers have avoided dealing with the impact on EU affairs by NPs as it is extremely difficult to measure.<sup>358</sup> Andreas Dür, who looked at the causality between the impact of interest groups and political outcomes, establishes three problems when measuring influence by interest groups, which are equally applicable to measuring the impact of NPs: the existence of different channels of influence, the occurrence of counteractive lobbying, and the fact that influence can be wielded at different stages of the policy process.<sup>359</sup>

<sup>357</sup> See Appendices I and II for an overview of the seven steps of the OLP and the different chances NPs have to use their influence and control mechanisms during these steps. Appendix I gives an overview of chances for the NP to use its control and influence mechanisms during the OLP, what methods will be used to trace the different steps and what counts as evidence during these steps. Appendix II explains what the different steps of the OLP entail.

<sup>358</sup> With the exceptions of Rozenberg (2002) who uses the variable 'impact' to measure the levels of Europeanisation of NPs, Saalfeld (2005) who quantitatively links institutions to outcomes, and Auel et al. (2015) who measure parliamentary strength based upon parliamentary activities.

<sup>359</sup> Dür, 2008:47.

Firstly, in the case of an EU legislative proposal, governments are not only influenced by their NPs, but also by many interest groups. It is therefore hard to establish which of these various influences have contributed to the final outcome. This is more likely in salient cases and/or when the position of the NP is supported by large groups of voters. According to Russell and Benton, there are so many ways in which influence can be exercised that it remains a slippery topic.<sup>360</sup>

Secondly, the NP can still have influence, even if there is no visible impact on the outcome of EU decision-making. It might have limited a certain outcome by countering the lobbying of another interest group.<sup>361</sup> Thirdly, influence occurs at different stages of the policy-making process and to have a proper understanding of influence, it is important to look at all different stages, from the publication to the adoption or clearance of the EU legislative file.

In addition, influence is often informal and therefore not directly observable. As discussed above, in some cases NPs do not have to be explicit in their wishes, as their governments are already aware of them and have included them in their position before or during the agenda-setting phase.<sup>362</sup> This is also referred to as the ‘rule of anticipated reactions’.<sup>363</sup> This is a way to avoid public revolts by backbenchers to government positions.<sup>364</sup> In other words, the absence of openly-expressed objections by the opposition could be a sign of parliamentary strength rather than weakness.<sup>365</sup>

To overcome these obstacles, previous research has used different methods to measure influence or impact. Most scholars measuring the impact of the European Parliament, for example, have made use of quantitative studies of amendments.<sup>366</sup>

Quantitative approaches have been equally dominant in research on the impact of member states in the Council of Ministers, as conducted by Thomson et al. and Golub,

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<sup>360</sup> Russell & Benton, 2011:96.

<sup>361</sup> Ibid.

<sup>362</sup> Lukes, 2005:22.

<sup>363</sup> Saalfeld, 2005:349; Russell & Benton 2009:4.

<sup>364</sup> As the EP is the parliamentary institution that votes on EU legislation, and not the NPs (see also Cygan, 2013:84), it is expected that the rule of anticipation is less pronounced when measuring ‘impact’ in this research, as governments are less dependent on their NPs in EU legislation. In other words, although I do expect NPs to be able to have an impact on their government when dealing with EU legislative proposals, it is not expected that governments would feel the urge to take into account their NP’s position before or during the agenda.-setting phase.

<sup>365</sup> Saalfeld, 2005:347.

<sup>366</sup> Kreppel, 1999, 2002; Tsebelis & Kalandrakis, 1999; Tsebelis et al., 2001.

with their dataset on EU decision-making (DEU).<sup>367</sup> The DEU dataset is capable of addressing a range of research questions regarding the inputs, processes and outputs of the EU's legislative system.<sup>368</sup> It establishes thereby the powers of the EP, EC and Council of Ministers in the EU legislative process. Such a dataset is not (yet) applicable to NPs, however. Besides, it examines the successes of bargaining at EU level, whereas this research looks at the efforts of individual NPs to impact their domestic governments' EU policy positions and their outcome. It would not be a suitable instrument, therefore.

Others, particularly those measuring the impact of domestic legislatures or interest groups have opted for qualitative research, consisting of interviews<sup>369</sup> and process-tracing.<sup>370</sup> Kalitowski explains his choice for process-tracing as a way of understanding the detailed process by which policy ideas evolve into legislation.<sup>371</sup> Dorrenbacher et al. measure the impact of parliamentary control on transpositions of EU directives during coalition governments via process-tracing as well.<sup>372</sup>

#### **4.2.4 How to measure impact**

We have just seen that previous research has used three main methods to measure impact: process-tracing<sup>373</sup>, quantitative studies of amendments or content analysis<sup>374</sup> and the DEU dataset.<sup>375</sup>

This research applies a qualitative study, for several reasons. It not only looks at the outcome of an EU legislative proposal *after* the NP's input, but also at the relationship between formal powers and other explanatory values. Qualitative methods, such as process-tracing can thereby help. Besides, a qualitative study will also enable the researcher to take into account the subtler role the NP can play<sup>376</sup>, for example, by asking interviewees about different forms of impact they have used or experienced during the scrutiny of the EU legislative file.

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<sup>367</sup> Thomson et al., 2012; Golub, 2012.

<sup>368</sup> Slapin, 2014:25; Thomson et al., 2012:604.

<sup>369</sup> Power, 2000; Smookler, 2006.

<sup>370</sup> Kalitowski, 2008.

<sup>371</sup> Kalitowski, 2008:705.

<sup>372</sup> Dorrenbacher et al. 2015.

<sup>373</sup> Dür & de Bièvre, 2007.

<sup>374</sup> Kreppel, 1999; Klüver, 2010.

<sup>375</sup> Thomson et al., 2012; Golub, 2012.

<sup>376</sup> Russell and Benton 2009, p.6.

Therefore, a pair-wise comparison is complemented by process-tracing in a small-N case study in this research, which helps to overcome the obstacles as spelled out by Dür and ensure measurement of the actual impact of the NP.

Dür's first obstacle, regarding the different stakeholders that could have contributed to the final outcome of a government EU policy position, is one that this research has also encountered. Process-tracing is the most common method to overcome this, as it enables the researcher to look at attempts to influence, the responses of decision-makers to those attempts, and the degree to which preferences are reflected in outcomes.<sup>377</sup>

By process-tracing the causal chain between the start of the consultation period and the government's final position on the legislative proposal, it will be possible to establish whether certain types of impact have originated from interest groups rather than from the NP. This enables dealing with rival explanations.<sup>378</sup>

Besides, as we have seen, cause and effect may be hard to prove if the government follows the NP's line, as it might have taken that position anyway.<sup>379</sup> It is therefore important to be able to distinguish the original positions of both the government and various political parties in the NP before the tracing of processes in order to know whether the chances are likely that they are on the same or opposing lines regarding an EU legislative proposal.

Documentary evidence from different sources (for example, formal policy positions of the government and NP, meeting documents of NPs and government, correspondence between NPs and government and Council press releases<sup>380</sup>) is critical to process-tracing.

Interviews with MPs from relevant committees<sup>381</sup> have been conducted, which helped to establish the level of counteractive lobbying that occurred to prevent some issues from

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<sup>377</sup> Dür. 2008:49.

<sup>378</sup> As many interest groups use their NP as a forum through which they lobby the government, it is impossible to separate the influence of interest groups channelled through the NP, from the NP's influence *per se*. Any impact channelled through the NP is therefore considered to be 'NP's impact', even if the idea originates in interest groups. The effect is there because of the NP's use of control and influence mechanisms which legitimises this as 'NP's impact'. This research therefore solely focuses on those actors with a formal role in the decision-making process, which is a plausible way to delimit the scope of analysis (see also Princen, 2012:629).

<sup>379</sup> Russell & Benton, 2011:71.

<sup>380</sup> Council press releases can be useful as they often refer directly to the contributions of individual government representatives.

<sup>381</sup> Those committees in the NP, which dealt with the EU legislative proposal.

being accepted. A series of questions have been asked to establish the level of formal and informal influences of the NP (obstacles two and three from Dür). These questions varied between finding out to what extent the agenda has been determined by both ministers and MPs (formal right) and the degree to which ministers consulted with MPs on certain EU legislative proposals (informal right).

As previous research has illustrated the methodological difficulties of measuring impact, a pragmatic approach has been adopted<sup>382</sup> and I am aware that no single analysis of impact is capable of fully reflecting parliamentary influence as much of this can often be invisible. Table 4 gives an overview of the challenges to measuring impact and what methods and evidence will be used to deal with them. How these methods will be applied will be discussed in sub-chapter 4.6 which deals with the analysis.

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<sup>382</sup> Dür & De Bièvre, 2007:3.

**Table 4 Challenges to Measuring Impact**

<b>Challenges to measure impact</b>	<b>Methods in order to overcome the challenge</b>	<b>Evidence</b>
Counteractive lobbying	Process-tracing  Interviews	<ul style="list-style-type: none"> <li>- Minutes Committee meetings (NP)</li> <li>- Minutes plenary meetings (NP)</li> <li>- Parliamentary questions and ministerial answers</li> <li>- Ministerial reactions to EC legislative proposals</li> <li>- Summaries on websites:  <a href="http://www.IPEX.eu">www.IPEX.eu</a>  <a href="http://www.parliament.uk/commons">http://www.parliament.uk/commons</a>  <a href="http://www.parliament.uk/lords">http://www.parliament.uk/lords</a>  <a href="http://www.tweedekamer.nl/">http://www.tweedekamer.nl/</a> </li> <li>- Websites of relevant ministerial departments</li> </ul>
Non-visible impact by countering lobbying of interest groups	Interviews	<ul style="list-style-type: none"> <li>- MPs' responses to open questions in interviews, e.g. to what extent they have tried to limit the impact of lobbying interest groups.</li> </ul>
Impact happens at various stages	Process-tracing  Interviews	<ul style="list-style-type: none"> <li>- Minutes Committee meeting (NP)</li> <li>- Minutes plenary meeting (NP) (during all 7 steps of the consultation period (see Appendix I and II)</li> <li>- Parliamentary questions and ministerial answers</li> <li>- Ministerial reactions to EC legislative proposals</li> <li>- Summaries on websites:  <a href="http://www.IPEX.eu">www.IPEX.eu</a>  <a href="http://www.parliament.uk/commons">http://www.parliament.uk/commons</a>  <a href="http://www.tweedekamer.nl/">http://www.tweedekamer.nl/</a> </li> <li>- Websites of relevant ministerial departments</li> <li>- Responses of both MPs and civil servants/ministers regarding semi-open and open questions in the field of the extent to which there has been any influence going on informally, e.g. via personal emails, phone calls, in the corridors, during coffees and/or lunch breaks.</li> </ul>
Rule of anticipated reactions	Interviews (limited outcome is expected).	Responses of civil servants/ministers to questions regarding the extent to which they have already taken parliamentary views into account while drafting a first reaction to the EC draft legislative proposal.

### **4.3 The Explanatory factors: conceptualisation and operationalisation**

This sub-chapter examines how the four different explanatory factors are conceptualised and operationalised (see table 7 at the end of this Chapter for an overview of all variables, indicators and data used).

#### **4.3.1 Measuring partisan composition**

The first explanatory factor is the partisan composition which is conceptualised as the party composition of the government, i.e. the concentration of executive power in either a single party government or an executive power-sharing multi-party government.<sup>383</sup>

This explanatory factor is operationalised via the following indicators: the effective number of parties in government (one versus two +).<sup>384</sup>

#### **4.3.2 Measuring euro-scepticism**

The second explanatory factor is the presence or absence of a Eurosceptic party on which the government depends to govern in a coalition. A Eurosceptic party is considered to be a political party which shows principled opposition to the EU and European integration and either thinks that its country should withdraw from membership<sup>385</sup>, or its policies on the EU are opposed to the whole project of European integration as it is currently conceived.<sup>386</sup> Based upon this definition, the Conservative party is considered to be a Eurosceptic party since Cameron's Bloomberg speech in January 2013. The participation or dependence of a Eurosceptic party in governing coalitions achieving a majority in parliament is used as indicator for the operationalisation.

#### **4.3.3 Measuring salience**

Salience will be used as the third explanatory factor, referring to the level of salience of an issue for political parties in government. This variable is conceptualised as the extent to which the governing parties consider an issue to be vital for their electoral appeal.<sup>387</sup>

Salience is operationalised as the reference to EU topics in national party manifestos (if

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<sup>383</sup> Lijphart, 2012.

<sup>384</sup> Ibid., 12

<sup>385</sup> as expressed in their party manifestos or described in/by the media.

<sup>386</sup> Szczerbiak & Taggart, 2008:6.

<sup>387</sup> Netjes & Binnema, 2007:40.

an issue get its own heading or a separate paragraph in a party programme, it is considered to be salient). Besides, the Euro-barometer (question 7 of the Fieldwork of the Standard Euro-Barometer of the year in which the EU legislative file was published and where more than 20% of citizens considers this topic to be salient) for the selection of overall themes.<sup>388</sup>

Different versions of salience can be distinguished; one is a salience for the electorate, while the other can be salient for legislative actors. In this research, salience is described as one that is salient to the electorate. In other words, an EU legislative proposal is considered to be salient if the electorate is concerned about it (for example, as expressed in the Euro-barometer). It is considered to be of low salience if the electorate is not directly worried about it, but it can still be politicised in the NP as a consequence of different ideological positions.

#### **4.3.4 Measuring Lisbon provisions**

The fourth explanatory factor refers to the presence or absence of negative ROs. This will be conceptualised as the right of NPs to send ROs to the EC in order to monitor subsidiarity as laid down in Protocols 1 and 2 of the Treaty of Lisbon.<sup>389</sup> The indicators for the operationalisation are all forms of formal parliamentary objections to the EC regarding the publication of EU legislative proposals.<sup>390</sup>

### **4.4 Operationalisation Causal mechanisms**

Before explaining the operationalisation of different causal mechanisms, table 5 gives first of all a summary of the causal processes for each hypothesis, as discussed in Chapter 3.

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<sup>388</sup> As most citizens in the Euro-Barometer in question 7 respond that the topics they are mostly worried about in their countries are related to the economic situation, unemployment and social security, topics covering those themes have been excluded from the research.

<sup>389</sup> Also known as the ‘Early warning mechanism’, as it gives NPs eight weeks to decide whether a new EU legislative proposal complies or not with the principle of subsidiarity.

<sup>390</sup> There is no specific format for reasoned opinions, as long as the NP explicitly refers to a breach of subsidiarity (Kiiver, 2012:135).

**Table 5 Summary of Posited Causal Processes**

<b>Variable</b>	<b>Posited Causal Process</b>
Partisan composition: Multi-party government	EU legislative proposal: sent to Council, EP and NPs → multi-party government and NP use of formal powers → lots of discussions in government → government cannot agree → compromise → asks for support from different parties in NP → control and influence of government by NP through their formal powers of, for example, asking questions and threatening of confidence votes → government must take NP position on board to ensure sufficient support for proposal → few formal powers do not stop the NP from having a say → parliamentary impact.
Partisan composition: Single party government	EU legislative proposal: sent to Council, EP and NPs → Single party government and NP → No discussion in government → one view on EU proposal → no dependence on NP → NP: limited use of mechanisms to influence (majority in NP is government party) → NP agrees with government → no parliamentary impact.
Eurosceptic government	Government with Eurosceptic coalition partner → EU issues appear more often on the agenda of the government → contention in government → government needs support from NP → discussions in NP by use of formal powers (committee meetings, plenary meetings coalition partners) → parliamentary parties give advice with either several or few formal mechanisms → Government is dependent on NP for support to achieve a majority → NP's position must be adopted by the government to get support for their compromise → parliamentary impact.
Non-Eurosceptic government	Government without Eurosceptic coalition partner → EU issues hardly appear on the agenda → little contention → status quo → no discussion in government → little discussions in the NP → little advice needed → NP does not give advice → government does not have to take into account NP's position → No parliamentary impact.
Saliency	NPs dealing with a salient topic → NPs use more than their formal mechanisms to influence and control the government regarding the position of the EU proposal; for example, outside of committee meetings, it will use publicity, party meetings or hold informal discussions with civil servants → NPs show high level of visible influence and control → government wants to show it is willing to respond to its representatives and is put publicly under pressure → government more inclined to adopt the NP's position → parliamentary impact.

Non-Salience	NPs dealing with non-salient EU topic → NPs do not fully use their formal mechanisms to influence → MPs' actions are not visible → little pressure on government → government responds to EU proposal based upon its own position → no parliamentary impact.
Lisbon provisions: Presence of RO	EC proposal → sent to EP, Council and NPs → NPs decide to send a negative RO to the EC → topic gets more salience → domestically: discussion with government → NP uses domestic formal powers → pressure on government because of negative RO → government feels contentiousness of topic → increase of salience for the government → government more likely to listen to NP as it fears negative publicity → adoption of NP's position → parliamentary impact.
Absence of RO	EC proposal → sent to EP, Council and NPs → NP uses formal mechanisms → NP decides not to send RO to the EC → NP does not attach salience to topic → no need to discuss with government → government is not aware of NP's position → government does not adopt NP's position → no parliamentary impact.

The next section explains how the causal mechanisms of these processes are operationalised per hypothesis when the condition to be measured is present and which data is used.

*H1) The use of the formal powers of a weak NP during an EU legislative proposal in a multi-party government (versus single-party government)*

1) *Publication of the EU legislative proposal. → The government publishes its position → The coalition government might not agree:*

This stage must measure to what extent the government felt the need for support from its NP as a consequence of contention within its own coalition (by comparing the causal process of a multi-party case with a single government case). Contention is measured by comparing the initial positions of the different coalition partners on the respective EU legislative proposal.

Data: Interviews, meeting documents of EAC/sectoral committee and governmental documents referring to its position.

- 2) *The government, as part of a coalition, is likely to have more difficulties to find a compromise. → Consults with the NP to get support and directs to NP → NP uses its formal powers to influence:*

This stage needs to measure any difficulties the government had to a majority in the NP to support the governmental position. To measure these difficulties, the level of contact is compared between the NP and government during this OLP of the respective EU legislative proposal. If this is more than in a single government case, the government is considered to be dependent on the NP to come to an agreement. The NP is considered to use more than its normal formal powers if it has at least one or more committee meetings with the government during one of the OLP steps in which it explicitly expresses its opinion on the file. A standard use of formal powers consists of one committee meeting after the Council meeting during which MPs ask questions and receive information.

Data: Minutes of committee meetings, Minutes of meetings between government representatives and NP, correspondence between NP and government and interviews.

- 3) *Compromise in Council. → NP uses formal powers to hold its government to account:*

This stage must establish to what extent government representatives have taken NP's wishes into account because its input to the Council was based upon compromise and it expects more questions (use of formal powers) after the meeting. To measure the pressure of government to include the NP's position into its contribution to the Council due to the compromise reached, the number of questions asked by the NP - and discussions between government and NP after Council meetings - are compared to the level of discussions in a single-party government.

Data: Correspondence between the NP and the Minister regarding the outcome of the Council meeting and interviews.

- 4) Final step: compare change in the position of the government on the EU legislative proposal (for example, via meeting notes) to the position of the NP and establish to what extent the NP's positions have been adopted. If there is a link between the variable to be measured and increased parliamentary activities,

leading to an increased impact, the hypothesis is confirmed. If there is no link between the variable to be measured and the increased use of formal powers and impact, the hypothesis is refuted. If the increased use of formal powers can be linked to the variable to be measured, the hypothesis can still be confirmed, even if the NP has not directly had an impact on the scrutinised dossier.

*H2) The use of formal powers of a strong NP during an EU legislative proposal in a Eurosceptic multi-party government (versus non-Eurosceptic government)*

- 1) *Publication of the EU legislative proposal. → Eurosceptic party adds the item to agenda. → Contention within government when it prepares its initial reaction to the EU legislative proposal. → Government parties need support from NP therefore. → NP gets to use its formal powers:*

It must be established to what extent the (partly) Eurosceptic government was keen to put the item on the agenda (compared to non-Eurosceptic government) and to what extent the government coalition partners disagree about the EU legislative proposal. The levels of contention are measured by comparing the initial positions of the different coalition partners on the respective EU legislative proposal (via interviews and party programmes).

Data: Interviews, meeting documents of EAC/sectoral committee, correspondence between government and NP at this stage and government's position on/reaction to EC, letter to NP, government memorandum.

- 2) *The government, in disagreement over the EU legislative proposal is likely to be open to input from the NP → NP's use of strong formal powers to influence the government's position.*

This stage needs to establish to what extent the government felt it was difficult to get a majority in the NP to support the governmental position (comparison between Eurosceptic and non-Eurosceptic government). To measure the 'difficulty', the level of contact between the NP and government during the OLP of the respective EU legislative proposal is compared. The NP is considered to use more than its normal formal powers if it has one or more committee meetings with the government during one of the OLP steps in which it explicitly expresses its opinion on the file. Standard use of formal powers would mean one committee

meeting before the Council meeting during which MPs ask questions and receive information.

Data: Minutes of committee meetings, Minutes of meetings between government representatives and NP, correspondence between NP and government and interviews.

- 3) *Government input into the Council: based upon a compromise → more questions from NP afterwards. → Threat → Government: likely to adopt NP's wishes. → NP: use of formal powers.*

This stage establishes to what extent government representatives have taken NP's wishes into account because its input into the Council was based upon a compromise. To measure the pressure on the government to include the NP's position into its input into the Council because of the compromise reached, the number of questions asked by the opposition and discussions between government and NP after the Council meeting is compared. If this is more than in a single-government case, it is expected that there is more control after the Council meeting in a (partly) Eurosceptic government.

Data: Correspondence between the NP and Minister regarding the outcome of the Council meeting and the input of the government and interviews.

- 4) Final step: See H1.

*H3) The use of formal powers by a weak NP in a salient EU legislative proposal (versus a non-salient EU legislative proposal)*

- 1) *Publication of the EU legislative proposal. → The government and NP confirm this document as a salient document. → The NP increases the use of formal powers to influence the government on this topic (for example, via publicity).*

This stage must establish the extent to which MPs use more than their formal mechanisms to influence and control the government regarding the EU legislative proposal, and the extent to which the government is more likely to include NP's position because of its saliency (compare to a non-salient case).

Data: Interviews, meeting documents of EAC/sectoral committees, correspondence between government and NP at this stage, national press release

(saliency), government position/reaction to EC, letter to NP, government memorandum.

- 2) *NP uses all its formal and informal powers and particularly visible powers to influence the government at this stage. → Because of the increased public attention, government is put under pressure and is more likely to be open to NP's position in a salient case.*

This stage seeks to establish whether there are more NP meetings and more correspondence between NP and government regarding the salient EU legislative proposal and compare these to the number of meetings and level of correspondence in the case of a non-salient EU legislative issue. The NP is considered to use more than its normal formal powers if it has one or more committee meetings with the government during one of the OLP steps in which it explicitly expresses its opinion on the file. Standard use of formal powers consist in having one committee meeting after the Council meeting during which MPs ask questions or receive information.

Data: Minutes of committee meetings, Minutes of meetings between government representatives and the NP, correspondence between NP and government, Interviews.

- 3) *Because of the levels of publicity given to this topic by the NP, the government is more likely to accept discussion on the outcome of the Council meeting publicly, which gives the NP chances to use its control mechanisms.* This stage will measure to what extent the NP does more to control the government in a salient than non-salient case and to what extent the government takes NP into account for that reason.

Data: Minutes of meetings EAC, sectoral committee or plenary, any correspondence between the NP and the Minister regarding the outcome of the Council meeting and the input of the government, interviews.

- 4) Final step: see H1.

*H4) The use of formal powers of a strong NP during an EU legislative proposal after having sent a negative RO (versus a EU legislative proposal without having sent a RO to the EC).*

- 1) *Publication of the EU legislative proposal. → NP gets 8 weeks to decide whether the EC legislative proposal is at odds with the principle for subsidiarity. → The NP uses its formal powers including its right to send a RO to the EC.*

This stage has to establish to what extent the government is influenced in its initial position regarding the EC legislative proposal by the NP's negative RO (compare with a reaction of the government in case the NP did *not* send an RO to the EC).

Data: Interviews, meeting documents of EAC/sectoral committee, correspondence between government and NP at this stage, government's position/reaction to EC, letter to NP, government memorandum.

- 2) *After negative RO: NP uses all its formal powers to influence the government. → Government under pressure. → Government: likely be open to NP's position.*

This stage has to establish the extent to which the NP is better able to influence the government because of its RO and to what extent the government feels that it needs to take NP's position into account because of the increased pressure after the negative RO (compare to the government's reaction in case no RO has been sent to the EC). The NP is considered to use more than its normal formal powers if it has one or more committee meetings with the government during one of the OLP steps in which it explicitly expresses its opinion on the file. Standard use of formal powers consists in one committee meeting before the Council meeting, during which MPs ask questions and receive information.

Data: The RO of the NP and a possible reaction of the government to this. Correspondence between NP and government, interviews.

- 3) *NP: a critical stance on this dossier. → Use of all its formal powers to hold the government to account after the Council meeting.*

This stage has to establish to what extent the NP is better able to use its formal powers after sending a negative RO and to what extent the government has taken

NP's wishes into account in the Council as a result of the negative RO, knowing that it will be held to account afterwards in the NP.

Data: Minutes of EAC/sectoral committee meetings, plenary meetings, correspondence between government and NP and interviews.

4) Final step: See H.1.

## 4.5 Case selection

### 4.5.1. Small-N case studies

The research question *under what conditions will NPs have an impact on their government's policy on the EU?* is investigated through a small-N comparison. This enables in-depth empirical analysis showing a deeper understanding of complex differences among and between European NPs.

This thesis deals with new explanatory factors and the case studies explore how these interact with formal powers. This is done in a pair-wise comparison, in which each time two cases are studied and all conditions resemble each other in every respect but one.<sup>391</sup> As real measurable 'impact' is assessed rather than 'formal powers', it is expected that a combination of different qualitative methods (process-tracing of 16 cases and 8 controlled comparisons) are suitable to reflect the political complexity of this phenomenon, including informal levels of influence.

The main theoretical argument is a conditional one: NPs' formal powers make a difference on the impact of the government's EU policy position, but only under certain conditions.

The cases are legislative files and are looked at when being scrutinised by the same NP to establish whether their impact on the government's EU policy position varies while operating under different conditions. This helps in exploring the causal relationships between different features of individual cases.<sup>392</sup> That is, by changing only one variable and keeping all others constant (including the NP), increases the chances of measuring the impact of the respective explanatory factor on the outcome of interest.

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<sup>391</sup> George & Bennett, 2005:152.

<sup>392</sup> Tansey, 2007:765.

To analyse the different hypotheses, two NPs have been selected: one conforming to the trusteeship model, namely the House of Commons (UK) (for H1 and H3) and one conforming to the delegatory model - the Second Chamber (NL) (for H2 and H4). The comparisons establish whether there are any differences in scrutiny between the cases (EU legislative files) when these NPs operate under different conditions.

#### **4.5.1.1 The House of Commons in the UK and the Second Chamber in the Netherlands**

In order to perform the case studies, two NPs have been selected: the Second Chamber in the Netherlands (with strong ex ante influence mechanisms) and the House of Commons in the UK (with stronger ex post control mechanisms).<sup>393</sup> Table 2 in chapter 2 gives an overview of ex ante and ex post formal powers of the different NPs in the EU. The House of Commons in the UK thereby scored low on ex ante influence mechanisms and high on ex post control mechanisms, whereas the Dutch Second Chamber scored low on ex post control mechanisms and high on ex ante influence mechanisms. Even though the Dutch Second Chamber scored high on ex ante influence mechanisms, other NPs within that cluster scored higher, as the Dutch Second Chamber has not got the strong mandating rights, such as the Danish *Folketing* and Finnish *Eduskunta*.

Both NPs are generally considered to have moderate powers compared to other EU NPs and therefore representative of the average powers of a NP in the EU.<sup>394</sup> The main strength of the House of Commons is the right to apply a scrutiny reserve<sup>395</sup> which has also been introduced by the Dutch Second Chamber since the Treaty of Lisbon has come into force. The scrutiny reserve gives NPs the right to further discuss EU legislation and ask for time from the government. It can also bind the government to keeping the NP informed on any developments regarding the issue in question.

A significant difference between the formal power of the House of Commons and the Second Chamber is that the Dutch NP has completely decentralised EU legislative files to be dealt with by specialised committees and the EAC only deals with issues related to EU Treaty Changes and enlargement.

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<sup>393</sup> The second matrix in Chapter 2.4 enabled the selection of one NP with high scores on *ex ante* influence indicators and another with lower scores on the *ex ante* indicators, but stronger scores on the *ex post* control indicators.

<sup>394</sup> Neuhold & Smith, 2015:670-671.

<sup>395</sup> The scrutiny reserve implies that ministers are not allowed to agree to EU legislation as long as the NP has the document under scrutiny.

This is considered an indicator of parliamentary strength, as it involves MPs' own expertise of the policy area into the scrutiny process.<sup>396</sup> In the UK, on the contrary, there is no systematic method of disseminating EU issues to sectoral committees and they are only transferred in the case that members of the EAC feel that the topic requires expert opinions.

Next to selecting the two NPs based upon the Table for formal powers (Chapter 2), the two selected NPs give, furthermore, the possibility of comparing other explanatory factors. According to Lijphart, the UK is the least disproportional of the plurality systems with few political parties, while the Netherlands has the strongest proportionality system with strong multipartism.<sup>397</sup>

The Dutch Parliament is also interesting, however, as although it does not have the same strong formal mandating rights as the Danish *Folketing*, it does exercise very strong agenda control. Furthermore, since the implementation of the Lisbon Treaty it has strengthened its ex ante influence mechanisms (such as meetings with the Prime Minister before the European Council) at the expense of ex post control mechanisms.<sup>398</sup> This is important, as previous research has shown that ex ante is the time when influence occurs.<sup>399</sup> To control a government ex post, the Council meeting does not give the NP any opportunity to exercise an impact on the EU dossier.

The empirical analysis of this research will only focus on the Lower Chambers of the NPs, in other words, the House of Lords in the UK<sup>400</sup> and the First Chamber in the Netherlands are not included as they are normally the chambers with fewer formal powers than the Upper Chambers.<sup>401</sup>

During the negotiations of the Lisbon Treaty both the UK and Dutch Government suggested to introduce a yellow card in order to reinforce the role of the NPs.<sup>402</sup> The UK Government added a request for a red card for NPs during his negotiations on a

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<sup>396</sup> Holzhaecker, 2005:437.

<sup>397</sup> Lijphart, 2012:154-156; Schmidt, 2006:158.

<sup>398</sup> Wessels & Rozenberg, 2013:36.

<sup>399</sup> Auel, 2007:488; Sprungk, 2013:554.

<sup>400</sup> The House of Commons and the House of Lords use different scrutiny procedures, whereby the House of Commons is known to be reactive, while the House of Lords, with its in-depth inquiries into EU issues, is known to be pro-active in EU affairs (Cygan, 2007:163).

<sup>401</sup> With the exception of the European right to send a reasoned opinion to the EC, which is a right that is allocated to both Chambers in bicameral parliaments.

<sup>402</sup> Carbone, 2010:153.

reformed EU Treaty in 2016. This is another reason why it is interesting to analyse how the NPs in these two member states perform when scrutinising EU legislative files.

#### **4.5.1.2 The scrutiny process in the House of Commons**

Most of the scrutiny of EU legislative files is undertaken by the European Scrutiny Committee (ESC) and few documents are decentralised to other select committees.<sup>403</sup> This means that the domestic agenda is still dominant for most UK MPs.<sup>404</sup> The ESC consists of 16 members and the main purpose of the committee is to influence UK ministers and hold them to account after the Council meeting.<sup>405</sup> It is therefore considered to be a moderate player in the scrutiny of EU issues.<sup>406</sup> For each new proposal the committee has to decide whether the topic is of political or legal importance, whether the committee has enough information to make a decision, whether the document should be debated or whether it should be ‘tagged’ (noted as relevant to a particular or future debate) or transferred to a sectoral committee or one of the European Committees (A,B or C).<sup>407</sup>

One of the formal rights of the ESC is to recommend EU documents for plenary debates, but it is in the end up to the government to decide which topics are debated on the floor.<sup>408</sup>

Because of its few formal ex ante influence powers (see Table in Chapter 2.4), the HC has tried to compensate via the introduction of the right to a Scrutiny Reserve, which implies that the responsible minister cannot make a decision in the Council as long as the NP has not cleared the draft legislative proposal. This is the strongest formal power of the ESC and evidence shows that ministers do take the scrutiny reserve seriously, although it can be overridden at times.<sup>409</sup> Other formal powers of the ESC include the right to send a topic to the floor of the plenary meeting of the House, where motions can be adopted.

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<sup>403</sup> Either to a Select committee or to one of the European Committees (A, B, C) which deal with certain expertise policy topics and meet on an ad hoc basis (Huff & Smith, 2015:316).

<sup>404</sup> Cygan, 2007:166.

<sup>405</sup> Huff & Smith, 2015:315.

<sup>406</sup> Neuhold & Smith, 2015:670-671.

<sup>407</sup> The European Scrutiny System in the House of Commons, Department of Chamber and Committee Services, 6<sup>th</sup> July 2009, p.9-10.

<sup>408</sup> Auel & Raunio, 2014a:20.

<sup>409</sup> Huff & Smith, 2015:318-319.

The composition in parliamentary committees represents the proportion of seats held by a party, which guarantees the governing party a majority within all select committees.<sup>410</sup>

After the publication of an EU legislative proposal the UK government writes an EM outlining its first position which it forwards to the ESC. Although since the Lisbon Treaty has come into force, the ESC should receive the initial EU legislative proposal directly from Brussels, it does not deal with this until it receives the EM from its government. In other words, if the government is late in publishing its legislative proposal, there could potentially be little or no time left for the NP in case it wants to raise a yellow card.<sup>411</sup> Moreover, the scrutiny of EU affairs is so highly centralised<sup>412</sup> and the ESC deals with more than 1,000 EU documents per year<sup>413</sup> for which it must decide whether these should remain<sup>414</sup> under scrutiny or can be cleared. As the ESC deals with so many documents per year, it must be very selective in choosing which EU legislative proposal it will follow, with the result that many only receive superficial attention.<sup>415</sup>

#### 4.5.1.3 The scrutiny process in the Second Chamber

The Netherlands has a bicameral system and this research only looks at the stronger Chamber, namely the Second Chamber, also known as the House of Representatives which carries the right to initiate and amend legislation.<sup>416</sup> The MPs who form part of this Chamber are directly elected every four years, using a system of proportional representation.<sup>417</sup>

The SC is generally considered to be a moderate player, the so-called *policy shaper*.<sup>418</sup> Its formal rights are above the average of NPs' formal powers, but it lacks strong mandating rights, such as those held by the Danish *Folketing*. Among its formal powers it has, amongst others, standard ones such as asking questions and receiving information, but also a more powerful one in the complete use of a decentralised

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<sup>410</sup> Cygan, 2007:166.

<sup>411</sup> For more about the NPs' right to send a yellow card, see Chapter 3.1

<sup>412</sup> Huff & Smith, 2015:314.

<sup>413</sup> Ibid.,315.

<sup>414</sup> If a case is salient or in the case that the ESC does not agree with the government's view as expressed in the EM.

<sup>415</sup> For more information about the political parties in the UK and the members of the ESC and other involved committees in the scrutiny of the selected cases, see appendix III.

<sup>416</sup> Högenauer, 2015:252.

<sup>417</sup> For more information about the political parties in the Netherlands and the members of the involved committees in the scrutiny of the selected cases, see appendix IV.

<sup>418</sup> Neuhold & Smith, 2015:671, 679.

committee system, meaning that EU issues are scrutinised like domestic files<sup>419</sup>. The EAC, which consists of 25 members, deals solely with issues related to the overall coordination of EU issues.<sup>420</sup> The EAC has a cross-departmental scope of competences and draws attention to different EU legislative proposals in the different sectoral committees.<sup>421</sup> The scrutiny of EU legislative proposals happens in a similar way to domestic proposals.

After the Lisbon Treaty, the Second Chamber increased the scrutiny of EU legislative files by allocating a scrutiny reserve, the strongest formal powers of the SC so far, to control its government over EU issues<sup>422</sup> and meetings with the Council now take place *before* Council meetings.<sup>423</sup> These changes have been carried out not only because of the Lisbon Treaty, but also because the Dutch population has become more Eurosceptic since 2009.<sup>424</sup> One of the responses of the Dutch government after the ‘no’ vote against the EU Constitution in the Netherlands in 2005, was to increase the control on EU legislative acts and safeguard in particular the subsidiarity principle.

Before the Council meetings take place, the responsible government department sends the meeting agenda to the relevant sectoral committee, after which a meeting is set up together with the responsible minister.<sup>425</sup> It also sends a summary of the EU legislative proposal and the government’s (first) position (in the so-called *bnc-fiche*).<sup>426</sup>

The committee at this stage can decide to formalise its position to put extra pressure on the government, by submitting the Minutes of the meeting to the plenary meeting after which motions can be tabled.<sup>427</sup> After the meeting in the Council, the responsible government department sends a letter to the sectoral committee informing it of the outcome. After this, the committee can decide whether it has any more questions to raise to the government or if it is happy with the feedback.<sup>428</sup>

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<sup>419</sup> Högenauer, 2015:253.

<sup>420</sup> Ibid., 254.

<sup>421</sup> Kiiver, 2006:53.

<sup>422</sup> Högenauer, 2015: 253-257.

<sup>423</sup> Rozenberg & Wessels, 2013:36.

<sup>424</sup> Harryvan & Hoekstra, 2013:53.

<sup>425</sup> known as the ‘Algemeen overleg’.

<sup>426</sup> Which can be compared to the Explanatory Memorandum in the UK.

<sup>427</sup> Högenauer, 2015:255.

<sup>428</sup> These steps correspond to step 3, 4, 5 and 6 of the OLP, see appendix I and II for an overview.

#### 4.5.2 Selecting EU legislative proposals

The topics of EU legislative proposals are selected based on the explanatory variables and therefore vary in time and in content.<sup>429</sup> Each case consists of one EU legislative proposal, whereby all-but-one of the variables are absent which decreases the chances of rival explanations (see table 6). In each case, the manner in which the formal powers of NPs operate under certain conditions has been studied.

In addition, only topics over which there is obvious disagreement between the NP and government are selected.<sup>430</sup> This increases the chances of measuring ‘impact’ rather than ‘just coincidence’.<sup>431</sup> This decision also gives access to a greater number of publications per case (for example, minutes of meetings or correspondence between the NP and the government), which increases the quantity of data usable to verify the causal process.<sup>432</sup>

It can be argued that selecting different EU legislative proposals interferes with the explanatory variables and makes comparison more difficult. However, a most similar design is applied for the pair-wise comparisons, whereby the cases resemble each other in all but one respect. All issues are comparable in the sense that they are all considered to be of equal (non-)salience<sup>433</sup>. They are all dealt with by the same governmental departments and the same policy areas (DEFRA<sup>434</sup> in the UK and the Infrastructure and Environment (I&E) Committee in the Netherlands) in order to decrease the chances of rival explanations. EU legislative files are either related to fisheries (House of Commons) or infrastructure (Second Chamber), as these are topics that are not part of the most significant topics for citizens (so, no salience for the electorate)<sup>435</sup>, but are still

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<sup>429</sup> For example, they are selected based upon the period during which the government consisted of multi-parties, a single party or when it included or excluded a Eurosceptic party.

<sup>430</sup> Based upon their party programmes or the contents of correspondence between the government and the NP.

<sup>431</sup> This is less obvious in the single-government case, as the NP consists mostly of MPs from the same party as the government, so the NP is more likely to agree with its government.

<sup>432</sup> Besides, only topics were selected, whereby the EC has a shared competence with the member states and NPs have the right to submit a reasoned opinion to the EC on conformity with subsidiarity and proportionality.

<sup>433</sup> With the exception of the case dealing with EU salience.

<sup>434</sup> Department for Environment, Food and Rural Affairs

<sup>435</sup> With the exception of case 5 (salience) which deals with the environment (a salient topic based upon the party manifestos of political parties and the Euro-Barometer of the year the EU legislative proposal was published).

salient for legislative actors, so disagreements between the government and NP are still expected to be found.

This is why, in some cases, the salience variable is not completely absent. For example, regarding the use of the Lisbon provisions, only those NPs for whom this had salience made use of the EWM. Therefore, topics have been selected with at least *equal* salience to the government and NP and all outside the area of economic affairs<sup>436</sup> or employment.<sup>437</sup> In addition, none of the non-salient topics are referred to in national political party programmes under their own headings.<sup>438</sup>

For the selection of EU legislative files some had to be disregarded, such as the draft Regulation regarding the allocation of fishing opportunities under the Fisheries Partnership Agreement between the EU and Morocco or the draft Regulation regarding a recovery plan for blue fin tuna, because the draft legislative files were of such little importance, that the NP cleared the document without scrutinising it. The NP, in these cases, opted out from using its formal powers altogether, as the topic was not important enough for the legislative actors either. A non-salient topic had to be selected, based upon party manifestos of government parties and the lack of levels of concern among EU citizens based upon the Euro-barometer, but nevertheless salient enough for the legislative actors to want to use its formal powers to scrutinise it (see also 3.2.3).

All issues are part of the OLP<sup>439</sup>, whereby NPs adopt a similar path of influence over and control of their governments, which facilitates a pair-wise comparison (see table 6). The comparison of the cases looks as follows per hypothesis. In order to increase the internal validity of the analysis, each pair-wise comparison is supported by another, shadow pair-wise comparison, following similar steps of the OLP.

*H1 Multi-party government is a favourable condition for NPs to increase the substantive impact on their government's EU policy position.*

Two EU legislative files have been selected as cases for this hypothesis, both dealt with by the House of Commons, an NP which conforms to the trusteeship model. Although this is an NP with few formal powers, it is expected to have a stronger substantive

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<sup>436</sup> Avoiding files dealing with the financial crisis which, according the Euro-barometer (question 7 of the Fieldwork), is described as one of the major concerns of citizens in the UK and Netherlands.

<sup>437</sup> According to the Euro-barometer, these are the most important issues for EU citizens (Euro-barometer 80, December 2013, question 7, annex).

<sup>438</sup> For more information on the indicators of salience, Chapter 4.3.3.

<sup>439</sup> See more on the different steps of the OLP in Appendix I and II.

impact on the case in which it operates as part of a multi-party government. In the selected cases, all conditions (euro-scepticism, salience and Lisbon) are constant, with the exception of the partisan composition condition. This is present in the first case and compared to the second when absent (co-variation). Secondly, per case the different causal mechanisms are studied in order to discover how the process has been brought about per case.

*H2 The more the government depends on the support of a Eurosceptic party, the more likely the NP will have a substantive impact on the government's EU policy position.*

Two EU legislative proposals are selected as cases, both dealt with by the Dutch Second Chamber. This NP conforms to the delegatory model with strong formal powers. As strength comes in gradations, it is expected that the NP's impact can increase even further in the case in which its coalition government depends on the support of a Eurosceptic party. In the selected cases, all conditions (partisan composition, salience and Lisbon) are constant with the exception of the Eurosceptic condition. This is present in the first case and compared to the second when absent (co-variation). Secondly, per case the different causal mechanisms are studied in order to find out how the process has been brought about per case.

*H3 The more salient an EU issue is to parliament, the more likely the NP will have a substantive impact on the government's EU policy position.*

Two EU legislative files have been selected as cases, both dealt with by the House of Commons. It is expected that the impact of this NP on its government's contribution to the Council is low, unless it deals with a salient topic which should increase its impact. In the selected cases, all conditions (partisan composition, Euro-scepticism and Lisbon) are constant, with the exception of the salience condition. This is present in the first case and compared to the second when absent (co-variation). Secondly, per case the different causal mechanisms are studied in order to understand how the process has been brought about per case.

*H4 Those NPs opposing an EU legislative proposal in a reasoned opinion under the EWM have greater substantive impact on their government's EU policy position than those NPs that do not oppose it.*

Two legislative proposals have been selected as cases, both dealt with by the Dutch Second Chamber. It is expected that its impact is intermediate, but in the case where the NP has sent a negative RO to the EC, it can increase its impact even further (strong impact). In the selected cases, all conditions (partisan composition, Euro-scepticism and salience) are constant - with the exception of the Lisbon provision condition. This is present in the first case and compared to the second when absent (co-variation). Secondly, per case the different causal mechanisms are studied in order to find out how the process has been brought about per case.

Table 6 gives an overview of the hypotheses, what is compared and what is not per hypothesis, including the topics (and alternative topics) of the different cases selected for each hypothesis.

**Table 6 Pair-wise Comparison and Case Selection EU legislative files**

<b>Hypotheses</b>	<b>What to compare</b>	<b>What not to compare</b>	<b>Cases</b>
<b>H1</b> Multi-party government is a favourable condition for NPs to increase their substantive impact on government's EU policy position.	The formal powers of an NP conforming to trusteeship during an EU legislative proposal dealt with by a multi-party government versus one by a single-party government.	Saliency, Euro-scepticism and Lisbon provisions	<p><b>Case 1:</b> Reform Common Fisheries Policy</p> <p><b>Case 1a:</b> Cod Stocks</p> <p><b>Case 2:</b> Compliance Common Fisheries Policy</p> <p><b>Case 2a:</b> Cod Recovery</p>
<b>H2</b> The more the government depends on the support of a Eurosceptic party, the more likely the NP will have a substantive impact on the government's EU policy position.	The formal powers of an NP conforming to the delegatory model during an EU legislative proposal in a Eurosceptic government versus one without a Eurosceptic government.	Saliency, Euro-scepticism and Lisbon provisions	<p><b>Case 3:</b> The First Railway Package –</p> <p><b>Case 3a:</b> EU Integrated Maritime Policy</p> <p><b>Case 4:</b> The Fourth Railway Package: Interoperability –</p> <p><b>Case 4a:</b> Port Services</p>
<b>H3:</b> The more salient an EU issue is to parliament, the more likely the NP will have a substantive impact on the government's EU policy position.	The formal powers of an NP conforming to the trusteeship model dealing with a salient EU legislative proposal versus a non-EU legislative proposal.	Partisan composition, Euro-scepticism and Lisbon provisions	<p><b>Case 5:</b> EU Water Policy -</p> <p><b>Case 5a:</b> European Maritime and Fisheries Fund</p> <p><b>Case 6:</b> Ship Recycling</p> <p><b>Case 6a:</b> Cod Stocks</p>
<b>H4</b> Those NPs opposing an EU legislative proposal in a RO under the EWM have greater substantive impact on their government's EU policy position than those NPs that do not oppose the proposal.	The formal powers of an NP conforming to the delegatory model dealing with an EU legislative proposal after having sent a RO* to the EC versus a EU legislative proposal dealt with by an NP without any ROs.	Partisan composition, Euro-scepticism and saliency.	<p><b>Case 7:</b> Maritime Spatial Planning</p> <p><b>Case 7a:</b> The 4th Railway Package: open market for Railway passengers -</p>

			<p><b>Case 8:</b> Port Services</p> <p><b>Case 8a:</b> The 4th Railway Package: Interoperability –</p>
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This table gives an overview of what will be measured for each hypothesis and what variables will be absent in the pair-wise comparison. It also shows that a pair-wise comparison will take place between C1 and C2, C1a and C2a C3 and 4, C3a and C4a, C5 and C6, C5a and C6a, C7 and C8, and C7a and C8a.

\* RO = reasoned opinion.

#### 4.6 Data analysis method: process-tracing

To analyse the data, a combination of the comparative method with process-tracing has been applied. This helps to account for any differences between the outcomes of the cases.<sup>440</sup> Co-variation has been used to get concrete results as a consequence of the variation in the explanatory factors (for example, ‘did these conditions lead to the increase or decrease of the NP’s substantive impact?’), whereas process-tracing can help to rule out any rival explanations by looking at whether the causal processes developed as expected.<sup>441</sup> Process-tracing also helps to reach a more general understanding of the relationship between the formal powers of the NP, the parliamentary activities when using them under certain conditions and the outcome of the use of these powers. By reconstructing the whole policy process including all significant steps in the sequence that led to the outcome of that particular case, the causal process between the IV and the DV has been traced. This helped to narrow the list of potential causes of certain effects.

With a pair-wise comparison, the causal processes between two cases of the same NP have been compared and it has been established whether the causal process differs if an explanatory factor changes. This has happened in a most similar system design, whereby in both cases to be compared all conditions are constant and only the explanatory factor varies (see table 6).

Although the main purpose of undertaking a case study is to measure the causal effects and understand the use of formal powers under certain conditions, it is important to

<sup>440</sup> George & Bennett, 2005:81.

<sup>441</sup> Blatter & Haverland, 2012:p.24, 213.

know how these effects have emerged and causal mechanisms are presumed in every estimate of a mean causal effect.<sup>442</sup> In other words, causal mechanisms help to explain how the outcome became possible.<sup>443</sup>

Tracing the causal processes leading to a certain outcome enabled the elimination of any rival explanation by looking at the context during which the decision-making took place (for example, was it just before election time or could the economic crisis have influenced an increase or decrease in impact). Furthermore, different types of influence (formal and informal) can be identified during the various stages of the OLP of an EC legislative proposal. This allowed me to see whether the causal process hypothesised by the theory is in fact evident in the sequence, and values of the intervening variables in that case.<sup>444</sup>

The process has been path-dependent, that is, it had to occur in a sequence of events. If the different observations during that period could be linked and are therefore connected, this was considered an explanation for why a certain case happened. The different attempts by the NP to achieve an impact, their governments' responses to the impact attempts, the degree to which preferences were reflected in outcomes, and NPs statements of (dis-)satisfaction with the outcome<sup>445</sup> have thereby been taken into account.<sup>446</sup>

In order to establish whether the hypotheses hold, the theory has been pattern matched to empirical scrutiny in process-tracing<sup>447</sup> have been matched to the observed sequence.<sup>448</sup> The goal is to establish whether the hypothesised causal mechanism linking the condition (X) to the outcome (Y) is present and that it functioned as in the theory.<sup>449</sup>

Although process-tracing is a well-suited method to test theories in cases with multiple interactions<sup>450</sup>, there are several weaknesses. First of all, it can only show causal inference if there is an uninterrupted causal path between causes and effect. This makes

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<sup>442</sup> Gerring, 2007:44.

<sup>443</sup> George & Bennett, 2005:206-207.

<sup>444</sup> Bennett & Checkel, 2015:5.

<sup>445</sup> Dür, 2008:49.

<sup>446</sup> For example, the OLP consists of a seven-step process whereby NPs play a role at several stages (see Appendix I and II).

<sup>447</sup> George & Bennett, 2005:30.

<sup>448</sup> Rohfling, 2013:33; Yin, 2009:136.

<sup>449</sup> Beach and Pedersen, 2013:11.

<sup>450</sup> George & Bennett, 2005:206; Hall, 2013:27.

empirical data essential, but it can be missing sometimes, particularly in relation to government positions in the EU Council. In those cases, secondary sources have been referred to, such as the Minutes of meetings and/or interviews.

Secondly, it is possible that more than one hypothesised causal mechanism is consistent with the process-tracing evidence. In these cases of equifinality, it has been important to discover whether any of the alternative explanations are complementary or if one is causal and another spurious: for example, by applying the same causal mechanisms to other cases.<sup>451</sup>

Thirdly, it is tempting in process-tracing to overlook things that did not happen and only focus on positive evidence. For that reason, interviews have been conducted asking open- and semi-open questions which allowed respondents to give information that would not have been found when only examining archival documents.<sup>452</sup>

Lastly, interferences are only based on a small sample and might therefore have lower external validity than large-N correlation studies and generalisability is therefore modest.<sup>453</sup>

## **4.7 Data collection**

As evidence, documentary sources are used that were published during the seven steps of the OLP in order to compare the NP's position to that of its government (see Appendix I and II for more information about the seven steps of the OLP and the methods and evidence that will be used per step). Interviews of MPs and civil servants are furthermore used to establish any informal ways of influencing, interviews with civil servants/ministers to establish the degree of pressure on the minister during the steps of the OLP during which he or she can be held to account.

Essential documents are formal policy documents (of both NP and government), Minutes of parliamentary and ministerial meetings and correspondence between NPs and governments about EU legislative proposals, Minutes from the attendance of government representatives at EAC meetings or plenary meetings on EU affairs, from NP meetings, committees' weekly press releases, reasoned opinions sent to the EC,

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<sup>451</sup> George & Bennett, 2005:92.

<sup>452</sup> Vennesson, 2008:238.

<sup>453</sup> Dörrenbächer et al., 2015:6, Berg-Schlosser, 2009:11.

Minutes or summaries of government meetings and positions. This data has been collected from databases from NPs ([www.overheid.nl](http://www.overheid.nl) and <http://www.parliament.uk>) and IPEX<sup>454</sup>. Most scrutiny of Council meetings is carried out in writing in both the UK and the Netherlands which helped by sourcing relevant documents.

These documents allowed the comparison of the input of the NP (while operating under certain conditions) to the position of its government on an EU legislative file.<sup>455</sup> To observe the initial positions of the NP, reference was made to the minutes of the main responsible NP committee after the publication of an EC legislative proposal. Minutes of any following meetings and correspondence of the NP helped to establish the position of the NP and any possible changes within that. A greater challenge arose when collecting the initial and final position of the government, which in some cases were not made public. In such cases, reference was made to the governmental memorandum and minutes of meetings between the NP and government, and correspondence between these two institutions, all of which allowed the retrieval of the initial position of the government, including any changes to the memorandum during the scrutiny of the file.

Moreover, interviews helped to interpret and augment the data (where, for example, a document is secret and withheld from public analysis). Besides, documents can show agreement between influencing NP and the government, whereas in reality there could have been disagreements between the parties. Conducting interviews is a way of triangulation to ensure that the data is not only collected from one source, which can increase the credibility of the findings.<sup>456</sup>

Conducting interviews has furthermore given insight into the extent to which MPs are willing to influence and control their governments on EU affairs when the national interest is at stake. This may limit their room for manoeuvre and could complicate the measuring of NP impact.<sup>457</sup> Conducting interviews with government representatives were assessed qualitatively to establish the extent to which they felt influenced in their decision-making by their NPs and whether there has been any change since the Treaty of Lisbon has come into force. To allow the interviewees to offer alternative causal

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<sup>454</sup> IPEX is a database for the mutual exchange of information between NPs and the EP concerning issues related to the EU.

<sup>455</sup> In order to establish whether the government's position has changed, it is hereby relevant to look at the initial and final position of the government and establish to what extent this has changed according to the position of the NP.

<sup>456</sup> Tansey, 2007:767.

<sup>457</sup> Cooper, 2012:449.

mechanisms, the interviews were semi-structured, including some open-ended questions.

By taking a sample of each involved parliamentary committee during the interviews (reflecting the different political parties represented in the committee<sup>458</sup>), it has been possible to make inferences about the beliefs and actions of the whole committee without having to interview everyone.<sup>459</sup> As a starting point, MPs were approached who were members of the EAC/sectoral committees during the period that the respective EU legislative proposal was dealt with in the NP. Secondly, interviews took place with relevant ministers and/or civil servants who dealt with the EU legislative proposal from the side of the government.

The focus was thereby on first-hand participants working on the respective EU legislative proposal at the time and open-ended questions were asked which allowed respondents to talk more freely.<sup>460</sup> Furthermore, interviews with clerks and clerk advisors were held and also with the permanent representative in the Netherlands who could give information on the wider perspective. Interviews were held with parliamentary representatives in Brussels from both the House of Commons and the Second Chamber who could also give a more general view on the scrutiny of NPs in the EU legislative process. Interviews with interest parties have been able to give a more independent perspective on the scrutiny of relevant EU legislative files.

The references show an overview of those who participated in interviews (a total of 25, including two questionnaires).

Table 7 gives an overview of the different explanatory factors: the indicators, necessary data and expected outcome per hypothesis.

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<sup>458</sup> Those with more than three seats in the committee.

<sup>459</sup> Tansey, 2007:766.

<sup>460</sup> Tansey, 2007:766.

**Table 7 Variables, indicators, data collection and expected outcome**

<b>Variable and hypothesis</b>	<u>Partisan composition</u>  <i>Multi-party government is a favourable condition for NP to increase its measurable impact on gov.'s EU policy position</i>		<u>Dependence on Eurosceptic gov.:</u>  <i>The more the government depends on the support of a Eurosceptic party, the more likely the NP will have a measurable impact on its gov.'s EU policy position</i>		<u>Saliency</u>  <i>The more salient an EU issue is to a NP, the more likely the NP will have a measurable impact on its gov.'s EU policy position.</i>		<u>Use of EWM</u>  <i>Those NPs opposing an EU leg. proposal in a RO under the EWM have greater measurable impact on their gov.'s EU policy position than those NPs that do not oppose the proposal.</i>	
<b>Indicators</b>	The effective number of parties in gov.		The participation or dependence of a Eurosceptic party in the governing coalition		Reference to the topic in party manifestos and EU Barometer		All forms of formal parliamentary objections to the EC regarding an EU legislative proposal	
<b>Data</b>	- Meeting documents  - Press Releases  -Correspondence  - Interviews		- Meeting documents  - Press Releases  - Correspondence  - Interviews		- Meeting documents  - Press Releases  - Correspondence  - Interviews		- Meeting documents  - Press Releases  - Correspondence  - Interviews	
<b>Expected outcome</b>	Case 1:  Multi party:  Strong impact	Case 2:  Single party:  Weak impact	Case 3:  Euro-sceptic gov.:  Strong impact	Case 4:  Non-Euro-sceptic gov.:  Interme-diate impact	Case 5:  Salient:  Strong impact	Case 6:  Non-salient:  Interme-diate impact	Case 7:  With RO:  Strong impact	Case 8:  No RO:  Interme-diate impact.

## Chapter 5

### Partisan composition

#### 5.1 Introduction

This first Chapter of the empirical analysis deals with the partisan composition condition (hypothesis one). The euro-scepticism, salience<sup>461</sup> and Lisbon<sup>462</sup> variables are absent for this case.

The pair-wise comparison examines two legislative files, both being dealt with by the House of Commons (HC), an NP that conforms to the trusteeship model (according to Table 2 in Chapter 2). This means that the NP gives more leeway to the government in the absence of ex ante influence formal procedures and governments gain the freedom to act as trustees during the Council of Ministers. However, the NP retains formal powers to exercise control over its government afterwards.

Although the HC has few ex ante formal powers, it is expected to exert a stronger measurable impact in the case in which it operates when scrutinising a multi-party government, consisting of a coalition between Cameron and Clegg (2010-2015) (C1) instead of a single party government led by Labour (Blair/Brown, 2005-2010) (C2).<sup>463</sup>

In order to keep the number of competing explanations to a minimum, the two selected EU legislative files were both dealt with by the same government departments (DEFRA) and cover a similar topic, namely the Common Fisheries Policy (CFP). The CFP has led to much contestation during various revisions, which is why it is expected that there will be opposing views inside the NP and the government.

To counterbalance for chances of confirmation bias, each pair-wise comparison not only consists of tracing the different steps during the OLP (which consists of 7 steps, see appendix I and II) per case added by evidence given by interviewees, it adds an alternative shadow pair-wise comparison in order to establish whether a similar causal path is followed per case and whether the outcomes are comparable to the first pair-wise

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<sup>461</sup> References to party manifestos (i.e. if a topic gets a separate heading or paragraph in a party programme) are used as indicators for 'salience', see Chapter 4.3.3.

<sup>462</sup> Although the legislative proposal was published after the Lisbon Treaty came into force, the NP does not make use of its new powers for this EU legislative file.

<sup>463</sup> For more information about the political parties in the UK and the members of the ESC and other involved committees in the scrutiny of the selected cases, see appendix III.

comparison (an elaboration of these shadow pair-wise comparisons can be found in appendix V).

The Eurosceptic variable is absent in both cases, as the scrutiny of C1 ends before Cameron's Bloomberg Speech<sup>464</sup>, namely on 4<sup>th</sup> July 2012. With regard to C2, at the time of the scrutiny of this EU legislative proposal, the single-party Labour party government was lead by Gordon Brown who wanted Britain to remain in the EU and thanks to him the Lisbon Treaty was signed without a referendum about it in the UK.<sup>465</sup>

The topic in both cases can be considered as non-salient to the electorate, but salient to legislators<sup>466</sup>, as the party in government does refer to the need to reform of the CFP in their party manifestos of 2005<sup>467</sup>, but as part of a wider improvement of rural communities for the UK, which overall attracts limited attention, and not as a stand-alone goal.<sup>468</sup> Besides, the Euro-barometer of 2008<sup>469</sup> shows that the majority of citizens do not include 'fisheries' as a main concern. Rising prices/inflation and the economic situation were the two most frequently mentioned national concerns. The political parties in the Cameron-Clegg coalition government spent a similar amount of attention to the CFP in the party manifestos of 2011<sup>470</sup>, and the CFP is not raised as a matter of concern in the Euro-barometer in 2011.<sup>471</sup> Finally, the Lisbon variable is also stable for this case. Both cases are dealt with after the Lisbon Treaty has come into force, in neither case does the NP make use of sending a RO to the European Commission.<sup>472</sup> The absence of other possible variables is a way of increasing the internal validity and decreasing the chances of equifinality.

This Chapter consists of three parts; first, it deals with the analysis of cases one and two, followed by the pair-wise comparison. The analysis consists of a combination of process-tracing, following the seven steps of the OLP with additional interview data, and begins with an overview of the different positions of the main political parties on

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<sup>464</sup> January 2013, this is considered to be the time that the Conservative party gets a more Eurosceptic direction.

<sup>465</sup> For this research, I consider Labour and the Liberal Democrats as non-Eurosceptic parties. The Conservatives are considered to be non-Eurosceptic until January 2013, when Cameron presented his Bloomberg speech which can be described as the start of a more sceptical approach of the EU.

<sup>466</sup> More information about this can be found in Chapter 3.2.3.

<sup>467</sup> Setting out the policy plans for 2005-2009, during which the publication of this case took place.

<sup>468</sup> The Labour Party Manifesto, 2005

<sup>469</sup> Standard Euro-barometer, 70, annex question seven.

<sup>470</sup> Conservative Manifesto, 2010 and Liberal Democrat Manifesto 2010.

<sup>471</sup> Standard Euro-barometer 75, annex, question seven.

<sup>472</sup> Although the publication of the EU legislative proposal in Case 2 takes place just before the Lisbon Treaty has come into force, the actual scrutiny of the EU file takes place in 2009.

the CFP during the period of the publication of each EU legislative file. It will continue by giving a reminder of the expected causal process per case and at the end of the Chapter, it will provide an overview of any differences per step of the OLP per case and compare the results of the analysis of both cases.

## **5.2 Case 1: the Regulation on the Common Fisheries Policy (COM(2011)425<sup>473</sup>)**

### **5.2.1 Party policy position on EU fisheries**

For a long time, political parties in the HC held different views on the CFP. The Conservatives (particularly during the Howard period<sup>474</sup>) sought to abandon the CFP all together, a more extreme viewpoint than those of other parties, like Labour and the Liberal Democrats who pleaded for reform instead.<sup>475</sup> However, when David Cameron came into power, he also asked for a reform of the CFP, rather than its complete abolition, even though part of his party still favoured abolition of the policy completely.<sup>476</sup> Because of this internal division and because MPs from fishery constituencies, such as those in Scotland, potentially have different ideas about the reform of the CFP than MPs representing regions not dependent on fisheries, it is still expected that there will be disagreements in the HC on this file. Table 8 gives an overview of the political views of the main political parties in the HC on the CFP during 2011 (the year of publication of the CFP Reform proposal).

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<sup>473</sup> [http://eur-lex.europa.eu/procedure/EN/2011\\_195](http://eur-lex.europa.eu/procedure/EN/2011_195)

<sup>474</sup> 2003-2005.

<sup>475</sup> Wanlin, 2005:1.

<sup>476</sup> Lynch 2015, p.189.

**Table 8 Party policy positions on the CFP in the UK, 2010-2015**

<b>Labour</b>	<b>Conservatives</b>	<b>Liberal-Democrats</b>	<b>SNP</b>
A Reform of the CFP, focusing on discards, but keep coordination at EU level. <sup>477</sup>	A push for a reform of the CFP to promote a bigger say for local communities and end discards. <sup>478</sup> Although the Conservatives wanted to pull out of the CFP during the Howard period, they softened their approach towards the CFP by asking for radical reform. <sup>479</sup>	A reform of the CFP <sup>480</sup> , with a greater role for the devolved administrations and decisions should be made on a regional basis, with more powers being given to fishermen, scientists and communities. <sup>481</sup> No reference is made to the CFP in the manifesto for the general elections. <sup>482</sup>	Complete UK withdrawal from the CFP. <sup>483</sup>

### 5.2.2 Expected Causal Process

The hypothesis expects a positive relationship between the multi-party government and the increase of parliamentary impact on government’s EU policy position, as the government might depend on the NP in order to get a majority for its position, which potentially is based upon a compromise (see Chapter 3.4.1 for the theoretical argument). The following causal process in the case where the multi party condition is present is therefore expected:

EU legislative proposal: sent to Council, EP and NPs → multi-party government and NP use of formal powers → lots of discussion in government → government cannot agree → compromise → asks for support from different parties in NP → control and influence of government by NP through its formal powers, for example, asking questions and threatening of confidence votes → government must take NP position on

<sup>477</sup> Party manifesto Labour 2010: *A future fair for all*.

<sup>478</sup> Conservative manifesto 2010.

<sup>479</sup> [www.politics.co.uk](http://www.politics.co.uk), Common Fisheries Policy, <http://www.politics.co.uk/reference/common-fisheries-policy>.

<sup>480</sup> <http://www.libdemvoice.org/tag/common-fisheries-policy>

<sup>481</sup> The Liberal Democrat Manifesto for the 2009 Elections to the European Parliament.

<sup>482</sup> Liberal Democrat Manifesto 2010.

<sup>483</sup> [www.politics.co.uk](http://www.politics.co.uk), *Common Fisheries Policy*.

board to ensure sufficient support for proposal → few formal powers do not stop the NP from having a say → parliamentary impact.

### **5.2.3 Background of the proposal**

In 2009 the EC published a Green Paper regarding the revision of the CFP in the EU, to which the UK government (with DEFRA as the responsible department) responded after consulting the HC and after an inquiry among different fishery stakeholders among others. The EU published a number of proposals in 2011 based upon the responses to the Green Paper and one of these proposals suggested a revised regulation in the field of the CFP. This draft regulation proposes radical changes to fisheries management in the EU. The proposal deals thereby with both the management of European fishing fleets and the conservation of fish stocks.

### **5.2.4. Parliamentary scrutiny of the EU legislative file during the seven steps of the OLP<sup>484</sup>**

This section discusses all different steps of the OLP of the CFP reform and whether the HC used its formal powers to either influence and/or control their government's EU policy position at any point of the scrutiny and if so, whether its attempts had any effect.

#### Step 1: Publication

On 13<sup>th</sup> July 2011 the EU legislative proposal is published and is sent to Council, EP and NPs. On 18<sup>th</sup> July, this document is deposited in the HC.<sup>485</sup> This is later than in other NPs, as since the Lisbon Treaty has come into force, NPs should receive EU legislative files on the same day as the EP and Council, which is the day of publication. However, in the UK, the ESC decided to only deal with the EU legislative proposal once the government has published its explanatory memorandum (EM).<sup>486</sup> On 19<sup>th</sup> July 2012, a first debate in Council takes place<sup>487</sup>.

At the end of this stage no evidence in the field of the use of any formal powers by the HC is found, as there has simply been no time to prepare the documents for discussion. This is as expected.

<sup>484</sup> For more information on these steps, see Appendix I and II.

<sup>485</sup> HC, ESC, 41st Report, 2010-2012, p.3.

<sup>486</sup> HC, ESC, *Reforming the European Scrutiny System in the HC*, Twenty-Fourth Report of Session 2013-14, vol.1, p.11

<sup>487</sup> Press Release, European Council, 3108th Council meeting, Agriculture and Fisheries, Brussels 19<sup>th</sup> July 2011.

Step 2: NPs given eight weeks to respond to the EC (deadline 24/10/2011)

To be able to confirm the main causal mechanism during this stage, evidence of an increased level of scrutiny by the HC must be found as a consequence of governments not agreeing with each other and therefore depending on the support of political parties in the HC.

As expected, during this phase not a lot of evidence was found, other than some initial positioning of both the HC and government. During this period the NP has eight weeks to identify whether the EU proposal conforms to the subsidiarity principle or whether it should receive a yellow card. In this case, the HC does not make use of its (formal) EU power to send its objections against an EU legislative proposal by sending a RO to the EC. However, it does accuse the government for withholding this right, saying that it feels it did not receive government's information on time.<sup>488</sup> The government, on the other hand, argues that there was no right to send a RO in this matter anyway, as the topic is part of the exclusive competence of the EU (Art. 3 of the TEU).<sup>489</sup> This will be discussed in more detail during the scrutiny of this legislative file.

Secondly, as expected, during this stage the UK government published its EM<sup>490</sup>, including its own position (16<sup>th</sup> August 2011<sup>491</sup>), in which it shows some level of concern with the proposal. Whereas the UK government feels that the CFP should remain an EU competence:

‘... [T]he UK is seeking genuine decentralisation and simplification of decision making, and is concerned that the proposal does not detail how Member States and stakeholders should work together to develop coherent regional plans ...’<sup>492</sup>

The EM is the first official document since the consultation of the Green Paper that contains the UK Government's official position on CFP Reform (considered as

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<sup>488</sup> HC ESC meeting, 2<sup>nd</sup> November 2011, European Committee A, 7<sup>th</sup> November 2011

<sup>489</sup> Ibid.

<sup>490</sup> Within ten working days of the deposit of a document, the government department, which takes responsibility for it, should submit an EM upon it (The European Scrutiny System in the HC, Department of Chamber and Committee Services, 6<sup>th</sup> July 2009).

<sup>491</sup> DEFRA Explanatory Memorandum Reform of the Common Fisheries Policy, 16<sup>th</sup> August 2011

<sup>492</sup> Ibid.

government's initial position).<sup>493</sup> During this stage, evidence of a potential disagreement within the government was expected to be found, as indicated in the causal process. However, there is no sign of internal disagreement in any documents published during this stage between members of government. This is confirmed during interviews. On both the government side and that of the HC, interviewees confirmed that there was no disagreement between the coalition partners on this file, as the Liberal Democrats did not have an explicit view on it. According to Clayton, the former head of the CFP reform at DEFRA, internally the Liberal Democrats and Conservatives had different views on issues related to the EU and also the reform of the CFP, but this did not come across in the scrutiny process. As far as ministers were concerned there was a consistent line on what we wanted to achieve. Clayton, the head of the CFP at DEFRA during this period, argued that as a matter of fact the more challenging scrutiny of the government in relation to UK/EU competence issues came from Conservative MPs.

‘There was no great debate going on along party lines. It was more country interest rather than political interest’.<sup>494</sup>

This is confirmed by Kelvin Hopkins MP, member of the ESC, who argued that Conservatives in the government coalition of 2010-2015 were more worried about their own, more Eurosceptic, backbenchers than the Liberal Democrats in the cabinet.<sup>495</sup>

Richard Benyon MP, the Conservative parliamentary undersecretary for Fisheries in the UK since 2010, maintains a critical but pragmatic approach towards the CFP during the different stages of the scrutiny. These will be discussed below.

The second stage of the scrutiny process of the OLP has ended here. No evidence has been found of coalition partners disagreeing with each other and for that reason needing more support from MPs for their EU policy position on the Reform of the CFP, other than the contents of the party manifestos and press releases.

### Step 3: Ex ante influence phase

To be able to confirm the causal mechanism during this stage, evidence must be found showing increased levels of scrutiny by the HC as a consequence of the government

<sup>493</sup> An EM is submitted on every document (except, by agreement with the Scrutiny Committee, the most trivial) and therefore does not give as such an indication on the importance of the EU proposal.

<sup>494</sup> Clayton, 21<sup>st</sup> July 2015

<sup>495</sup> Hopkins, 30<sup>th</sup> June 2015

coalition partners not agreeing with one another on the contents of the legislative file, for example, minutes of meetings referring to opposing positions in government or at least between the different political parties in the government.

Although the HC is a NP whereby the scrutiny emphasis is on its *control* function, it is possible to distinguish different types of contact during this ex ante phase<sup>496</sup>, such as written communication and minutes of meetings, which give the NP the chance to have a proper say on this legislative file.

On 14<sup>th</sup> September 2011, the ESC publishes its first report for this dossier<sup>497</sup> (first parliamentary position) and discusses the position of the EC, of government and of the environmental law firm *Client Earth*. This last organisation argues that the mandatory introduction of a system of transferable fishing concessions (TFCs), rather than the simple allocation of fishing quota/fishing opportunities, under the CFP proposal is unlawful.<sup>498</sup>

The ESC seeks to raise a question to the parliamentary undersecretary, as he appears to regard member state competence as having been respected in the case of transferable concessions, in marked contrast to the position taken by *Client Earth*, and the ESC shows that it would be interested to have the parliamentary undersecretary's reactions to the points made by that organisation.<sup>499</sup> It therefore indicates that it will recommend the documents for debate (which will take place on 7<sup>th</sup> November 2011 in the European Committee A<sup>500</sup>). The NP actively uses its formal powers here, as it normally involves one of the European Committees in cases where the topic is either technical or important.<sup>501</sup> The ESC's position does not differ from the government in this respect, but it questions its position.

The ESC furthermore asked of the government that it receives a response in good time before the next meeting of 12<sup>th</sup> October 2012, in order that it could consider whether the draft regulation complies with the principle of subsidiarity, and whether to issue a

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<sup>496</sup> Whereby the emphasis is on influencing the government before the Council meeting.

<sup>497</sup> HC ESC, 41<sup>st</sup> Report 2010-2012, 14<sup>th</sup> September 2011.

<sup>498</sup> *Ibid.*, p. 14.

<sup>499</sup> *Ibid.*, par. 1.36.

<sup>500</sup> European Committees (formerly 'European Standing Committees') are appointed to consider the documents in detail and report their findings back to the HC, more information on the composition of this committee can be found in Appendix III.

<sup>501</sup> Groves, 3<sup>rd</sup> July 2015.

RO<sup>502</sup>. The NP has therefore made use of its formal powers (request for more information), but has not yet published its own position.

The DEFRA parliamentary undersecretary, Richard Benyon, sent several letters to the HC regarding this file and the parliamentary requests on 11, 24 and 27 October 2011. In the letter of 11<sup>th</sup> October 2011, Benyon replied to questions raised by MPs of the ESC in the 41<sup>st</sup> Report:

‘The Committee asked for additional information on Member State competence in the case of introducing Transferable Fishing Concessions (TFCs), with reference to a submission received by *Client Earth* on this issue. In response, the original position—as set out in the Explanatory Memorandum [of 16 August 2011]—is maintained.’<sup>503</sup>

In other words, it does not agree with the argument of *Client Earth*, as raised by the ESC.

On 12<sup>th</sup> October, the ESC holds a meeting<sup>504</sup> in which it shows concern and asks for more information. It thereby uses its formal powers (the right to ask for more information), but it does not make an attempt to change the government’s position. During this meeting, the ESC shows regret about the late arrival of DEFRA’s letter of 11<sup>th</sup> October, in which it answers the ESC’s requests for more information (for example, regarding the concerns raised by *Client Earth*<sup>505</sup>). Because of the late arrival, parliament missed its chance to submit a RO to the EC.<sup>506</sup>

It furthermore does not agree with DEFRA’s point regarding the subsidiarity principle which, according to the parliamentary undersecretary, does not apply to areas of exclusive EU competence:

‘... This depends critically upon whether the purpose of transferable fishing concessions is indeed the conservation of marine resources, or whether it is

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<sup>502</sup> HC ESC, 41<sup>st</sup> Report 2010-2012, 14<sup>th</sup> September 2011, p.15

<sup>503</sup> HC ESC, 42<sup>nd</sup> Report 2010-2012, 2<sup>nd</sup> November 2011, par. 1.6

<sup>504</sup> HC ESC, 42<sup>nd</sup> Report 2010-2012, 2<sup>nd</sup> November 2011.

<sup>505</sup> This organisation lobbies DEFRA on CFP, but as they do so via the NP, the parliamentary remarks coming from *Client Earth* are considered as parliamentary scrutiny.

<sup>506</sup> HC ESC, 42<sup>nd</sup> Report 2010-2012, 2<sup>nd</sup> November 2011, par. 1.7.

geared more to fleet management, a point the Minister's letter had not addressed ...'<sup>507</sup>

The ESC therefore asks for a more considered response to this important issue (use of formal powers).<sup>508</sup> The use of formal powers in this instance mainly consists of asking the government to behave in a certain way, and to re-consider its position as laid out in the EM.

In a letter of 24<sup>th</sup> October 2011, DEFRA apologises for the delay in meeting the 12<sup>th</sup> October deadline.<sup>509</sup>

In another letter of 27<sup>th</sup> October 2011, DEFRA explains how, after obtaining legal advice in the field of a possible application of the principle of subsidiarity to the CFP, the Minister maintains his original position:

‘... Whatever you or I might wish, I remain of the view that the proposals on TFCs lie within the exclusive competence of the EU ...’<sup>510</sup>

On 2<sup>nd</sup> November 2011<sup>511</sup>, the ESC holds a meeting in which it expresses regret at the late arrival of the Government's response to the parliamentary request for more information:

‘Despite our very specific request that we should receive comments in good time before our meeting on 12 October, the letter in question reached us barely two hours before it was due to start. As a result, our first opportunity to consider it was on 19 October, meaning that there was then no chance of a Reasoned Opinion being issued before the eight week deadline in the Protocol.’<sup>512</sup>

During the interview with Clayton, the former head of the CFP Reform at DEFRA, it was clear that getting documents on time to the House is one of the main challenges for civil servants, as they depend on the timetable of the EU.<sup>513</sup>

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<sup>507</sup> Ibid., par. 1.8.

<sup>508</sup> Ibid., par. 1.10.

<sup>509</sup> Ibid., par. 1.11.

<sup>510</sup> Ibid., par. 1.12.

<sup>511</sup> HC ESC 42<sup>nd</sup> Report, 2010-2012, 2<sup>nd</sup> November 2011.

<sup>512</sup> Ibid., par. 1.7.

<sup>513</sup> Clayton, 21<sup>st</sup> July 2015.

On 10<sup>th</sup> November 2011, the deadline to submit responses to DEFRA regarding the Fisheries Industry is reached. DEFRA receives 39 responses, including from devolved administrations which are responsible for carrying out the CFP<sup>514</sup>. In DEFRA's response to the inquiry, it appears that most responses from stakeholders stress the need for a more regionalised future CFP:

'The responses to the consultation questions have shown that there is a wealth of support for genuine and radical reform of both the CFP and the CMO. In particular, I am pleased to see the support for a shift towards a more regionalised CFP and for working towards more sustainable targets and a reduction in discards. Likewise, on CMO proposals views were broadly aligned to the Government's analysis with overall support for the Commission's aims and recognition that some areas need further clarification, including around the increased responsibility of Producer Organisations.'<sup>515</sup>

The need for more regionalisation is also the main view of the HC (as appears from minutes of meetings held at a later stage) and gets support from government:

'The UK is seeking genuine decentralisation and simplification of decision-making where Member States are able to work together regionally to develop management plans, and implement measures which are appropriate to their fisheries.'<sup>516</sup>

### *Green Paper CFP*

The UK government's position is in line with its response to the Green Paper regarding the CFP, which it published at the end of 2009.<sup>517</sup> The UK's response to this EC publication was drafted after consulting different fishery and other interest organisations and after discussions in Parliament with DEFRA Parliamentary undersecretary Huw Irranca-Davies MP (Labour). The UK's response to these papers mainly focused on the

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<sup>514</sup> DEFRA, Summary of Responses to the consultation on proposals relating to the Common Fisheries Policy (CFP), February 2012.

<sup>515</sup> DEFRA, Summary of Responses to the consultation on proposals relating to the Common Fisheries Policy (CFP) and the Common Organisation of the Market (CMO) on Fishery and Aquaculture Products, February 2012, p. 4.

<sup>516</sup> Ibid., p. 20.

<sup>517</sup> During this time the UK Government still consisted of one party (Labour).

need for decentralisation and to optimise the renewable wealth of marine fish resources.<sup>518</sup>

The current position of the government may not only be influenced by the Green Paper consultation of 2009, but *before* the publication of the EC legislative proposal on 13<sup>th</sup> July 2011 the HC has already given a mandate to the government in this policy area. It was namely on 12<sup>th</sup> May 2011 that the HC adopted a motion which was inspired by a campaign against discards.<sup>519</sup> The motion:

‘... [C]alls on the government to vote against proposed reforms of the EU Common Fisheries Policy unless they implement an ecosystems-based approach to fisheries management, end discards in relation to all fish and shellfish with derogation only for species proven to have a high survival rate on discarding, require that all fish and shellfish are harvested at sustainable levels by 2015, ensure the involvement of fishers and other stakeholders in decision-making processes ...’<sup>520</sup>

This is the first parliamentary official position on the CFP since the publication of the Green Paper. Richard Benyon responds to this by saying:

‘... Let me make a few things clear. The outrage that people feel about discards is shared by the government and Members on both sides of the House. ‘I can support a ban and I will be pushing for one—it is semantics whether we talk about an end to discards or a ban—but only if it is backed by genuinely effective, enforceable and affordable measures that encourage fishermen to be more selective about what they catch ...’<sup>521</sup>

This response indicates *no* sign of influence of the NP, as the motion regarding discards is supported across all political parties and is also government policy (as explained in the EM of 16<sup>th</sup> August 2011). Interviewees on the side of the government and on that of the NP confirm this. According to Richard Benyon, no massive changes were made to the government position as a consequence of NP scrutiny<sup>522</sup> and the government’s

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<sup>518</sup> UK response to the EC Reform Green Paper on the Common Fisheries Policy (COM(2009)163).

<sup>519</sup> HC, motion Fisheries, 12<sup>th</sup> May 2011.

<sup>520</sup> *Ibid.*, 2.10pm.

<sup>521</sup> *Ibid.*, column 1461.

<sup>522</sup> Benyon, 25<sup>th</sup> June 2015.

position also focused on discards and regionalisation.<sup>523</sup> According to Henry Smith MP, member of the ESC during the 2010-2015 period, the ESC steered the government's active attitude in this dossier though did not change its position.<sup>524</sup> However, government representatives also confirmed that they definitely did take the motion seriously and that the Minister attending the Fisheries Council meeting would have to take the contents into account.<sup>525</sup>

#### *Meeting with the European Committee A*

In a meeting with the Parliamentary undersecretary of DEFRA, Benyon, on 7<sup>th</sup> November 2011, the members of the European Committee A show regret that Parliament did not receive DEFRA's information at an earlier stage (as specifically requested on 14<sup>th</sup> September 2011). Now, there is no chance for the HC to submit a RO to the EC. DEFRA thereby prevented Parliament from using one of its formal rights.

Chris Heaton-Harris MP (Conservative) argues during this meeting:

‘... As explained in the ESC's report of 2 November 2011, the Government's failure to provide these views in time meant that the deadline under the Lisbon treaty for submitting reasoned opinions could not be met ...’<sup>526</sup>

Benyon responds, saying:

‘I regret that the advice was not given to the Committee in time. It is a very detailed technical issue. We were given three or four weeks to provide that information and it required not just getting a legal opinion, but discussing with the devolved Governments the impact it had on them and whether they wished to make a contribution to the debate.’<sup>527</sup>

Fiona O'Donnell MP (Labour) asked the parliamentary undersecretary to give his views about the appearance of Richard Lochhead, the Scottish Minister for fisheries, before the Select Committee on Environment, Food and Rural Affairs (EFRAC)<sup>528</sup>, speaking about his preference of a repatriation of powers in the field of the CFP. Benyon

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<sup>523</sup> This rules out the chance of an anticipated reaction in the EM of the government which focuses on discards and regionalisation as well.

<sup>524</sup> Smith, 2<sup>nd</sup> July 2015.

<sup>525</sup> Clayton, 21<sup>st</sup> July 2015.

<sup>526</sup> European Committee A, *Reform of the Common Fisheries Policy*, 7<sup>th</sup> November 2011, 4:30pm.

<sup>527</sup> Ibid., 4:33pm.

<sup>528</sup> Ibid.

responded that he was not aware of this appearance to the EFRAC. He adds, however, that he is in favour of more devolved control of fisheries, but not of completely withdrawing from the CFP (contrary to some Labour and Conservative MPs), as fish do not recognise borders.<sup>529</sup> Benyon confirmed in an interview that he is known as a more pro-European conservative within his party and this is not related to any concessions he had to make to the Liberal Democrats during the coalition government:

‘... I am pro-European, just like my Liberal Democrat colleagues. In the time that we worked together, we never had any different opinion on how deal with EU issues. We wanted to keep Britain in the EU, but we were committed to reform the CFP, because it was bad policy.’<sup>530</sup>

Eilidh Whiteford MP (SNP) asked Benyon to be more explicit about the difficulties of regionalisation<sup>531</sup>, to which he responded:

‘If we cannot crack the regionalisation issue, it will be a big blow for those of us—I think I speak for people on both sides of the House—who want a dramatic and radical reform of this failed policy. I believe that we can get what we want, which is a genuine regionalisation and a much more local management of our fishery.’<sup>532</sup>

The interview with Benyon confirmed that the government was a strong supporter of regionalisation and that this has not been influenced by the NP. Some parties in the NP, such as the SNP and part of the Conservatives wanted to go further and have the UK removed from the CFP all together.<sup>533</sup>

Gisella Stuart MP (Labour) argues that this is the first meeting on the CFP since the coalition government has come to power and that, so far, this topic is mainly dealt with by the Backbench Business Committee (BBC),<sup>534</sup> whereas it should be government business.<sup>535</sup> Other MPs argue that the UK would be better off to completely withdraw itself from the CFP.<sup>536</sup> Benyon argues that the CFP has been a failure, but that it makes

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<sup>529</sup> Ibid.

<sup>530</sup> Benyon, 25th June 2015.

<sup>531</sup> Ibid., column nr.6.

<sup>532</sup> Ibid.

<sup>533</sup> Benyon, 25<sup>th</sup> June, 2015.

<sup>534</sup> The BBC gives an opportunity to backbench Members to bring forward debates of their choice.

<sup>535</sup> European Committee A, *The Reform of the Common Fisheries Policy*, 7<sup>th</sup> November 2011, session 2010-2012, column nr. 13.

<sup>536</sup> Such as Kelvin Hopkins MP (Labour), column 23.

sense to be involved.<sup>537</sup> UK vessels, it was pointed out, have also been seen outside their own waters.<sup>538</sup> There is a disagreement at this point between some Conservative MPs and the Conservative Minister on the actual existence and scope of the CFP.<sup>539</sup> The remarks from Mrs Stuart MP also show that the government has *not* needed to increase discussions on this topic with parliament (so it might have no difficulties in finding an agreement within the coalition).<sup>540</sup> Different interviewees from the side of the NP<sup>541</sup> and that of government<sup>542</sup> are of the opinion that the coalition government did not make it harder for government to come to an agreement on this issue and, therefore, did not make the coalition more dependent on the NP in order to find support for compromise. Richard Benyon continued to stress the importance of the regionalisation of the CFP, get rid of unnecessary regulation and abandoning discards for the UK government (as raised by different MPs from all political parties, including labour, the opposition).<sup>543</sup> This has been an important stage of the consultation period, during which MPs expressed their own views to government explicitly. With the exception of those MPs wanting to withdraw from the CFP all together, most focused on issues such as the importance of regionalisation and ending discards, in line with the government's position and no attempts were made to change the government's position. Interviews confirm this and Clayton argued that the positions of the NP and government were not that different (with the exception of those backbenchers wanting to leave) and that MPs mostly tried to make sure that the Minister would continue following this line in Brussels.<sup>544</sup>

### *Parliamentary Inquiry into the CFP*

On 24<sup>th</sup> February 2012, the HC published the outcome of its inquiry into the reform of the CFP (issued by the EFRAC).<sup>545</sup> During the inquiry the HC received evidence from 34 different fisheries and other stakeholders. It directs its attempts to influence the new EU legislative proposals via government:

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<sup>537</sup> European Committee A, *The Reform of the Common Fisheries Policy*, 7<sup>th</sup> November 2011, session 2010-2012, column nr. 4.

<sup>538</sup> *Ibid.*, column 10.

<sup>539</sup> E.g. the contribution of Barry Gardiner MP.

<sup>540</sup> European Committee A, *The Reform of the Common Fisheries Policy*, 7<sup>th</sup> November 2011, session 2010-2012, column 13.

<sup>541</sup> Hopkins MP, Smith MP, Rees-Mogg MP.

<sup>542</sup> Benyon MP, Clayton.

<sup>543</sup> *Ibid.*, column 5.

<sup>544</sup> Clayton, 21<sup>st</sup> July 2015.

<sup>545</sup> HC, Inquiry into the proposals for reform of the Common Fisheries Policy - Environment, Food and Rural Affairs Committee (12<sup>th</sup> Report, 24<sup>th</sup> February 2012).

‘DEFRA has a once-in-a-decade opportunity to reform the Common Fisheries Policy ... We direct our conclusions and recommendations principally at DEFRA to guide them in their ongoing negotiations with the EU’.<sup>546</sup>

The HC thereby clearly outlines its own position as well:

‘We are convinced that a more effective system of European fisheries governance could be achieved if high-level objectives only are set centrally by the European institutions while day-to-day decisions are delegated to regional groupings of Member States. However, the draft Regulation does not provide a clear, practicable mechanism for regionalisation. This lack of clarity creates anxiety among stakeholders and risks derailing the process of improving the CFP’s governance ...’<sup>547</sup>

According to Clayton, the EFRAC was more active in influencing government. It had the technical expertise that the ESC lacked, and could therefore go into more detail.<sup>548</sup> Even though the government did not change its position after the lengthy contribution of the EFRAC, it did take the suggestions of the Committee on board.<sup>549</sup> Clayton is of the opinion that throughout discussions with the different committees, its position did not change, although it was important to government to explain itself to the committees and get to the right result with regard to its feedback to the Council. In this way, the HC is influential.<sup>550</sup>

#### *A motion gets adopted*

On 19<sup>th</sup> March 2012, a Fisheries and Agriculture Council debate takes place to discuss the EC legislative proposal<sup>551</sup> and on 15<sup>th</sup> March this document is discussed in the plenary meeting of the HC in the presence of Minister Richard Benyon<sup>552</sup>. During the meeting MPs got a chance to influence DEFRA’s input into the Council meeting of 19<sup>th</sup> March 2012 and also discuss the outcome of the parliamentary inquiry into the CFP.

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<sup>546</sup> HC, Inquiry into the proposals for reform of the Common Fisheries Policy - Environment, Food and Rural Affairs Committee (12<sup>th</sup> Report, 24<sup>th</sup> February 2012), par 7.

<sup>547</sup> Ibid., Conclusions and Recommendations.

<sup>548</sup> Clayton, 21<sup>st</sup> July 2015.

<sup>549</sup> Ibid.

<sup>550</sup> Ibid.

<sup>551</sup> Press release, 3155<sup>th</sup> Council meeting, Agriculture and Fisheries, Brussels, 19<sup>th</sup> and 20<sup>th</sup> March 2012.

<sup>552</sup> HC, Common Fisheries Policy (plenary debate), 15<sup>th</sup> March 2012.

The HC therefore uses a formal power that on paper it does not have (ex ante influence powers)<sup>553</sup>

During this plenary session a motion is accepted. The parliament:

‘... [C]alls on the government to use the current round of Common Fisheries Policy reform to argue for a reduction in micro-management from Brussels, greater devolution of fishing policy to Member States, the introduction of greater regional ecosystem-based management and more scientific research to underpin decision-making in order to secure the future of coastal communities and the health of the marine ecosystem ...’<sup>554</sup>

During the debates a further demand for a need for regionalisation in this field is made, for example, by Dr Eilidh Whiteford (Banff and Buchan) (SNP).<sup>555</sup> The discussion about the CFP becomes at times a more politically- rather than contents-based discussion, particularly after the intervention of Austin Mitchell MP (Labour):

‘... The common fisheries policy remains a folly that will not work, cannot be made to work and should be ended. The one thing I cheered when the Conservatives won the election—there was only one thing—was that they promised to repatriate powers from Europe. That, presumably, has been diluted by the coalition with the Liberal Democrats, who will probably smuggle those powers back across the channel in the boots of their cars ...’<sup>556</sup>

This intervention indicates that the UK government has a divided view on the reform of the CFP, but (part of) the opposition would support the Conservatives in a further dilution of the CFP (unlike the Liberal Democrat coalition partner). This is confirmed by Hopkins MP who argued in the interview that as a Eurosceptic Labour MP, he felt his views on the Reform of the CFP were better reflected during the Cameron-Clegg coalition government of 2010-2015 than when his own party was in power during the Blair government, as the single party government was united in a pro-EU approach.<sup>557</sup> In other words, influencing the government on EU issues might have been easier during the Conservative era because the Conservative party was so divided on the EU and this

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<sup>553</sup> Ibid.

<sup>554</sup> Ibid., 2.21pm.

<sup>555</sup> Ibid., column 450.

<sup>556</sup> Ibid., column 443.

<sup>557</sup> Hopkins, 30<sup>th</sup> June 2015.

might not have been due to the coalition with the Liberal Democrats. Interviews confirm this. Benyon argues that he and the Liberal Democrats have similar (pro-European) views on the EU and this was supported by Caroline Spelman MP (Secretary of State at DEFRA at the time).

Fiona O'Donnell (Labour) criticises the government for not investing more time in this topic:

'Fisheries are a government-held public resource, so we think it right that government decide who should be able to access them, but, as the Hon. Member for Thirsk and Malton has pointed out, astonishingly the government do not even know who owns the quota that they hand out.'<sup>558</sup>

In his response Richard Benyon assures the House that he will defend the need for regionalisation in the CFP and that he will inform Parliament after the Council meeting:

'On Monday I am going to Brussels, where I will be discussing, not least, regionalisation, as well as the external dimension, on which we are making some progress, although it has not yet got to where I want it to be ...'<sup>559</sup>

The first stage during which the HC had a chance to impact government policy position in the field of the reform of the CFP ends. The first Fisheries Council meeting regarding the CFP has passed and the government has been able to either in- or exclude parliamentary input into the negotiations in Brussels.

The HC made an increased use of its formal powers (by including the European Committee A, several ESC meetings, an inquiry by the EFRAC and a discussion during a plenary meeting of the HC *before* the Council meeting). However, although there is evidence of a high level use of even *ex ante* influence mechanisms by the HC, which in the case of the UK Parliament shows an increased use of its (formal) powers (as it normally only holds meetings *after* the Council meeting), there is no proof that this has been caused by a government consisting of various parties. In conjunction with the absence of evidence reflecting this causal mechanism, interviews confirm that the

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<sup>558</sup> Ibid., column 479.

<sup>559</sup> Ibid.

coalition government and its different views on the Reform of the CFP did not play a role in NP's increased use of formal powers.<sup>560</sup>

#### Step 4 Ex post control phase

A Fisheries Council to discuss the Reform of the CFP takes place on 19<sup>th</sup> March 2012.

No evidence of any meeting or correspondence has been found that shows any contact between parliament and government at this stage. This is contrary to the expected causal process.

#### Step 5 Ex ante influence phase

To be able to confirm the causal mechanism here during this stage, evidence is needed showing increased levels of scrutiny by the HC as a consequence of the government coalition partners not agreeing with each other on the contents of the legislative file.

The day before the next Fisheries and Agriculture Council<sup>561</sup>, during which the draft EU regulation was again on the agenda, the Parliamentary undersecretary of DEFRA sent a letter to inform the ESC (11<sup>th</sup> June 2011) on the agenda of the Fisheries Council.<sup>562</sup> During the Fisheries Council meeting on 12<sup>th</sup> June 2012<sup>563</sup>, a partial agreement was reached on the draft regulation. The UK government supported this agreement. After the Council meeting had taken place, the ESC sent a letter on 14<sup>th</sup> June to the Parliamentary undersecretary of DEFRA. In this letter the ESC supported the Parliamentary undersecretary, but in so doing remind him of some important changes in the sector.<sup>564</sup>

The government informed the HC before the Council, which is more than it should do according to its formal powers, but there is no opportunity for the HC to have an impact at this stage. While scrutiny can be considered as 'more than expected' (normally the government would only inform the HC *after* the Council meeting), there is no evidence that this is the consequence of a multiparty government.

<sup>560</sup> Benyon, 25<sup>th</sup> June 2015, Rees-Mogg MP, 22<sup>nd</sup> June 2015, Clayton, 21<sup>st</sup> July 2015.

<sup>561</sup> 12<sup>th</sup> June 2012. There were two Fisheries Council meetings beforehand (on 26<sup>th</sup> April and 14<sup>th</sup> May 2012), but these have not lead to the use of any of the NP's formal ex ante influence or ex post control rights.

<sup>562</sup> HC ESC 7th Report, 4<sup>th</sup> July 2012, par. 5.5

<sup>563</sup> Press Release, 3174<sup>th</sup> Council meeting, Agriculture and Fisheries, Luxembourg, 12th June 2012.

<sup>564</sup> HC ESC 7th Report, 4<sup>th</sup> July 2012, par. 5.6.

### Step 6 Ex post control phase

At this stage it is expected that the government will feed back to the Parliament the input it has given into the Council meeting and to what extent it has been able to include NP's priorities, which would count as evidence of impact at this stage.

On 12<sup>th</sup> June 2012, another Fisheries Council takes place.

On 24<sup>th</sup> June 2012, DEFRA sent a letter to the ESC with information regarding the outcome of the Fisheries Council<sup>565</sup>. This is a form of ex post control. The contents of the letter are simply informative and explain the points which the UK government supports, and those with which it disagrees, therefore, not useful as evidence to show whether the points made by the UK government during the Council stemmed from Parliament.

On 24<sup>th</sup> June 2012, the Secretary of State Mrs Caroline Spelman MP (Conservative) published a statement regarding the outcome of the Council meeting. According to the government, thanks to the UK there has been progress made in the field of discards and regionalisation (some of the main priorities of the HC).<sup>566</sup>

The ESC holds a meeting on 4<sup>th</sup> July 2012<sup>567</sup> during which it discusses the outcome of the Council meeting and notes its satisfaction with the government's information, but there is no indication that the government included the HC's position. The document is cleared. This document disconfirms that the government has taken into account the position of the HC.

The evidence found at this stage does not show any signs of the government needing the support of the NP, as it might possibly disagree internally.

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<sup>565</sup> Ibid., par. 5.6.

<sup>566</sup> HC ESC 7<sup>th</sup> Report (2012-2013), 4<sup>th</sup> July 2012, par. 2.3.

<sup>567</sup> HC ESC, 7<sup>th</sup> Report (2012-2013), 4<sup>th</sup> July 2012.

### Step 7 Adoption

The file is adopted on 17<sup>th</sup> December 2013. In the final compromise, EU member states agreed that fishing quotas should fully respect scientific advice in order to have healthy fish stocks and higher quotas. Discard of fish stocks is no longer allowed to prevent wasting food, which was also a strong wish of the HC.<sup>568</sup> There will be furthermore ecosystem multi-annual plans for the management of fisheries and fisheries will be regionally managed. These were issues the HC had strong views on.

Rather than consisting of the usual seven steps in total of the OLP, during which the NP has a chance to influence the impact of government's EU policy position, this case consists of two readings. However, because the HC has cleared the document, it no longer scrutinises its government regarding this file. No more relevant evidence is expected of increased levels of scrutiny by the NP as a consequence of the government coalition partners not agreeing with one another on the contents of the legislative file during these stages. In December 2013 the document is accepted in a second reading.

### **5.2.5 Concluding remarks**

The different steps of the OLP of this EU legislative file show various signs of influence by the HC on government. While there are signs of 'increased parliamentary activity', there is no real evidence of 'impact'. Even without real impact it is interesting to establish whether the increased parliamentary activity is a consequence of the partisan composition of the government. According to the theoretical argument we expected to observe an increased use of formal powers by the NP, leading to higher levels of measurable impact as a consequence of the different views of the coalition partners in government. These different views require coalition partners to find a compromise, for which they need to find a majority, as no single party has a majority in the NP. The increased use of formal powers was clearly visible during the analysis of the process-tracing. However, interpreting these steps raises different challenges.

First of all, there is the challenge of equifinality. Although the salience, Eurosceptic and Lisbon variables are absent based upon the indicators used for the operationalisation of these variables, they are all to some extent still present in this case.

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<sup>568</sup> European Commission, press release, 15<sup>th</sup> July 2013. 12282/13

First of all, the ‘salience for the electorate’ variable<sup>569</sup> is absent, as the party manifestos of the three main political parties (Conservatives, Labour and Liberal Democrats)<sup>570</sup> do not refer to the CFP in 2010. Nevertheless, one can argue that for some MPs (especially those representing constituencies in which fisheries are still an important source of income for many voters such as the Shetland Isles, Scrabster and Peterhead in Scotland, Brixham and Plymouth in southwest England, and Ardglass in Northern Ireland) this is a very salient topic, not only for the legislative actors, but also for the electorate. To overcome this possible form of equifinality, a case from the same policy area is selected to compare the scrutiny by the NP in a single party government (the EU legislative proposal in the field of the CFP 2008). If there are a similar number of meetings before or after the Council meeting, it can be concluded that ‘salience’ is the variable that is dominant in increasing the NP’s activities.

When looking at the Eurosceptic variable, however, this is absent as there is no Eurosceptic party element in government. However, the Eurosceptic attitude of Conservatives is well known and although not part of the coalition government, UKIP’s extreme anti-EU position does have an impact on the Conservatives approach to the EU.<sup>571</sup> This could therefore give rise to the salience of the case that not only deals with fisheries, but is also about the deeper question of the extent to which the EU should be involved in this policy at all.

Many MPs showed negative feelings towards the EU during the scrutiny of the EU legislative file, and interviews show that many Conservative MPs are against the CFP because of anti-EU feelings.<sup>572</sup> However, the responsible Minister in government, Richard Benyon MP, claims to be pro-European<sup>573</sup> and confirmed this during his interview<sup>574</sup>; thus, we can be confident that the Eurosceptic condition is absent<sup>575</sup>, but the ‘salience’ one is not, as the EU angle seems to be an incentive for MPs to increase the use of their formal powers in this field.<sup>576</sup> Interviewees all confirm the importance of

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<sup>569</sup> See Chapter 4, Research Design.

<sup>570</sup> The CFP is referred to in the Conservative and Labour manifestos, but only in a minor way.

<sup>571</sup> Research shows that the Conservatives are most likely to lose voters to UKIP (Evans & Mellon, 2015).

<sup>572</sup> Hopkins, 30<sup>th</sup> June 2015, Clayton 21<sup>st</sup> July 2015.

<sup>573</sup> HC, Thursday 12<sup>th</sup> May 2011, Oral answers and questions, Environment, Food and Rural Affairs, 5.42pm.

<sup>574</sup> 25<sup>th</sup> June 2015.

<sup>575</sup> Combined with the fact that the Eurosceptic speech of David Cameron did not take place until January 2013, which is the start of a more Eurosceptic direction within the Conservative party.

<sup>576</sup> Clayton 21<sup>st</sup> July 2015, Hopkins, 30<sup>th</sup> June 2015.

this topic, mainly because of the timing (it only began to attract more attention in 2011) and also because of link to the debate on EU integration overall.<sup>577</sup>

According to Benyon it was especially because he was so pro-European that he felt personally motivated to make a success of the reform.

‘If we cannot do this right in the EU, then how can we reform the rest of the EU?’<sup>578</sup>

A civil servant at DEFRA argues that

‘MPs have a significant interest in the overarching CFP and see it as symptomatic of failed EU policy and hence an ideal object for criticism/reform. Fisheries are also an issue that impacts on a large number of constituencies where the majorities are very tight so local MPs tend to be more pro-active in those circumstances.’<sup>579</sup>

Also, the variable of the Lisbon provisions cannot be overlooked here. Some MPs would have considered sending a RO if they had had a chance. These MPs feel that the topic should have been dealt with at national and not EU level.

In other words, different conditions, such as salience, Euro-scepticism and the Lisbon provisions all played a role in increasing the use of parliamentary formal powers to some extent. The only condition that does not seem to be related to the increased use of formal powers is that of partisan composition. Neither in the minutes of the meetings nor in the interviewees is any evidence found of a link between the increased use of formal powers and the partisan composition. On the contrary, the UK government seems to be well united on this file and expressed clear views on it from the beginning.

It is only the party manifestos of the two coalition parties that illustrate different views (see table 8). All interviews undertaken for this case confirm that there was no disagreement between the two coalition partners in the field regarding this dossier<sup>580</sup>, and that getting to an agreement was hard as a compromise had to be reached with the more Eurosceptic conservative backbenchers. The more Eurosceptic element of the

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<sup>577</sup> Rees-Mogg, 22<sup>nd</sup> June 2015, Hopkins, 30<sup>th</sup> June 2015, Smith, 2<sup>nd</sup> July 2015.

<sup>578</sup> Benyon, 25<sup>th</sup> June 2015.

<sup>579</sup> DEFRA civil servant questionnaire, 21<sup>st</sup> May 2015.

<sup>580</sup> Rees-Mogg, 22<sup>nd</sup> June 2015, Hopkins, 30<sup>th</sup> June 2015, Benyon, 25<sup>th</sup> June 2015, Smith, 2<sup>nd</sup> July 2015, Clayton, 21<sup>st</sup> July 2015 and Luk, 5<sup>th</sup> August 2015.

opposition backed the Conservatives in this field.<sup>581</sup> This is a clear example of what in previous research has been described as national mainstream parties; ideologically less cohesive on integration than traditional socio-economic issues. It is clear how the issue of EU integration can threaten the internal cohesiveness of political parties.<sup>582</sup>

More specifically, the scrutiny of the CFP file by the HC is related to an increased use of formal powers, but the independent variable of the partisan composition cannot be linked to this.

The HC had already adopted a motion on the CFP on 11<sup>th</sup> May 2011, which was before the publication of the actual EU legislative proposal, setting a mandate to the government. The contents of this motion is reflected in the government's EM, but the interviewees indicated that the government position was very clear from the beginning until the end of the scrutiny process and that anticipated reactions have not been taken place in this field.<sup>583</sup>

#### *Measurable impact*

When examining the minutes of meetings and comparing the position of the government as stated in the EM compared to its feedback to the ESC there are no clear signs of parliamentary impact at any point during the scrutiny of the file. The main differences between the government and the NP consisted either in the degree to which the CFP should remain an EU policy or whether this policy should be given back to the member states (position of the backbenchers, but not a majority of the NP). Interviewees confirmed that although the HC increased the use of its formal powers in this case, this was only partly a consequence of the importance of the publication. Other issues also played a role, such as the composition of the ESC, which consisted of a high number of Eurosceptic members. All these factors combined to put pressure on the government<sup>584</sup> to keep the HC updated and informed regularly. It did not, however, change the contents of the EU legislative file, and in some cases even had to overwrite its own position.<sup>585</sup>

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<sup>581</sup> E.g. Hopkins, 30<sup>th</sup> June 2015.

<sup>582</sup> Auel & Raunio, 2014b:7.

<sup>583</sup> Benyon, 25<sup>th</sup> June 2015.

<sup>584</sup> Benyon, 25<sup>th</sup> June 2015, Clayton, 21<sup>st</sup> July 2015.

<sup>585</sup> Benyon, 25<sup>th</sup> June 2015.

During conversations with government representatives and MPs about the use of any forms of informal impact, it was argued that MPs did informally try to influence the government's position in this field. Unofficial meetings took place with parliamentary experts in the area but the government position did not change.<sup>586</sup> However, it did have the effect of making civil servants and ministers think about their position, and made them more alert. The government could also explain why it could not take over specific requests, for example, in the field of coastal community interests.<sup>587</sup> MPs felt slightly different about informal ways of influence and stated that these do not work unless originating from by Bill Cash MP (Conservative), chair of the ESC 2010-2015, who carried authority in the government.<sup>588</sup>

As none of the points raised by the HC were reflected into the government's input to the Council, the measurable impact can be considered to be weak here. This, however, does not mean that increased parliamentary activity does not make a difference. During the various steps of the OLP scrutiny process, the government increased its feedback to the NP by attending meetings and keeping them informed on discussions in the Council. Interviewees confirmed that discussions in, for example, the European Committee A does put pressure on the government to keep the HC in the loop. Although the HC did not manage to change the government position and thereby its input into Council, it still increased its control function and thereby tightened the relationship with the government in this case.

The next case looks at an occurrence that was scrutinised during the single party 2005-2010 government of Blair/Brown. The case also deals with the CFP and it will check the different steps made by the HC in order to impact the government's position in this case.

### **5.3 The EU Regulation on establishing a Community control for ensuring compliance with the rules of the CFP (COM(08) 721<sup>589</sup>)**

#### **5.3.1 Party position on the CFP**

Although the political parties in the HC have similar views on the CFP like they did during the Cameron-Clegg coalition from 2010, the party manifestos during the

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<sup>586</sup> Clayton, 21<sup>st</sup> July 2015, DEFRA civil servant, 21<sup>st</sup> May 2015.

<sup>587</sup> Clayton, 21<sup>st</sup> July 2015.

<sup>588</sup> Hopkins, 30<sup>th</sup> June 2015.

<sup>589</sup> <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32013R1380>

Blair/Brown single party government in 2005-2010 showed slight differences (see table 9).

**Table 9 Party policy position on the CFP in the UK 2005-2010**

<b>Labour</b>	<b>Conservatives</b>	<b>Liberal-Democrats</b>	<b>SNP</b>
A Reform of the CFP, led by the UK, not the EU.	From 2005, the Conservatives pleaded for a reform of the CFP rather than complete withdrawal which was the general policy line during the Howard leadership <sup>590</sup> . Its main focus lies thereby on the ending the fish discards. <sup>591</sup>	A reform of the CFP <sup>592</sup> with a greater role for the devolved administrations and decisions should be made on a regional basis with more powers being given to fishermen, scientists and communities. <sup>593</sup>	Complete UK withdrawal from the CFP. <sup>594</sup>

### 5.3.2 Expected causal process

As the scrutiny of this EU legislative file takes place during a single party in government, the expected causal process for this case is as follows:

EU legislative proposal: sent to Council, EP and NPs → Single party government and NP → Little discussion in government → one view on EU proposal → Little dependence on NP → NP: limited use of mechanisms to influence (majority in NP is government party) → NP agrees with government → no parliamentary impact.

<sup>590</sup> Wanlin, 2005.

<sup>591</sup> The Conservatives, *Vote for Change, European Election Manifesto*, 2009.

<sup>592</sup> <http://www.libdemvoice.org/tag/common-fisheries-policy>

<sup>593</sup> The Liberal Democrat Manifesto for the 2009 Elections to the European Parliament.

<sup>594</sup> [www.politics.co.uk](http://www.politics.co.uk), *Common Fisheries Policy*.

### 5.3.3 Background of the proposal

This draft regulation brings together in one measure all the control elements of the CFP, addressing the issues highlighted by the European Court of Auditors (ECA). Its aim is to limit and control catch volumes by setting total allowable catches and national quotas coupled with technical rules and effort schemes. The European fisheries control policy is at the heart of the CFP because its credibility depends on effective application of this control policy. Despite some progress, the control system continues to suffer from substantial shortcomings.<sup>595</sup>

### 5.3.4 Parliamentary scrutiny of the EU legislative file during the seven steps of the OLP<sup>596</sup>

This section discusses all different steps of the OLP of the EU legislative file regarding the Compliance with CFP Rules and whether the HC used its formal powers to either influence and/or control their government's EU policy position at any point of the scrutiny and if so, whether its attempts had any effect.

#### Step 1 (Publication) and 2 (NP has 8 weeks to respond/not relevant)

At this stage, no evidence is expected to be found as the NP needs time to prepare the EC legislative proposal.

The EC publishes its draft regulation on 14<sup>th</sup> November 2008.<sup>597</sup> It is deposited in the HC on 20<sup>th</sup> November 2008.<sup>598</sup> On 18<sup>th</sup> November 2008 the Council<sup>599</sup> discusses the topic for the first time<sup>600</sup>, but the HC has not had any time to prepare any input into its government's position.

#### Step 3 Ex ante influence phase

To be able to confirm the causal mechanism during this stage, evidence must be found showing that little discussion about this topic was undertaken by government and, as a

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<sup>595</sup> See COM(08) 721.

<sup>596</sup> For more information on these steps, see Appendix I and II.

<sup>597</sup> <http://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1436207868034&uri=CELEX:52008PC0721>

<sup>598</sup> HC ESC, 12<sup>th</sup> Report, Session 2008-2009, 18<sup>th</sup> March 2009.

<sup>599</sup> Press Release, 2904<sup>th</sup> meeting of the Council, Agriculture and Fisheries, Brussels 18-20 November 2008.

<sup>600</sup> <http://eur-lex.europa.eu/legal-content/EN/HIS/?uri=CELEX:52008PC0721&qid=1436207868034>

consequence of it being a single-party administration, there is little need for it to seek parliamentary input.

On 10<sup>th</sup> February 2009, DEFRA publishes its EM<sup>601</sup> (initial position of the government). From the EM it appears that the UK government supports this new control regulation, but needs to ensure that new burdens on industry and administrations be proportionate. Besides, the Minister, Mr Huw Irranca-Davies, argues that:

‘The mandate of the Community Fisheries Control Agency would be extended beyond its current facilitating role into one of policing Member States' activities: he believes that it is not appropriate for the Agency to carry out this sort of function, which should be the sole responsibility of the Commission.’<sup>602</sup>

The Minister outlines that the government continues to work with industry and will draft an Impact Assessment (IA), including the financial impact of the control regulation for the UK.<sup>603</sup>

The ESC considers this proposal to be a combination of importance<sup>604</sup> and complexity, which is why it decides to forward the document for scrutiny by European Committee A.<sup>605</sup> This committee is one of the three ad hoc European Committees (A, B and C) dealing with certain topics<sup>606</sup>. It thereby uses its formal powers to include another, more specialised, committee in the scrutiny of this case. In addition, the committee uses its formal powers by asking questions to government in the field of costs relating to the measures proposed and shows its concerns about the public acceptability of this control proposal. Involvement of Committees (A, B, C) is normally undertaken in an important case. This is confirmed in interviews:

‘The scrutiny gets transferred to Committee if they want something debated. That is a parliamentary mechanism, whereby they say that we collectively

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<sup>601</sup> HC ESC, 12<sup>th</sup> Report, Session 2008-2009, 18<sup>th</sup> March 2009.

<sup>602</sup> DEFRA, *Explanatory Memorandum on European Community Legislation*, COM(2008)718, 10<sup>th</sup> February 2009, par. 7

<sup>603</sup> *Ibid.*, par. 8.

<sup>604</sup> Based upon the indicators in the Research Design Chapter, this refers to importance for the legislative actors, not necessarily for the electorate.

<sup>605</sup> HC, *European Scrutiny System in the HC*, May 2015, p.21).

<sup>606</sup> HC ESC, 12<sup>th</sup> Report, Session 2008-2009, 18<sup>th</sup> March 2009, par. 2.14.

think that this is a major issue, and the government needs to be given a bit of a serious questioning on this'.<sup>607</sup>

However, data for this stage indicates that the NP does not show its own opinion about the contents of the EU legislative proposal and does not try to create an impact on the government's position. This is as expected, but there is no sign that this is a consequence of the single party government. Interviewees confirm that it is the contents of the topic that are relevant here and not the single party government. According to Benyon, the debate on the CFP was not yet so controversial at that stage<sup>608</sup> and the scandal of the discards, which made the reform so urgent, only became relevant in 2011.<sup>609</sup> In other words, it was the timing of the process rather than the single party component. This is confirmed by ClientEarth, an environmental law organisation, which lobbied the government on the CFP but only started to work with the UK government intensively in 2010-2011 as the real reform of the CFP became an issue.<sup>610</sup>

The first three stages of scrutiny have finished here. The minor use of formal powers by the NP and the small amount of contact with the government at this stage - neither the government party, Labour, nor the opposition intend to spend more time on this topic than the basic scrutiny requires (with the exception of the referral to European Committee A) - is as expected. Although the ESC meeting of 18<sup>th</sup> March 2009 is included here, this should not be considered an ex ante influence attempt, as the ESC does not intend at any time to influence the government. It is, rather, an attempt to hold the government to account ex ante. The next Council meeting, during which the draft regulation would be discussed again, would not be until June 2009. A meeting with the government, which would be held just before the Council meeting, would allow the HC to have a proper influence on the topic, as the exact contents of the Council meeting would be clearer. A meeting taking place in the middle of the OLP (five months after the publication and three months before the next Council meeting) should be considered more as an 'exploratory' meeting, during which the NP asks for and receives more information about the case rather than exerting its influence.

#### Step 4 Ex post control step

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<sup>607</sup> Benyon, 25<sup>th</sup> June 2015.

<sup>608</sup> Benyon, 25<sup>th</sup> June 2015.

<sup>609</sup> Benyon, 25<sup>th</sup> June 2015.

<sup>610</sup> Luk, 5<sup>th</sup> August 2015.

On 23<sup>rd</sup> June 2009, the Council reaches a common position on this file.

To be able to confirm the causal mechanism at this stage, evidence must be found of the NP using its normal formal powers<sup>611</sup> to hold government to account after the EU Fisheries Council and not to increase its efforts.

On 17<sup>th</sup> July 2009 the government published a second EM, including the IA<sup>612</sup>. In the EM, DEFRA shows concern over the impact of the proposal on recreational fisheries, the consequences for direct sales to processors and merchants, and the position of the Community Fisheries Control Agency (CFCA).<sup>613</sup> The IA gives an indication of the costs (one-off costs of about £4.3 million and an average annual cost of £531,000) and benefits (between £2.027 and 2.701 million).<sup>614</sup>

On 10<sup>th</sup> August 2009 the DEFRA Minister sent a letter to the HC to inform it about the latest version of EC regulation, including the remaining concerns for the UK government (provisions on recreational fishing would now focus on data collection, with additional management measures applying only if there is shown to be a specific problem).<sup>615</sup> The EC has agreed to amend the provision which would have required fish under quota to be sold only through auction.<sup>616</sup>

After the Council meeting, the government did not inform parliament on the discussion outcomes and to what extent the UK's input reflected any previous discussions it had had with the HC. The HC, therefore, does not get a chance to hold its government to account on this, and there is no evidence that any questions are raised by MPs at a later stage, to get clarifications about the outcome of the Fisheries Council.

However, the government does inform the HC by means of a second EM with an IA and it also sends the HC another letter, later in August, to inform the HC of the latest version of the EC regulation which the latter adopted after the Council meeting of June 2009. However, there is no evidence found of any *active* forms of parliamentary control (such as the right to ask questions).

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<sup>611</sup> One meeting at the ESC, with attendance of the responsible minister, took place *after* the Council meeting.

<sup>612</sup> HC ESC, 28<sup>th</sup> Report of session 2008-2009, 10<sup>th</sup> September 2009.

<sup>613</sup> *Ibid.*, par. 1.7.

<sup>614</sup> *Ibid.*

<sup>615</sup> *Ibid.*, par. 1.8.

<sup>616</sup> *Ibid.*

Interviews confirmed that MPs chose not to use their formal powers in this case as there was no real division in this field and other topics were of priority.<sup>617</sup>

#### Step 5: Ex ante influence phase

To confirm the causal mechanism during this step of the OLP, little or no attempt<sup>618</sup> by the HC to achieve an impact on its government's EU policy position is anticipated. The HC is a NP, where any possible impact on government takes place via controlling its actions *after* a meeting.

On 10<sup>th</sup> September 2009 the ESC discusses the draft control regulation for a second time.<sup>619</sup> It brings the draft regulation to the attention of the House. No attempts to create an impact are made during this meeting (no use of formal powers).<sup>620</sup>

On 13<sup>th</sup> October 2009, the case is discussed by the European Committee A, which is attended by the Minister, Huw Irranca-Davies (the parliament therefore makes use of its formal powers).<sup>621</sup>

The Parliamentary Under-Secretary of State for DEFRA (Huw Irranca-Davies, Labour) informs the Committee:

‘In March last year, this Committee, under my predecessor, debated a report by the European Court of Auditors, which was highly critical of what it saw as widespread failings in the Community fisheries control system. At that time, the Committee approved a motion supporting the Government's aim of contributing positively to discussions for further improvements in fisheries management and control, thereby contributing to the long-term sustainability of fish stocks. I very much welcomed the deliberations of the Committee at that time on that subject’.<sup>622</sup>

The Minister apologises furthermore for taking so long in discussing this topic with the Parliament (the HC has no agenda-setting rights) which is due to the complexity of the

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<sup>617</sup> Rees-Mogg, 22<sup>nd</sup> June 2015, Hopkins, 25<sup>th</sup> June 2015, Smith 2<sup>nd</sup> July 2015.

<sup>618</sup> No more than one ESC meeting, asking for information and no attempts to have an impact on the contents.

<sup>619</sup> HC ESC, 28<sup>th</sup> Report of session 2008-2009, 10<sup>th</sup> September 2009.

<sup>620</sup> Ibid.

<sup>621</sup> HC, European Committee A, 13<sup>th</sup> October 2009, session 2008-2009.

<sup>622</sup> Ibid., column 4.

topic, he explains (this prevents parliament from using its formal powers). However, this meeting takes place before the Council meeting, giving parliament the chance to offer proper input into the UK government's position (ex ante influence was, thus, created by the government). Irranca-Davies also points out the remaining priorities for the UK government and that it will push hard to address these issues before the final proposal is adopted:

‘We are very concerned about the proposal in article 82 that would require us to impose minimum penalties for serious infringements. In our view, that proposal goes beyond similar provisions establishing maximum penalties in the regulation on illegal, unreported and unregulated fishing.’<sup>623</sup>

The Minister concludes, commenting that he looks forward to hearing the views of the committee members. Several members of the European Committee asked questions about the contents of the draft regulation.<sup>624</sup>

On 14<sup>th</sup> October 2009, a reference was made to the Fisheries Council of 19<sup>th</sup> and 20<sup>th</sup> October 2009 which would discuss the Common Fisheries Control Regulation during the plenary session of the House (as a written ministerial statement by the Secretary of State for Environment, Food and Rural Affairs, Hilary Benn MP). No reference to the contents of the regulation is made.<sup>625</sup>

The European Committee A, a specialised committee, has been designated by the ESC to deal with this EU legislative proposal because of its technical expertise in this field. The government meets up with this Committee less than a week before the actual Fisheries Council and offers Parliament a real chance to shape government input into the Council meeting. However, the minutes of the meeting between the European Committee A and the Minister indicates no evidence of MPs using this chance to have an impact on the government's EU policy position. This is, however, in line with the causal process which expected that the MPs would make little use of their formal powers. Interviews confirmed that no use was made of formal powers, but that was a consequence of the topic of the debate. CFP was just not so relevant at the time.<sup>626</sup>

#### Step 6: Ex post control phase

<sup>623</sup> Ibid., column 5.

<sup>624</sup> Ibid., column 6.

<sup>625</sup> HC, written ministerial statement, Hilary Benn, 14<sup>th</sup> October 2009, column, 32WS.

<sup>626</sup> Rees-Mogg, 22<sup>nd</sup> June 2015, Hopkins, 30<sup>th</sup> June 2015, Smith, 2<sup>nd</sup> July 2015.

To confirm the causal mechanism at this stage, it is expected that the NP does little to hold government to account. It is possible that the HC will follow standard procedures to control its government at this stage, but it is expected that it will not be active<sup>627</sup> in finding out what the government has contributed during the Council and to what extent this is in line with Parliament's position. As the government consists of only one party, the majority of MPs will be of the same party often holding the same views. The government also holds a unified position and is therefore less dependent on the approval of the HC. It can therefore act as a trustee in this case, which it clearly does. The relationship between the government and the NP is basically limited to the government giving feedback of its actions to the NP. It has the total freedom to act according to its own judgement, and formal powers are used passively (reception of information).

On 19<sup>th</sup> October 2009 a debate takes place in the Council.

On Tuesday 10<sup>th</sup> November 2009, the Secretary of State for DEFRA (Hilary Benn MP) sent a written statement to the HC to inform it about the agreement reached at the Agriculture and Fisheries Council of 19<sup>th</sup> and 20<sup>th</sup> October 2009 regarding the Common Fisheries file.<sup>628</sup> In the statement Benn explained that before coming to an agreement, the EC held trilateral meetings with many members and the UK had its first trilateral meeting during which it focused on

‘... [T]hree significant priorities that had to be resolved, which comprised an offending provision on recreational fishing; demands on weighing tolerance; and the removal of the provision on minimum levels ... The final compromise included all the points prioritised by the UK. In a final table round, the compromise was adopted by unanimity.’<sup>629</sup>

The HC does not raise any questions about this information. It opts out on using its formal powers.<sup>630</sup>

As expected, the NP does not take any action to check the government's contribution to the Fisheries Council at this stage. The government sends

<sup>627</sup> It is expected that the NP will receive information from the government, without asking more questions about it.

<sup>628</sup> HC, Written Ministerial Statement, 10<sup>th</sup> November 2009, Column 15WS.

<sup>629</sup> HC, Written Ministerial Statement, 10<sup>th</sup> November 2009, *Agriculture and Fisheries Council*, column 16 WS.

<sup>630</sup> Ibid.

information to the HC regarding the outcome of the meeting, but that is the end of the scrutiny process.

#### Step 7: 20<sup>th</sup> November 2009

The act is adopted in the Council.<sup>631</sup> Member states agree upon a point system for serious infringements, which can lead to fishing licensing being suspended. Inspection procedures will be standardised and harmonised. The EC will be granted with new inspection powers.<sup>632</sup>

#### **5.3.5 Concluding remarks**

The scrutiny process of this case is intermittent, where only step five shows clear signs of ex ante influence chances. The other meetings of the ESC and contacts with the relevant Minister are not clearly timed before or after EU Council meetings. However, even during step five when the Minister attends a specially organised European Standing Committee meeting, the discussion consists solely of asking for clarification of the proposal and a justification of the UK's support for it rather than of an input by the NP regarding priorities and possible changes. The parliamentary use of formal powers is thereby limited to receiving information, but no attempts to have an impact were made. Based upon the theoretical argument the use of formal powers was expected to be limited during the scrutiny of a single party government, as with a majority in the NP and without the need to find a compromise with other coalition partners, the government has more freedom to act according to its own judgement. This is indeed reflected in the scrutiny of this case.

It can therefore be concluded that the causal chain of this case is confirmed. However, interviewees argued that MPs chose to make less use of their formal powers in this case, as a choice must be made when scrutinising the vast number of EU legislative files it deals with, and the reason for limiting the use of formal (and informal) powers is a result of different factors which are not related to the single party government. The main reason is the timing of the process. The CFP received a lot of criticism, also in the media, particularly once the scandal of the discards came to light. However, this was not

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<sup>631</sup> Press Release, 2976<sup>th</sup> Council meeting, Agriculture and Fisheries, Brussels, 20<sup>th</sup> November 2009.

<sup>632</sup> European Commission, press release, 31st December 2009, MEMO/09/571.

until 2010-2011.<sup>633</sup> In other words, the absence of salience in case two seems to be the main explanatory factor for the NP to not make use of its formal powers in this case.

### *Measurable impact*

During the OLP, the HC has not tried to influence the government's EU policy position and therefore there has been no impact in this case (weak). Interviews confirm that the government has followed its own position in this field<sup>634</sup> (so, no anticipated reactions either). Although the NP shows the importance of the case by referring it to the European Committee A and for a debate in plenary, the use of formal powers by the HC is limited to the seeking of clarifications and extra information which the government provides. Impact is not visible and the HC has no control over the position of the government to the Council, but this has not the objective of the HC. The HC wanted to check the government, not change its position. The different steps of the process-tracing analysis has shown that the EM (the first position of the government) did not change at any point as a consequence of any input of the HC.

## **5.4 Pair-wise comparison C1 to C2**

When the scrutiny of this case is compared to that in C1, during which the HC scrutinised a multi-party government of a similar type of EU legislative file, the differences in the levels of debates and active use of formal powers by the HC (such as asking questions and discussions in sectoral committees) are obvious (see also table 10).

In both cases, the HC increased the use of its formal powers, as it involved the European Committee A and it holds meetings with the government before Council meetings.

However, the main difference between the scrutiny of the two files is that in the multi-party case, the HC made many attempts to convince government from its own opinion by actively expressing its own views. In the case of the single party government, although it shows forms of ex ante formal powers, it limits them to control the government's actions in this case and to receive information. At no point did it attempt to impact the government position. However, as discussed during the different steps of the OLP, according to interviewees the factors explaining this increased use of formal

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<sup>633</sup> Benyon, 25<sup>th</sup> June 2015, Luk, 5<sup>th</sup> August 2015.

<sup>634</sup> Clayton, 21<sup>st</sup> July 2015, Smith, 2<sup>nd</sup> July 2015.

powers in order to create an impact are diverse, but none are related to the coalition government. According to Clayton, head of the CFP Reform at DEFRA at the time, the Liberal Democrats and Conservatives had no real opposing views on the Reform of the CFP (externally).<sup>635</sup> According to the opposition in the NP, the main goal of the Liberal Democrats at the time was to stay in government.<sup>636</sup> This is confirmed by other MPs<sup>637</sup> and civil servants working on Fisheries files at DEFRA.<sup>638</sup> According to Rees-Mogg MP (Conservative), there was a simple reason for increased scrutiny of the reform of the CFP:

‘The CFP has a direct effect on the livelihood of people of certain constituencies doing fishing. This affects fishermen across the country.’ Other fish topics have less direct effects on people’s livelihoods. Therefore it is less likely for MPs to be active on. It does not mean that other topics are not important. This is how a selection is made. We scrutinize about 1000 documents a year, only a limited number (35) gets to be discussed in the ESC and an even smaller number makes it to the House (half a dozen). We select issues that MPs have direct links with through their constituencies and therefore would like to get involved.’<sup>639</sup>

This is supported by Hopkins MP (Labour):

‘The CFP dealt with the overall policy, it affected much more. Other issues, such as the Compliance file and Cod Recovery were more about the detail. We deal with so many topics and have limited time. We knew that the CFP would do so much damage, so we chose it to work hard on it.’<sup>640</sup>

This assumes that the salience condition has been the main explanation for the variation in the use of formal powers and that the number of political parties in government, as discussed during the theoretical argument in Chapter 3, does not necessarily lead to increased powers of the NP. In other words, although on paper it seems that all conditions but one in both cases are constant, in C1 the salience condition is more active than in C2.

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<sup>635</sup> Clayton, 21<sup>st</sup> July 2015.

<sup>636</sup> Hopkins, Labour, 30<sup>th</sup> June 2015.

<sup>637</sup> Smith, Conservative, 2<sup>nd</sup> July 2015.

<sup>638</sup> 21<sup>st</sup> May 2015.

<sup>639</sup> Rees-Mogg, 22<sup>nd</sup> June 2015.

<sup>640</sup> Hopkins, 30<sup>th</sup> June 2015.

According to Benyon and others, there are additional reasons which explain the increased activity of the ESC during 2010-2015. The ESC, under the chairmanship of Bill Cash MP (Conservative), was a very active and Eurosceptic committee at the time. It was more aggressive than previous committees.<sup>641</sup> However, when comparing C1 to another multi-party government case, namely the cod recovery case (C1a, see appendix V), the use of formal powers by the same 2010-2015 ESC is limited compared to the scrutiny of the reform of the CFP, which makes this factor less relevant than that about timing and salience (see also table 11). According to MPs, the Reform of the CFP was much more contentious than other Fishery files and had become politicised and Europeanised.<sup>642</sup>

For the first two years of the 2010-2015 coalition government, DEFRA did not have a Liberal Democrat Minister which meant that the Conservatives with Caroline Spelman MP, as Secretary of State, and Richard Benyon MP, as the Minister, did not have to find a common position with them in this file. Clayton (former head of DEFRA CFP Reform) argues that the fact that the NP scrutinised a single party government did not play a role in the increased scrutiny of the NP in this file.<sup>643</sup> This is confirmed by several MPs.<sup>644</sup>

Hopkins MP (Labour) who calls himself Eurosceptic argued about this period:

‘The Blair/Brown Labour government was very pro-EU. They made it difficult for MPs like me to have a say. In 2010 a few more Eurosceptic left-wingers have come in.’<sup>645</sup>

In other words, for Hopkins it appeared even harder to impact his “own” single party government on EU issues, as he was one of the few Eurosceptic outliers. As the Conservative party has become more divided, Hopkins felt it easier to impact this government instead of the single party Labour administration. In other words, the increased chances for MPs to have a say on EU issues is not so much related to the number of parties government, but more to the different views on the EU. This is also shown in the contribution by Austin Mitchell (a Eurosceptic Labour MP) during the ESC meeting of 15<sup>th</sup> March 2012 when he argued that the only reason why he had been

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<sup>641</sup> Benyon, 25<sup>th</sup> June 2015, Smith MP, 2<sup>nd</sup> July 2015.

<sup>642</sup> Rees-Mogg, 22<sup>nd</sup> June 2015, Hopkins, 30<sup>th</sup> June 2015, Smith, 2<sup>nd</sup> July 2015.

<sup>643</sup> 21<sup>st</sup> July 2015.

<sup>644</sup> Rees-Mogg, 22<sup>nd</sup> June 2015, Hopkins, 30<sup>th</sup> June, Smith MP, 2<sup>nd</sup> July 2015.

<sup>645</sup> 30<sup>th</sup> June 2015.

happy that the Conservatives had won the 2010 election was because of their views on Europe.

Influencing the current single party government of David Cameron (2015-present) could therefore be equally easy when it comes to EU issues, as although the government consists of only one party, this Conservative party is highly divided on EU-related topics. The extent to which a government divided on EU issues can lead to increased parliamentary impact on its EU policy position will be dealt with in the next Chapter.

### *Shadow pair-wise comparison*

In order to increase the outcome of this evidence, another pair-wise comparison has been added during which again two shadow cases are compared: one is scrutinised during the multi-party government and the other during the single party administration of 2005-2010. Both topics are typical cases dealing with EU fisheries policies and are dealt with by DEFRA in the UK and are of similar salience as C1 and C2. The outcome of this comparison can be seen in table 11 (see appendix V for an elaboration of the two alternative cases).

The shadow multiparty condition case (1a) examines the Cod Stock proposal of the EC<sup>646</sup> during the coalition government 2010-2015 while the alternative single party case (2a) looks at the scrutiny of the Cod Recovery Plan<sup>647</sup> during the Labour government of 2005-2010.<sup>648</sup> From the comparison of the use of formal powers during the seven steps of the OLP in C1a and C2a, it appears that during the single party government the ESC increased its use of formal powers (see table 11). When talking to interviewees about these files, it appears that the increased use of formal powers in the Cod Recovery Plan is that there was more at stake in the first file compared to the second.<sup>649</sup> However, compared to the Reform of the CFP these files are both considered to be of minor need to use formal powers as there was less at stake and it was considered to be a less worrying topic amongst constituents:

‘The CFP is a much more contentious, political issue in the country. It’s more political. It had been for some time. There is a higher level of attention

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<sup>646</sup> COM(2012)21.

<sup>647</sup> COM(2008)162.

<sup>648</sup> For more information about the different steps of the scrutiny process of these cases, see appendix V.

<sup>649</sup> Rees-Mogg, 22<sup>nd</sup> June 2015, Hopkins, 30<sup>th</sup> June 2015, Clayton, 21<sup>st</sup> July 2015, Luk, 4<sup>th</sup> August 2015.

and scrutiny. Other issues, like cod recovery are more standard issues, relative obscure.<sup>650</sup>

‘This topic was getting more flag in 2011, we got alarmed about it. The fish stocks were devastated.’

‘There was a library note, produced by the HC Library office on how serious it was. Terrible devastation of fish stocks.’<sup>651</sup>

‘The cod recovery plan had already been dealt with before and there was less at stake than in the reform of the CFP.’<sup>652</sup>

When comparing C1a and C2a, it is evident again that the multi-party condition does not make a difference with regard to the use of formal powers by the NP. This pair-wise comparison also confirms that salience seems to be a more relevant condition for NPs to make use of formal powers than the partisan composition condition. In conclusion, all different used methods show that the hypothesis arguing that a multi-party government is a favourable condition for NPs to increase their measurable impact on government EU policy position cannot be confirmed with any evidence.

This shadow pair-wise comparison also compared the case of a file that was adopted after the Lisbon Treaty had come into force (C1a), while the second took place before the Lisbon Treaty (C2a). When comparing C2a (single party, pre-Lisbon) to C2 (single party, post-Lisbon), there seem to be similar levels of formal powers used in both cases (C2 refers the file to a European Committee A) and both committees use some ESC meetings *before* the Council meetings. The Lisbon factor has not changed the levels of scrutiny in these files. The four different cases used to analyse the partisan composition condition show very clearly which conditions are at work (salience) and which are not (partisan composition, Eurosceptic government and Lisbon).

However, as we have seen, the interviewees also indicated that other reasons, such as the more Eurosceptic ESC during the multi-party government increased the use of formal powers. This is in line with the expected causal process in the second hypothesis of this thesis which looks at the relationship between the use of formal powers leading

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<sup>650</sup> Smith, 2<sup>nd</sup> July 2015.

<sup>651</sup> Hopkins, 30<sup>th</sup> June 2015.

<sup>652</sup> Benyon, 25<sup>th</sup> June 2015.

to an increased impact where the government depends on a Eurosceptic party. The next Chapter will look into the presence of this Eurosceptic condition.

**Table 10 Outcome of the Pair-wise Comparison between Case 1 and Case 2**

<b>Seven steps of OLP</b>	<b>Use of formal powers CASE 1 (<u>multi-party gov</u>)</b>	<b>Use of formal powers CASE 2 (<u>single party gov</u>)</b>
<b>1: publication</b>	X	X
<b>2: eight weeks</b>	- Reception of EM (right to information)	X
<b>3: first influence phase</b>	- Different meetings with government (including expression of opinions) - Inclusion of sectoral committee (Committee A) - Several requests for further information - Reception of several letters (right to information) - Expression of opinion regarding the procedures. - Inquiry EFRAC	- Reception of EM - Meeting ESC - Involvement of sectoral committee - Question to government (contents)
<b>4: first control phase</b>	X	- No information on outcome of Council meeting. - Reception of second EM + IA - Letter from government.
<b>5: second influence phase</b>	- Reception of government letter (information) - Letter to Gov.	- Meeting ESC - Plenary meeting - Meeting European Committee A with Gov.
<b>6: second control phase</b>	- Correspondence with Government	- Letter about the outcome of the Council meeting.
<b>7: adoption</b>	X	X
<b>IMPACT</b>	Weak	Weak

**Table 11 Outcome of the Pair-wise Comparison between Case 1a and Case 2a**

<b>Seven steps of OLP</b>	<b>Use of formal powers CASE IA (<u>multi party</u>)</b>	<b>Use of formal powers CASE IIA (<u>single party + pre Lisbon</u>)</b>
<b>1: publication</b>	X	X
<b>2: eight weeks</b>	X	X
<b>3: first influence phase</b>	EM ESC meeting	X
<b>4: first control phase</b>	X	EM Letter government Meeting ESC
<b>5: second influence phase</b>	X	X
<b>6: second control phase</b>	X	Letter government IA government
<b>Extra influence phase</b>	X	ESC meeting
<b>Extra control phase</b>	X	2 letter government ESC meeting
<b>7: adoption</b>	X	X
<b>IMPACT</b>	Weak	Weak

## Chapter 6

### Euro-scepticism

#### 6.1 Introduction

Turning to the next explanatory factor, this second Chapter of the empirical analysis deals with the use of formal powers by the Dutch Second Chamber (SC) when scrutinising a government depending on Eurosceptic support (the Rutte I coalition 2010-2012) in a pair-wise comparison with the use of formal powers by the same NP, and a government that does not depend on Eurosceptic support (Rutte II 2012 - present).<sup>653</sup> The partisan composition variable will be constant<sup>654</sup> and the salience<sup>655</sup> and Lisbon<sup>656</sup> variables are absent for both cases in this comparison. The Dutch NP is considered to be a policy-shaper (see Chapter 5.4.1.1) with moderate formal powers which, however, consists mostly of ex ante influence mechanisms, allowing the NP more chances to impact its government's EU policy position. The NP is, however, expected to increase its impact even further in the case of the scrutiny of a coalition government which is dependent on a Eurosceptic party.

The cases have been selected on the independent variable. In other words, they have been chosen based upon the presence in the first case and absence in the second of the Eurosceptic condition. The topics that were scrutinised both cover the European Railways Policy, but during different governments.

More specifically, the first selected EU legislative file (C3) had to start during the Rutte I government, 2010-2012, which consisted of the VVD, the liberal party, the CDA, Christian-Democrat Party, along with the so-called 'tolerating' support of the PVV<sup>657</sup>

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<sup>653</sup> For more information on the political parties in the Netherlands, see Appendix IV.

<sup>654</sup> In both cases the parliament scrutinises a multi-party government.

<sup>655</sup> No references are made to this topic in any of the governing party manifestos (Liberals, Christian Democrats with the support of the Party for Freedom) which are used as an indicator to measure 'salience of the electorate', and transport does not appear to be one of the major concerns of Dutch citizens in the years of publication of EU proposals according to the Euro-Barometer (Standard Euro-barometer 74, 2010, and 78, 2012, question 7 the Netherlands).

<sup>656</sup> Although the Lisbon Treaty came into force in 2009, a year before the publication of this EU legislative proposal, the NP does not make use of its new powers for this EU legislative file. This is the same for case 4 which stabilises this variable.

<sup>657</sup> A Eurosceptic anti-Islam party (Kanne, 2011:31).

and the Party for Freedom<sup>658</sup>. None of these parties gave any attention to the First Railway Package in their political party manifestos, making the file non-salient to the electorate based upon the indicators (see Chapter 4.3.3). However, the VVD and CDA differ from the PVV principally when it comes to issues such as an internal market for railways - the PVV does not want the EU to deal with anything related to the EU<sup>659</sup>, although in 2010 its party programme is still mostly anti-Islam focused, it also opposed EU integration<sup>660</sup> - which is covered by this topic. It therefore seemed to be a topic where the chance of having different opinions within government and between government and the NP, is highly likely.

The second case (C4) also deals with European railways, but this time it is the Fourth European Railway Package being scrutinised by the NP during the coalition government of Rutte II which came into power in 2012 and consists of a coalition between the liberals (VVD) and social-democrats (PvdA). Again, none of the political parties in the coalition government<sup>661</sup> refer to the importance of railways in their party manifestos, but as the topic covers issues related to the free market of railways, it is expected that the coalition partners in government and the NP have opposing views on this topic (as the coalition consists of a left wing and right wing party) which might facilitate the attempt to distinguish parliamentary impact (or its lack).

The first section of this Chapter begins with the analysis of the first case (C3), consisting of tracing the processes during the seven steps of the OLP added with data extracted from interviews. It is followed by a similar analysis of the second case (C4), and will be concluded by a pair-wise comparison between the two cases. In order to increase the internal validity of the analysis, the outcome of the comparison is compared to the use of formal powers in two other cases, one dealing with the scrutiny of the Integrated Maritime Policy (IMP), which was scrutinised during Rutte I (2010-2012) and the other case covered the Port Services Directive (PSD), which was scrutinised during Rutte II (2012-present).

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<sup>658</sup> After the Dutch General Elections of 2010, the VVD became the biggest party. It tried to form a coalition with the CDA, but as it ended up in a minority government, it needed the support of a third party. The PVV did not physically enter government, but did form part of it by actively giving support. In other words, it 'tolerated' the government. This was the first, and so far only, time in Dutch political history that such a construction had to be invented to create a 'stable' coalition between different political parties.

<sup>659</sup> Kanne, 2011:243.

<sup>660</sup> Rijksuniversiteit Groningen (RUG), Documentation Centre for Dutch Political Parties: <http://dnpp.ub.rug.nl/pp/pvv>

<sup>661</sup> VVD Verkiezingsprogramma, 2012, PvdA Verkiezingsprogramma 2012.

## 6.2 The Draft Directive on the First Railway Package (COM(2010)475<sup>662</sup>)

### 6.2.1 Party policy positions on EU Railway Packages

Although none of the major (those with two seats or more in the NP) political parties in the SC refer to the first Railway Package in their party manifestos in 2010, opposing positions during the negotiations on this file are expected due to the varying positions of the political parties in parliament on the extent to which the internal market should further develop and in what areas. This is part of the contents of this legislative file, see also table 12.

**Table 12 Party policy positions on the European Railways in the Netherlands.**<sup>663</sup>

VVD	CDA	PVV	PvdA	D66	GL	SP
In favour of more internal market and more competition in the field of railways. <sup>664</sup>	In favour of more internal market and more competition in the field of railways <sup>665</sup>	In favour of competition of railways <sup>666</sup> , but against further transfer of powers to EU. <sup>667</sup>	Pro EU integration, but against transfer of public procurement to EU level <sup>668</sup> , like the railways. This should remain in hands of the member states. <sup>669</sup>	Pro EU integration and pro-competition. Supports internal market for railways. <sup>670</sup>	Pro EU party, but believes that public services, such as the railways, should remain under the control of the member states. <sup>671</sup>	Anti-EU party and against internal market and competition. Public matters, such as the railways are a matter for the member states to decide upon. <sup>672</sup>

<sup>662</sup> <http://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1436351018980&uri=CELEX:52010PC0475>

<sup>663</sup> As no change in the positions of the political parties took place in this field since 2010, only one overview of party political positions for the two cases is given.

<sup>664</sup> [www.vvd.nl/standpunten](http://www.vvd.nl/standpunten)

<sup>665</sup> WRR, *Dertig jaar privatisering, verzelfstandiging en marktwerking*, Amsterdam University Press, Amsterdam 2012, p.35.

<sup>666</sup> [www.deondernemer.nl](http://www.deondernemer.nl), 24<sup>th</sup> November 2010, *Tweede Kamer wil af van Prorail*.

<sup>667</sup> Although the PVV was in 2010 mainly an anti-Islam party, it also pleaded for a return of powers from the EU back to the member states (see its party manifesto, 2010, p. 17).

<sup>668</sup> TK, 21 501-33, nr. 341, 6<sup>th</sup> October 2011.

<sup>669</sup> PVDA, *verkiezingsprogramma 2010*, 2010, p.46.

<sup>670</sup> TK, 21 501-33, nr. 329, 8<sup>th</sup> July 2011, p. 16-17.

<sup>671</sup> WRR, *Dertig jaar privatisering, verzelfstandiging en marktwerking*, Amsterdam University Press, Amsterdam 2012, p.51.

<sup>672</sup> TK, 21 501-33, nr. 329, 8<sup>th</sup> July 2011, p.3.

### **6.2.2 Expected causal process**

Because the NP must scrutinise governments depending on Eurosceptic support (hereafter: ‘Eurosceptic government’), it is expected that the NP will have more chances their government’s EU policy position, since the three coalition partners in this case do not agree on EU issues generally and are therefore more likely to have to accept compromises for which they need parliamentary support. The following causal process in this case is therefore expected:

Government with Eurosceptic coalition partner → EU issues appear more often on the government agenda → contention in government → government needs support from NP → discussions in NP by use of formal powers (committee meetings, plenary meetings coalition partners) → parliamentary parties give advice with either several or few formal mechanisms → Government is dependent on NP for support to gain a majority → NP’s position must be adopted by government to get support for its compromise → parliamentary impact.

### **6.2.3 Background of the proposal 1<sup>st</sup> Railway Package**

The current draft directive was published to revise the First Railway Package published in 2001. The new proposal deals with suggestions to improve an adequate finance system of, and charging for, all railway infrastructures, the conditions of competition on the railway market, and the organisational reforms needed to ensure appropriate supervision of the market. The overall objective of the proposal is the removal of obstacles for an improved functioning of the internal market in the European Railways. This will have to improve the competitiveness of goods and international passengers transport via the railways.<sup>673</sup>

### **6.2.4 Parliamentary scrutiny of the EU file during the 7 steps of the OLP<sup>674</sup>**

This section discusses all different steps of the OLP of the EU legislative file regarding the First Railway Package and whether the SC used its formal powers to either influence and/or control their government’s EU policy position at any point of the scrutiny and if so, whether its attempts had any effect.

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<sup>673</sup> See COM(2010)475.

<sup>674</sup> For more information on these steps, see Appendix I and II.

### Step 1: Publication

The draft directive is published on 17<sup>th</sup> September 2010<sup>675</sup> and forwarded to the EP and NPs. It is published under the OLP.

### Step 2: NPs have eight weeks to respond (deadline: 16 November 2010)

To be able to confirm the causal mechanism during this stage, evidence must be found of increased levels of scrutiny<sup>676</sup> by the NP as a consequence of the Eurosceptic government. During this stage, not much concrete evidence is expected to be found, other than potentially the initial government position. This is not published until 27<sup>th</sup> October 2010 during the first round of the ex ante influence phase. However, from the different coalition partners it is known that the VVD<sup>677</sup> and CDA<sup>678</sup> are in favour of a further liberalisation of the internal market by the EU, including the field of railways.<sup>679</sup> However, the third party upon which this coalition government depends, the PVV<sup>680</sup>, is a more Eurosceptic one, and opposes interference from the EU.<sup>681</sup> From the opposition parties in parliament, it is known that the majority of parties are against further liberalisation (PvdA<sup>682</sup>, SP<sup>683</sup>, GroenLinks<sup>684</sup> and the pro-animal party) while other, smaller opposition parties, such as D66<sup>685</sup> and the SGP<sup>686</sup> are supportive of further liberalisation.

The NP shows no objections against the publication of this EU legislative file (none of the EU NPs show any objections).

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<sup>675</sup> <http://eur-lex.europa.eu/legal-content/EN/HIS/?uri=CELEX:52010PC0475&qid=1436383048067>

<sup>676</sup> More than one meeting between the NP and government, during which the NP reveals its opinion and tries to influence the government to include this opinion into the Council negotiations.

<sup>677</sup> The Liberals and the biggest party in the coalition.

<sup>678</sup> The Christian Democrats.

<sup>679</sup> For more information on the political parties in the Dutch SC, see appendix IV.

<sup>680</sup> Party for Freedom.

<sup>681</sup> [http://www.parlement.com/id/vhnnmt7m4rqi/partij\\_voor\\_de\\_vrijheid\\_pvv](http://www.parlement.com/id/vhnnmt7m4rqi/partij_voor_de_vrijheid_pvv)

<sup>682</sup> Social Democrats.

<sup>683</sup> Socialist Party.

<sup>684</sup> Green Left.

<sup>685</sup> Democrats (centre).

<sup>686</sup> Reformed Protestant Party.

### Step 3: Ex ante influence phase

To be able to confirm the causal mechanism during this stage, evidence must be found showing increased levels of scrutiny by the NP (extra use of formal powers)<sup>687</sup>; a consequence of the government coalition partners not agreeing with each other on the contents of a legislative file.

On 11<sup>th</sup> October 2010 the government sends the agenda of the Transport Council of 15<sup>th</sup> October 2010 to Parliament.<sup>688</sup> It reports that at this stage the recently published First Railway Package will not be discussed in great detail as yet.<sup>689</sup>

Following on from that, on 12<sup>th</sup> October 2010, the I&E Committee sent several questions to the Secretary of State, including questions related to the draft directive regarding the revision of the First Railway Package.<sup>690</sup> These questions include opinions expressed by MPs and are therefore considered to be the first position of the SC in this case.

The Liberal party<sup>691</sup> (which is in government) show support for the revision of the directive, but has a few questions to the Minister (therefore using its formal powers to gain more information). The party queries whether it would be better to make a clear distinction between the European railway routes and the more local and regional ones. The party, furthermore, is of the opinion that it would be better to separate infrastructure and railways, such as is done between ProRail<sup>692</sup> and the NS<sup>693</sup> in the Netherlands.<sup>694</sup> This is a clear sign of a party trying to have an impact on the government's position. Interesting though, is that it is made by the party already in government and not by the opposition.

The PVV, the Party for Freedom (Eurosceptic party which supports the government) welcomes the EU proposals to increase European supervision.<sup>695</sup> There are member

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<sup>687</sup> The NP is considered to use more than its normal formal powers if it has one or more meetings with the government during one of the OLP steps whereby it explicitly expresses its opinion on the file.

<sup>688</sup> TK, 21 501-33, nr. 295, 11<sup>th</sup> October 2010.

<sup>689</sup> Ibid., p.2.

<sup>690</sup> TK, 21 501-33, nr. 297, 12<sup>th</sup> October 2010.

<sup>691</sup> VVD.

<sup>692</sup> Organisation in the Netherlands responsible for the railway network.

<sup>693</sup> Dutch National Railways.

<sup>694</sup> TK, 21 501-33, nr. 297, 12<sup>th</sup> October 2010, p.3.

<sup>695</sup> Ibid., p.4.

states which now do not invest enough in the maintenance of railways.<sup>696</sup> The PVV, however, asks of government to what extent the current proposals will be able to enforce these newer suggestions.<sup>697</sup> The PVV supports the anchoring of EU directives into national legislation, but only when there is a guarantee that sufficient actions will be taken against member states that are not doing enough.<sup>698</sup>

It is remarkable that the only two political parties that ask questions of the Minister are those parties which are in government and that they did so even before the publication of the first position of the government. The opposition does not take advantage of the different views of two coalition partners and makes no attempt to influence the government. When speaking about this to Mr Atsma, the responsible Minister at the time, he argued that this was a technical dossier which did not really cut along party lines. MPs chose therefore to raise questions about technical details rather than changing the whole EU proposal.<sup>699</sup>

Although the Eurosceptic party intervenes, it does not do so in order to question the EU as such and supports the proposal. It only wishes to improve it. In other words, despite the attempts to create parliamentary impact, this is unlikely to be due to the Eurosceptic support on which the government depends.

The Secretary of State gives the following answers to MP questions by letter. According to the Dutch Government of the time, the EC does not distinguish between international and more local and regional railway routes.<sup>700</sup> It is, however, possible for member states to exclude regional networks from the Directive. Besides, the Secretary of State does not think it useful to draw such a distinction, as doing so would hinder an optimal train service.<sup>701</sup>

With regard to the separation of the railways and the management of the infrastructure, the EC has begun legal procedures against those member states that have not yet correctly implemented the previous first Railway Package. Some of these procedures deal with the independence of the infrastructure manager. In other words, at this stage it

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<sup>696</sup> Ibid., p.4

<sup>697</sup> Ibid.

<sup>698</sup> Ibid.

<sup>699</sup> Atsma, 29<sup>th</sup> May 2015

<sup>700</sup> TK, 21 501-33, nr. 297, 12<sup>th</sup> October 2010, p.8.

<sup>701</sup> Ibid.

does not choose to include additional legislation in this field, but rather enforce compliance via the European Court of Justice.<sup>702</sup>

Because of these existing cases against failing member states, the government does not think it would be appropriate to raise the issue now in the Council.<sup>703</sup> The Secretary of State does not support parliamentary attempts to influence, even if it comes from one of the government's own parties.

### *Publication of the EM*

On 27<sup>th</sup> October 2010, the Dutch government publishes its 'fiche'<sup>704</sup>, hereafter EM, regarding this legislative file which includes its own opinion and an assessment of implications for the Netherlands.<sup>705</sup> This is considered to be the first governmental position in this case.

There could be financial consequences for the Netherlands, as some of the costs could be paid for by the state and the Dutch Government would need to further assess this, including the consequences for business and citizens (such as ticket prices).<sup>706</sup> The Dutch government is in principle positive about the proposal. In the evaluation of the domestic railways, similar topics emerged, such as capacity management, compensation for use and supervision of interests.<sup>707</sup>

In the European negotiations, the Dutch government says it will focus on the several issues, such as limitation of administrative burdens, sovereign influence of member states on further regulation of the directive, and in particular the question of financial implications for the state.<sup>708</sup> The state needs to keep the space in which to direct railway companies through shareholders and supervision of the railways needs to increase in the field of non-discrimination of railway companies. The member states also need to keep

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<sup>702</sup> Ibid., p.8.

<sup>703</sup> Ibid., p.8-9.

<sup>704</sup> A fiche is the Dutch version of an explanatory memorandum. It includes the first position of the government regarding an EU proposal and refers to possible financial and juridical consequences for the Netherlands.

<sup>705</sup> TK, 22 112, nr. 1073, 27<sup>th</sup> October 2010.

<sup>706</sup> Ibid., par.5.

<sup>707</sup> Ibid., par. 9.

<sup>708</sup> Ibid.

enough space to buy certain tools with the aim of improving their own railways.<sup>709</sup> No reference is made to any of the issues raised by the MPs on 12<sup>th</sup> October 2010.

The first stage for the NP to influence its government with its views on the First Railway Package ends here. As this case was dealt with after the Lisbon Treaty came into force, the Dutch SC scrutinises its government *before* the Transport Council<sup>710</sup>. The MPs make use of this right in this case but, interestingly, it is not the opposition that exercises its right but rather, two of the coalition parties in government. The PVV and the VVD - two parties from which opposing views on the contents of this legislative file were expected - ask the government some more technical questions and there is no proof of disagreement (at parliamentary level). In other words, although the governing parties hold opposing views on EU liberalisation, in the NP the scrutiny of the government is limited to technical issues (rather than political ones). There is evidence of the NP making extra efforts to scrutinise the government on this file (as it writes a letter with its views and questions to the government even before the EM has been published). However, the points raised in these questions are mostly of a technical nature or request clarification. Interviews confirm that the issue of the European Railways was not such a hot topic during the First Railway Package. It only received more attention during the Fourth Railway Package. According to Van Dongen, government representative of the Railways, the First Railways Package was not a controversial debate and there was only criticism on the execution of the file, but not on the contents. During the First Railway Package no real competences were transferred to the EU level, according to Van Dongen.<sup>711</sup>

#### Step 4: Ex post control phase

After the Transport Council of 15<sup>th</sup> October 2010<sup>712</sup>, the Government informs the SC about the outcome of the Council meeting via a letter written on 23 November 2010<sup>713</sup> (part of parliamentary formal powers), but no reference is made nor questions asked about the First Railway Package.

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<sup>709</sup> Ibid., par. 9.

<sup>710</sup> After the Lisbon Treaty came into force, the scrutiny of the Dutch government was changed from *after* the Council meeting to *before* it.

<sup>711</sup> Van Dongen, 3<sup>rd</sup> June 2015.

<sup>712</sup> Press Release, 3037<sup>th</sup> Council meeting, Transport, Telecommunications and Energy, Luxembourg, 15<sup>th</sup> October 2010.

<sup>713</sup> TK, 21 501-33, nr. 300, 23<sup>rd</sup> November 2010.

During this stage extra scrutiny was expected which would check whether the government had taken into account the position of the NP, but no more than formal procedures are followed which is contradictory to the expected causal process.

#### Step 5: Ex ante influence phase

To confirm the causal mechanism at this stage, evidence is needed showing increased levels of scrutiny<sup>714</sup> as a consequence of the government coalition partners having different views on the EU. This is mainly because the coalition government is dependent upon a Eurosceptic party. This increases the likelihood of EU topics being discussed compared with a coalition government which only consists of traditional political parties. This would favour the maintenance of the status quo regarding EU issues (see Chapter 3.4.2).

On 26<sup>th</sup> November 2010, the government sends a letter to parliament to inform it about the agenda of the 2<sup>nd</sup> December Transport Council<sup>715</sup> (part of the parliamentary formal powers consisting of receiving timely information). On 30<sup>th</sup> November 2010, the I&E Committee meets with the Secretary of State to discuss the government's input into the Council meeting. Regarding the revision of the First Railway Package, a progress report is due for publication by the EC.<sup>716</sup>

Mr Monasch MP (PvdA<sup>717</sup>, opposition) argues that the social democrats are not in favour of further liberalising the domestic railway market.<sup>718</sup> The Dutch market is considered too small to be dominated by a few players, especially if these would be state companies from other countries. The Dutch councils, provinces and the national authorities will have to decide themselves how to procure passenger transport. The main railway line, being in the hands of the state, should, according to the Social Democrats, not be subject to procurement at all.<sup>719</sup> Monasch, therefore, argues that the Minister should give a clear signal to Brussels. The secretary of state should make it clear in Brussels that the SNCF and the Deutsche Bahn would not be able to claim the Dutch

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<sup>714</sup> The NP is considered to use more than its normal formal powers if it has one or more meetings with the government during one of the OLP steps whereby it explicitly expresses its opinion on the file (see Chapter 3.3 regarding the operationalisation of the causal mechanisms).

<sup>715</sup> TK, 21 501-33, nr. 301, 26<sup>th</sup> November 2010.

<sup>716</sup> TK, 21 501-33, nr. 303, 30<sup>th</sup> November 2010.

<sup>717</sup> Social-Democrats.

<sup>718</sup> TK, 21 501-33, nr. 303, 30<sup>th</sup> November 2010, p.3-4.

<sup>719</sup> Ibid.

main railway network. It seeks firm promises in this respect from the Secretary of State.<sup>720</sup>

The PvdA supports the rules for noise reduction, but it wishes to keep the possibility of tariff differentiation to itself.<sup>721</sup> This could result in paying more for noisy trains.

This contribution contains clear left wing signs from the opposition, trying to slow down its right wing government. However, it also shows signs of further EU integration debate, namely the extent to which it is up to the EU or the member states to discuss public procurement issues.<sup>722</sup>

The social democratic arguments provoked a discussion between the CDA<sup>723</sup> (government party) and the PvdA at parliamentary level.<sup>724</sup> The CDA has no problem with private procurement at all and does not agree with the PvdA that the NS should always receive the concession. The viewpoint of the CDA is that if the NS does not supply as asked, the contract should be given elsewhere. The CDA hereby brings the discussion along the left-right division and away from EU integration division<sup>725</sup> (which could potentially create a division in coalition of which the CDA is a member).

The CDA MP, Mr Rouwe, asked the Secretary of State to give the government's opinion on procurement.<sup>726</sup> The Secretary of State is a member of the liberal party (VVD) which is known for its positive views on open markets including in the field of public procurement. The CDA is backed by the government on this.<sup>727</sup> Besides, Mr Rouwe asked the Secretary of State to give more information on the current government position on separating railway management and actual transport.<sup>728</sup> The CDA does not support the 'economic balance' as suggested in article 10 and 11 of the regulation and would like to hear the Secretary of State's position.<sup>729</sup> The CDA MP furthermore refers to some capacities that should not be in hands of the EC.<sup>730</sup> The CDA MP used its formal powers to gain more information and push for some technical changes, but (as a coalition partner) it does not challenge the government's input or widen the debate along the principle right/left pro/against further EU integration cleavage.

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<sup>720</sup> Ibid.

<sup>721</sup> Ibid., p.3-4.

<sup>722</sup> Ibid.

<sup>723</sup> Christian Democrats.

<sup>724</sup> TK, 21 501-33, nr. 303, 30<sup>th</sup> November 2010, p.4.

<sup>725</sup> Ibid.

<sup>726</sup> Ibid., p.5-6.

<sup>727</sup> Ibid.

<sup>728</sup> Ibid.

<sup>729</sup> Ibid.

<sup>730</sup> Ibid.

The Secretary of State, Mrs Schulz, replies that procurement is not on the agenda of the next Transport Council. However, since it might come on the agenda later, it is good to know the views of MPs already.<sup>731</sup> Domestically, she primarily wants to give the concession to the Dutch National Railways (NS), but only if its offer is good enough. This answer contains a compromise, as she meets the opposition halfway without leaving her own party's ideological convictions (private procurement if the NS can not deliver).<sup>732</sup>

With regard to the question of Monasch in relation to the rules for noise reduction, she supports decreasing the reductions for noisy trains. She adds that she will do her best for this in Brussels. In other words, the Minister takes the point of the Christian Democrat party (party in government), but also does not rule out including the position of the opposition once the item appears on the agenda.<sup>733</sup>

The compromise as suggested by Schulz does not go far enough for the opposition. The PvdA comments that it still wants to underline that Dutch authorities should decide who is responsible for the main rail line.<sup>734</sup> Such decisions should not be in hands of the EC, a very important point for them.<sup>735</sup> The Eurosceptic partner in government follows a neo-liberal agenda when it comes to liberalising public services<sup>736</sup>, but might support the opposition in its point that it is up to the national member state to decide on domestic railways and that the EC has nothing to do with this. This is a clear attempt to try to have an impact, as the opposition insists on this one point and therefore uses more than its standard formal powers.

The CDA reacts to the PvdA by saying that the Secretary of State has already indicated that it will be in discussion with ProRail and the NS. She also correctly says that she will not give the contract to the NS unconditionally. That is the best attitude in the opinion of the CDA.<sup>737</sup> The coalition government partner here also uses more than its formal powers by basically responding on behalf of the government and thereby adapting her wording and defending the government position.<sup>738</sup> In other words, rather than having a debate between the government and the NP, it is a debate that clearly cuts

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<sup>731</sup> Ibid., p.7-9.

<sup>732</sup> Ibid.

<sup>733</sup> Ibid.

<sup>734</sup> Ibid., p.11.

<sup>735</sup> Ibid.

<sup>736</sup> <http://verkiezingen.eenvandaag.nl/uploads/doc/Standpunten%20politieke%20partijen%20over%20Europa.pdf>

<sup>737</sup> Ibid., p.11.

<sup>738</sup> Ibid.

along party lines in which the government parties defend the liberalisation view and (part of) the opposition opposes this.

The Secretary of State, Schultz, replied that her efforts in Brussels would focus on that it should be up to the member states to decide whether or not they will procure. Schulz agrees that this should remain a national choice.<sup>739</sup>

‘The PvdA can be convinced that I will not accept compulsory procurement’.<sup>740</sup>

The Secretary of State agrees with the opposition here and it can be argued that the efforts of the opposition have been successful.

At the end of this stage, it can be seen that there are different views between coalition and opposition parties within the NP. The government, however, is eventually open to the viewpoint of the opposition, in the sense that it will not agree with the EC gaining responsibility for all procurement issues, even if that means (part of) her ideological views. Although there seems to be an intermediate impact here (one part of the NP’s wishes are taken over), there are no signs that this could be a consequence of the government not internally agreeing with the Eurosceptic party supporting the coalition. Interviews showed that the government did not change its position as a consequence of the NP, but did take parliamentary views on board, of which it was aware during the Council meetings. Government representatives also argued that they were more inclined to take parliamentary views on board as it was a minority government and therefore more dependent on the support of the opposition.<sup>741</sup>

#### Step 6 Ex post control step

At this stage, it is expected that the government will give feedback to the Parliament regarding the input it has given to the Council meeting, and to what extent it has been able to include the NP’s priorities.

On 2<sup>nd</sup> December 2010 a Transport Council takes place.<sup>742</sup> On 19<sup>th</sup> January 2011, the government sends a letter to parliament to inform it about the outcome of the meeting (part of the NP’s formal powers).<sup>743</sup> The Council meeting also discussed the First

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<sup>739</sup> Ibid., p.11-12.

<sup>740</sup> Ibid.

<sup>741</sup> Atsma, 29<sup>th</sup> May 2015, Van Dongen, 3<sup>rd</sup> June 2015.

<sup>742</sup> Press Release, 3052nd Council meeting, Transport, Telecommunications and Energy, Brussels, 2-3 December 2010.

<sup>743</sup> TK, 21 501-33, nr. 306, 19<sup>th</sup> January 2011.

Railway Package. According to the Dutch government, it is important to set up a long-term strategy for infrastructure development. All member states point out the importance of maintaining their own budget system. With regard to the second point, the Netherlands indicated that decreasing the noise levels is important, also because of the differentiation of usage compensation. A crucial element for the Netherlands is getting 'LL-brake blocks' which are less noisy.<sup>744</sup> This point had been raised by the opposition at several points during the scrutiny process, but is also part of the government's initial position.<sup>745</sup> The Netherlands furthermore underlined the importance of research to prohibit the use of noisy railway material by 2020.<sup>746</sup>

With regard to the third point, the EC suggests a compulsory temporary reduction for train engines equipped with ETCS. The Netherlands, like many other EU member states, does not support such a compulsory reduction. It does, however, think that reduction could be an option to be applied when it is effective.<sup>747</sup>

The Dutch government has shown that it has done its best to include parliamentary concerns, such as the reward of noiseless material. No reference is made to public procurement, as this was not part of the agenda of the Council.

#### Extra ex ante influence phase

During this case the NP gets extra stages during which it has a chance of having an impact on its government's position regarding EU Legislative files. However, this is a consequence of the EU procedure, which for this case consists of two readings and more transport councils during which the case is discussed. In other words, it is not the consequence of higher activity levels of the NP. This stage will look for evidence of higher levels of scrutiny as a consequence of the Eurosceptic coalition government not agreeing on files related to EU integration.

On 30<sup>th</sup> May 2011, the Secretary of State wrote a letter to parliament to inform it about the next Transport Council to be held on 16<sup>th</sup> June 2011 which would deal with the First Railway Package as well.<sup>748</sup>

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<sup>744</sup> Ibid., p.2.

<sup>745</sup> See their EM, 27<sup>th</sup> October 2010.

<sup>746</sup> TK, 21 501-33, nr. 306, 19<sup>th</sup> January 2011.

<sup>747</sup> Ibid., p.2.

<sup>748</sup> TK, 21 501-33, nr. 321, 30<sup>th</sup> May 2011.

The Council tries to reach a general orientation on the First Railway Package. In this last phase of negotiations, there are two remaining priorities for the Netherlands. First of all, there are the conditions for giving access to additional services, and secondly, stimulating the use of noiseless railway material through the possibility of differentiation of the usage compensation.<sup>749</sup>

On 9<sup>th</sup> June 2011, the I&E Committee and the EAC meets with the Secretary of State to discuss the upcoming Transport Council of 16<sup>th</sup> June 2011.<sup>750</sup> Some MPs refer to the First Railway Package during this meeting. The VVD (coalition partner), for example, expresses its worry about the usage compensation in the EC proposal for the First Railway Package.<sup>751</sup> This is very different from the situation in the Netherlands. The VVD asks the Secretary of State for clarification.<sup>752</sup> The noise issue is also a problem, but there does not seem to be a majority to deal with this among member states.<sup>753</sup> D66<sup>754</sup> (opposition) also refers to the First Railway Package; it would also like to know of any updates in the field of compensation for the use of more quiet material. It asks the Minister to indicate what the objections are amongst other member states.<sup>755</sup> The MP from D66, Van Veldhoven, also asks if it would be possible to set up bilateral agreements with some member states as long as there is no agreement at EU level on this matter.<sup>756</sup>

The Minister replies that the issue about reducing noise is only shared by the Netherlands and Germany. Reasons for not wanting this vary by member state. The Dutch government is in favour of making noisy material illegal. In the end, the Council decides to keep applying this differentiation nationally, which has been successful.<sup>757</sup> During this meeting, only technical points are raised and the concerns of the Social Democrat opposition, namely the compulsory procurement, are no longer referred to.

Evidence is found of technical comments made by MPs, whereby most of these outstanding issues seem to be cross-cutting cleavages. There is no written evidence of

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<sup>749</sup> Ibid., p.2-4.

<sup>750</sup> TK, 2010–2011, 21 501-33, nr. 329, 8<sup>th</sup> July 2011.

<sup>751</sup> Ibid., p.7-8.

<sup>752</sup> Ibid., p.8.

<sup>753</sup> Ibid.

<sup>754</sup> Democratic (centre) party.

<sup>755</sup> TK, 2010–2011, 21 501-33, nr. 329, 8<sup>th</sup> July 2011, p.16.

<sup>756</sup> Ibid.

<sup>757</sup> Ibid., p.20-21.

any extra input by MPs. No attempt to influence or control, which means that the causal mechanism is not confirmed at this stage.

#### Extra ex post control phase

On 7<sup>th</sup> July 2011, the government sends a letter to parliament to inform it about the outcome of the 16<sup>th</sup> June 2011 Council.<sup>758</sup> The Council reached a general orientation on the Revision of the First Railway Package and included only a short discussion regarding the compensation of usage and how to calculate this. The compromise of the EU Presidency includes a transfer period of five years, during which the EC will play an important monitoring role.<sup>759</sup> The Secretary of State points out in her letter that during her intervention, she stressed the importance of further rules regarding the access to additional services. She is also disappointed about the lack of ambition regarding noise nuisance. She indicates that she will endeavour to establish bilateral agreements with neighbouring countries to deal with this issue.<sup>760</sup>

This seems to be an ordinary ex post control stage, during which the NP is informed on the outcome of the Council and the input made by the Dutch government. The NP does not react and there is no evidence of increased scrutiny by the NP at this stage. This is probably due to the switch to a more technical debate at this stage and the opposition may have felt that there is less to gain, as these are issues on which the coalition most likely will agree anyway. However, the Secretary of State does indicate that she will do her best to set up bilateral agreements on noise reduction with neighbouring countries, as requested by the opposition. There is a sign of intermediate impact here, as the government directly gives a follow-up to an initiative of the opposition (D66). As interviewees indicated, the government felt the need to do so because of the minority government, not because of the PVV (this topic was not a topic where the PVV had any objections, as step 3 shows as well.<sup>761</sup> In other words, although the causal process is confirmed here, it cannot be linked to the Eurosceptic variable.

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<sup>758</sup> TK, 21 501-33, nr. 331, 7<sup>th</sup> July 2011

<sup>759</sup> Ibid., p.1.

<sup>760</sup> Ibid.

<sup>761</sup> Atsma, 29<sup>th</sup> May 2015, Van Dongen, 3<sup>rd</sup> June 2015.

### Extra ex ante influence step

During this extra ex ante influence stage for the NP, evidence must be found showing that the NP makes use of extra possibilities to scrutinise its government because of internal disagreement within government about the extent of further liberalisation in this field as a consequence of having a Eurosceptic coalition government.

On 20<sup>th</sup> September 2011, the government sends a letter to the SC to inform it about the agenda of the Transport Council of 6<sup>th</sup> October 2011.<sup>762</sup> On 30<sup>th</sup> September 2011, the I&E Committee sends some questions to the Minister regarding the First Railway Package and other items to be discussed at that meeting.<sup>763</sup>

The Social Democrats<sup>764</sup> (opposition) show concern about the level of space that the government has given the Council with regard to opening up the Dutch Railway market.<sup>765</sup> The Secretary of State had previously indicated that a condition for opening up the market is that there should be enough space to make national choices with regard to public procurement.<sup>766</sup> The Social Democratic MP now asks the Secretary of State to indicate whether she meant that it is always up to the member states to decide how the main railway network will be procured. The party furthermore supports the government in its efforts to seek attention for noise nuisance.<sup>767</sup>

The Party for Freedom<sup>768</sup> (tolerating coalition partner in government<sup>769</sup>) makes more general comments about the government's contribution to the Transport Council of 6<sup>th</sup> October 2011. The MPs of the PVV had supported the critical position of the government during the last Transport Council after being pushed by the PVV fraction.<sup>770</sup> It might have been surprising that it gained support from many other member states. The PVV argued that it is happy that the Dutch Secretary of State has had the courage to open her mouth, contrary to many of those 'Europhile nodding

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<sup>762</sup> TK, 21 501-33, nr. 337, 20<sup>th</sup> September 2011.

<sup>763</sup> TK, 21 501-33 nr. 337, 30<sup>th</sup> September 2011.

<sup>764</sup> PvdA.

<sup>765</sup> TK, 21 501-33 nr. 337, 30<sup>th</sup> September 2011, p.2.

<sup>766</sup> Ibid., p.2.

<sup>767</sup> Ibid.

<sup>768</sup> PVV

<sup>769</sup> For more information, see appendix IV.

<sup>770</sup> TK, 21 501-33 nr. 337, 30<sup>th</sup> September 2011, p.2-3.

politicians', but not every Minister in the EU is blessed with the advice of a sensible and critical party as the PVV on her side.<sup>771</sup>

The Minister responds in a letter that the majority of the member states do not support the Dutch priority of tackling noise. She will endeavour to cooperate bilaterally with some other member states in this field. She is not more explicit about the public procurement request from the opposition.<sup>772</sup>

Parliamentary activity in this field is shown and the government displays interest in the inclusion of parliamentary comments into future negotiations in the Council (bilaterally). The discussion has been reduced to a technical one and no longer deals with issues over which the opposition can score points or widen any possible gaps between the coalition partners, such as those along the left/right or pro/against EU cleavage.

#### Extra Ex post control phase

On 26<sup>th</sup> October 2011<sup>773</sup>, the Secretary of State sends a letter to the SC to inform it about the outcome of the Transport Council of 6<sup>th</sup> October 2011. No reference is made to any discussions about the First Railway Package.

No evidence is found at this stage showing any attempts by the NP to hold its government to account on any discussions after the Transport Council.

#### Extra step of ex ante influence

On 1<sup>st</sup> December 2011, the government sends the agenda of the next Transport Council to Parliament.<sup>774</sup> It thereby explained that the Dutch government supported the compromise proposal on the First Railway Package in general lines.<sup>775</sup>

On 6<sup>th</sup> December 2011, the I&E Committee met with the Secretary of State, Schultz, to discuss the next Transport Council scheduled for 12<sup>th</sup> December 2011 which would table the First Railway Package to the Agenda.<sup>776</sup> The VVD wants to know from the

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<sup>771</sup> Ibid.

<sup>772</sup> Ibid., p.4

<sup>773</sup> TK, 21501-33, nr. 342, 26<sup>th</sup> October 2011

<sup>774</sup> TK, 21 501-33, nr. 349, 1<sup>st</sup> December 2011

<sup>775</sup> Ibid., p.2-3.

<sup>776</sup> TK, 21 501-33, nr. 355, 5<sup>th</sup> January 2012.

government whether the Netherlands already complies with other proposals of the EC, such as those of long-term contracts for infrastructure management.<sup>777</sup>

The Social-Democrats<sup>778</sup> (in opposition) move the discussion away from the technical debate and ask more about the views of other member states regarding the levels of liberalisation of railways.<sup>779</sup> The Dutch Social Democrats are sceptical about the separation of Prorail and the NS, and now that the EU has come up with similar proposals, it might be good for the Minister to tell other member states about the Dutch experience.<sup>780</sup>

The Socialist Party<sup>781</sup> (in opposition) was mainly worried about the attendance of the upcoming, important, Transport Council meeting.

‘The next Transport Council meeting will discuss the future European transport network of the EU, which will cost the EC until 2020 at least 31.7 billion Euros ... For that reason it is important that the Netherlands will send a political representative, so not like the Transport Council of 6<sup>th</sup> October. I would like to hear from the Minister whether this is the case’.<sup>782</sup>

The opposition shows that it wishes the government to attend the Council meetings, which is a clear sign of a delegatory relationship during this stage of the scrutiny (use of formal powers).

The Secretary of State, Mrs Schulz (VVD), responded to these questions. There will not be a new discussion about the contents of the First Railway Package during the second reading, she states.<sup>783</sup> She further explained that she does not expect that the separation between transport and structure will lead to any problems. The Netherlands already fulfils the standards of current EU proposals. For the Dutch government it was a priority to deal with the noise nuisance but is pretty much alone in this, as other member states are worried what this could mean for their material.<sup>784</sup>

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<sup>777</sup> Ibid., p.3-4.

<sup>778</sup> PvdA.

<sup>779</sup> TK, 21 501-33, nr. 355, 5<sup>th</sup> January 2012, p.5-6.

<sup>780</sup> Ibid.

<sup>781</sup> SP.

<sup>782</sup> TK, 21 501-33, nr. 355, 5<sup>th</sup> January 2012, p.6.

<sup>783</sup> Ibid., p.8-9.

<sup>784</sup> Ibid., p.8-9.

The last Council meeting did not discuss member states' views on liberalisation, as the current proposal does not cover this.<sup>785</sup>

The opposition does not accept the postponement of the discussion regarding liberalisation and the Social Democrat MP repeats his request to share the bad experiences of the Netherlands in the Council as a consequence of the separation of the NS and Prorail, as the EU might make the same mistake.<sup>786</sup> The opposition thereby uses more than its formal powers, as it continues to stress the importance of this topic.

The Secretary of State argues, however, that not everybody agrees that the separation of ProRail and the NS has been so bad.<sup>787</sup> Some think that it is working really well and that maybe some parts need to be repaired. Schulz refuses to say that it has been unsuccessful because she does not believe that story.<sup>788</sup> Once they discuss the domestic issue of the railways, it is possible that the SC adopts a different position. She thereby rejects the request of the opposition. She has already told the Chamber that she has not managed to get an agreement about noise nuisance.<sup>789</sup> She is now trying to set up some bilateral rules in this field (the corridor Rotterdam-Genova) with Germany, Switzerland and Italy. During their previous discussions in the Council about the First Railway Package, she mentioned the need for space to make national choices for or against procurement (impact) and that far-reaching opening of the market can only happen if there is enough clarity about the staff.<sup>790</sup> From the Secretary of State's responses, it appears that there is room for contributions from the opposition, after making extra use of their formal powers. Although her party favours an open market, she does raise the issue of public procurement in the Council as requested by the opposition and is also supportive of setting up bilateral agreements.

On 7<sup>th</sup> December 2011, the clerk of the I&E Committee sent a letter to the Secretary of State, Mrs Schulz, and the Minister Atsma to complain about the late arrival of the agenda of the Transport Council of 12<sup>th</sup> December 2011.<sup>791</sup> On behalf of the Committee, it requested that the relevant documents be sent in time so that the Committee will at least have a week to discuss the relevant Council meeting with the

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<sup>785</sup> Ibid.

<sup>786</sup> Ibid., p.13.

<sup>787</sup> Ibid., p.13-14.

<sup>788</sup> Ibid.

<sup>789</sup> Ibid.

<sup>790</sup> Ibid.

<sup>791</sup> TK, Brief aan de minister en de staatssecretaris van I&M, 7<sup>th</sup> December 2011.

Chamber.<sup>792</sup> This is another sign of the delegatory relationship between the NP and its government. The government cannot just act freely, but must inform the NP on time.

The discussions showed increased levels of scrutiny, as the MPs are expressing their views and give clear instructions on what they expect from the government during the Council meetings. There is an obvious sign of impact after the NP uses its formal powers (the Secretary of State told the Council that procurement needs to be a national choice) and there is a sign of holding the government to its responsibility of informing on time. This corresponds to the expected causal process.

#### Extra ex post control phase

During the Transport Council of 12<sup>th</sup> December 2011, a political agreement is reached about the First Railway Package.<sup>793</sup> This can be considered as the end of the scrutiny by the NP of the government relating to this legislative file. The file is not tabled on the agenda of any Transport Councils anymore and further scrutiny during the second reading is limited to discussions in the EP.

On 13<sup>th</sup> January 2012, the Secretary of State writes a letter to Parliament to inform it about the outcome of the Transport Council of 12<sup>th</sup> December 2011 during which the First Railway Package was adopted. The letter states that the adoption took place without any discussion. Negotiations on this topic will continue with the EP during the Danish EU Presidency in 2012.<sup>794</sup>

From this stage on, the NP no longer takes part in the active scrutiny of the case and is only informed regarding the progress made in the field of the First Railway Package. No written evidence is found that confirms the causal mechanisms.

#### Step 7: Adoption

On 29 October 2012 the Act is approved by the Council in a second reading.<sup>795</sup> This is the start of a single European Railway area, opening up the railway sector to

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<sup>792</sup> Ibid.

<sup>793</sup> European Commission, Press Release, *Vice-President Siim Kallas welcomes the outcome of the Transport Council*, 12<sup>th</sup> December 2011.

<sup>794</sup> TK, 21 501-33, nr. 356, 13<sup>th</sup> January 2012.

<sup>795</sup> Press Release, 3196<sup>th</sup> Council, Transport, Telecommunications and Energy, Luxembourg, 29<sup>th</sup> October 2012.

competition at EU level. Member states agreed on simplifying and modernising the regulatory framework for an EU railway sector.<sup>796</sup> No reference was made to the issue of noise reduction and the details of public procurement will be elaborated in the Fourth Railway Package (see also case 4).

### **6.2.5 Concluding remarks**

This case looked at whether the dependence of a coalition government with Eurosceptic support increases the chances of a NP to have an impact on its government position on an EU legislative file. The case uses the standard, post-Lisbon procedures of scrutiny during which the emphasis lies on the use of ex ante influence mechanisms by the NP. Scrutiny focused in this case mainly on technical issues and to some extent to wider political matters, such as the extent to which the state should support the widening of the internal market in the field of the railways. These issues can be cut along the traditional left-right cleavage, but could also to be increased as a consequence of Eurosceptic presence in the coalition government (the PVV might not want the EU to decide about domestic railways). The PVV MP, however, does support the draft regulation and makes no attempt to increase the scrutiny of this file, nor does the opposition. In other words, the EU file does not lead to substantial different opinions, making it hard for the coalition partners to find a compromise. The opposition is active on this file (for example, it expresses its opinions and repeats them on various occasion with the intention to have an impact), but contributions are mostly of a technical nature and the use of formal powers is therefore more related to the salience variable (the MPs seem to worry about the contents of the legislative file as published by the EC, for example, regarding the noise levels) than to the Eurosceptic variable. On some occasions, contributions were of left/wing and pro/against EU nature (the scope of liberalisation) which could be a sign of making use of a divided government on EU integration. Data extracted from interviews confirm that the extra use of formal powers used by MPs in this file is explained by the fact that as the NP scrutinised a minority government, the chances of being effective when using mechanisms of influence and control are more likely, as the government needs the support of the opposition in order to achieve a majority.<sup>797</sup> In other words, even without a dependence on the PVV during the 2010-2012 coalition, the government would still have aimed at limiting the transfer of competences to the EU. This contradicts the theoretical argument, explained in

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<sup>796</sup> Ibid.

<sup>797</sup> Van Dongen, 3<sup>rd</sup> June 2015, Koolmees MP, 6<sup>th</sup> July 2015, Monasch MP, 16<sup>th</sup> June 2015.

Chapter 3, in which the dependence by a coalition government upon a Eurosceptic partner increases parliamentary chances to have a measurable impact on government EU policy position.

### *Measurable impact*

Although there were various signs of impact during the scrutiny of this file, according to interviewees this is not a consequence of the dependence of a Eurosceptic party but an overall Eurosceptic direction of most established political parties after the ‘no’ in the Dutch referendum against an EU Constitution.<sup>798</sup> No evidence is found showing that Eurosceptic involvement increases the NP’s impact on government’s position.

Interviews with government representatives show that there have not been any informal types of influence in this file and that the government followed its own line when writing the EM without anticipating the possible position in the NP. It also did not change the EM as a consequence of the use of formal powers by the NP, but did take the position of the NP on board during the Council meeting.<sup>799</sup>

‘As a government representative you would be very naïve to ignore the position of the NP when they make it so explicitly.’<sup>800</sup>

As only part of NPs’ position reflected in the government’s input into the Council<sup>801</sup>, one can consider that during the scrutiny of this legislative file there has been an intermediate measurable impact. The point taken over from the NP was related to the extent to which procurement should be either a national or European choice. This issue is both Europeanised (to what extent should the EU decide upon this) and covers the left/right dimension (open market versus government’s responsibility). According to interviews with MPs, they are more likely to become active on dossiers covering Europeanised or political issues and leftwing and rightwing parties have different views about issues covering liberalisation.<sup>802</sup> Interviews with the government showed that they had to take over the position of the opposition, partly because it was a majority in the NP and partly because the government was weak in the sense that it was a minority

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<sup>798</sup> Van Dongen, 3<sup>rd</sup> June 2015, Monasch MP 16<sup>th</sup> June 2015, Koolmees MP, 6<sup>th</sup> July 2015.

<sup>799</sup> Kisters, 17<sup>th</sup> May 2015, Atsma, 29<sup>th</sup> May 2015, Van Dongen, 3<sup>rd</sup> June 2015.

<sup>800</sup> Atsma, 29<sup>th</sup> May 2015.

<sup>801</sup> The guarantee that the government would fight to leave procurement issues up to the member states and set up bilateral agreements with other member states in the field of noise reduction.

<sup>802</sup> Koolmees, 6<sup>th</sup> July 2015, Monasch, 16<sup>th</sup> June 2015.

government.<sup>803</sup> The input of the SC taken over by the government came from the opposition and was not the government's original position. Anticipated reactions and impact via party group meetings can therefore be ruled out. I am thereby confident in stating that measurable impact is observed in this case, which was a consequence of the NP using formal powers with the intention of adapting the government's EU policy position. The NP has increased its chances of doing so, as it scrutinised a minority government. The Eurosceptic condition is more or less absent in the analysed process.

### **6.3 Case 4: The Fourth Railway Package: Directive for Interoperability when scrutinised by the SC during the Rutte II coalition (between Liberals and Social Democrats) (COM(2013)30<sup>804</sup>)<sup>805</sup>**

#### **6.3.1. Expected causal process**

As in this case, the Eurosceptic condition is absent and all other explanatory factors (partisan composition, salience and Lisbon are constant) the following causal process is expected:

Government without Eurosceptic coalition partner → EU issues hardly appear on the agenda → little contention → status quo → little discussion in government → little discussions in the NP → little advice needed → NP does not give advice → government does not have to take into account NP's position → No parliamentary impact.

#### **6.3.2 Background EU proposal**

As part of the Fourth Railway Package the EC has published a proposal with regard to the Directive about the interoperability of the railway system in the EU. The purpose of this proposal is the decrease of administrative and technical obstructions by developing an EU approach with regard to security and interoperability procedures. In this particular proposal, the EC proposes conditions which must be followed by an interoperable railway system in the EU. It furthermore suggests ways to make the submission of permissions more efficient via a bigger role for the ERA. Technical norms and conformity judgement rules need to be clearer and updated.<sup>806</sup>

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<sup>803</sup> Atsma, 29<sup>th</sup> May 2015, Van Dongen, 3<sup>rd</sup> June 2015.

<sup>804</sup> <http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:52013PC0030>

<sup>805</sup> For policy positions, see table 12.

<sup>806</sup> COM(2013)30

### 6.3.3 Parliamentary scrutiny of the EU legislative file during the seven steps of the OLP<sup>807</sup>

This section discusses all different steps of the OLP of the EU legislative file regarding the Fourth Railway Package (Interoperability) and whether the SC used its formal powers to either influence and/or control their government's EU policy position at any point of the scrutiny and if so, whether its attempts had any effect.

#### Step 1: Publication

30<sup>th</sup> January 2013. The documents are forwarded to the EP, Council and NPs.

#### Step 2: NPs get eight week to oppose the EU legislative proposal

Although the Dutch SC sent a RO to the EC on 28<sup>th</sup> March 2013 regarding the proposal concerning the opening of the market for domestic passenger transport services by rail, which is also part of the Fourth Railway Package<sup>808</sup>, it does not have any problems with the proposal regarding the interoperability (it is only the Swedish and Lithuanian parliaments which sent ROs to the EC with regard to this proposal).

#### Step 3 First ex ante influence phase

As evidence to confirm the causal mechanism, this stage must establish whether the NP gets and takes chances to use its mechanisms of control and influence and whether this is more or less than it would do during a Eurosceptic government. It is expected that the evidence to be found shows an NP taking a passive approach, during which it will receive information from the government without taking any steps to actively influence the government's position.<sup>809</sup>

Before the Council meeting of 11<sup>th</sup> March 2013, the Dutch government sends an agenda and letter<sup>810</sup> to the I&E Committee on 19<sup>th</sup> February 2013. In the agenda, the Minister, Mrs Mansveld, outlines that this Package is part of the Single Market Act II. The Dutch government informs the SC that at the point of writing it is still studying the proposals

<sup>807</sup> For more information on these steps, see Appendix I and II.

<sup>808</sup> The Fourth Railway Package consists of different EU legislative proposals: one on opening up the market towards passenger by rail, one on safety, one on an EU Agency for Railways, one on a Single European Railway Area and one on interoperability.

<sup>809</sup> A possible meeting with the government before the Council will therefore mainly focus on gaining information rather than exerting influence.

<sup>810</sup> TK, 21.501-33, nr 407, 19<sup>th</sup> February 2013.

to get a better understanding of the consequences for the Netherlands and that once this is finished, it will publish its EM. The government is in favour of improving the mode of travel for passengers and will critically study the rules which will be necessary at EU level, further stating that competences should remain at national level.<sup>811</sup> When speaking to the government representative working on this file, the Minister confirms the disparities in views on the Fourth Railway Package between the coalition partners (the liberals and the Social Democrats).

‘The VVD was happy with opening the market, while the PvdA wanted the railways to remain a public service and thought that the EU legislative proposal was opposing the principle for subsidiarity.’<sup>812</sup>

She also confirmed that a divided government is more dependent on the support of the NP, as it needs to come up with a compromise which requires the support of the NP.<sup>813</sup>

On 25<sup>th</sup> February 2013 the I&E Minister writes a letter to the NP to inform it that the governmental memorandum will not be ready before 1<sup>st</sup> March 2013.<sup>814</sup> On 1<sup>st</sup> March 2013, the government sends the EM to the NP, in which it indicates that it will further elaborate on the national consequences of the proposals in an IA. This will be sent to the SC in due course. The Dutch government is of the opinion that any changes to the main railway line should not start until 2025 and not 2022, like the EC wants, as contracts will still be running then.<sup>815</sup> The EM is considered as the first position of the government on this file.

On 7<sup>th</sup> March a meeting takes place between the I&E Committee, the EAC and the I&E Minister which deals with the scrutiny reserve of the Fourth Railway Package. The Minister agrees to inform the SC on every agenda of the Transport Council dealing with this topic, on every draft position of the Council including government opinion and on any changes in that or in the EU proposals. During this meeting no reference is made to the interoperability regulation.

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<sup>811</sup>TK, 21.501-33, TK, 407, 19<sup>th</sup> February 2013.

<sup>812</sup> Van Dongen, 3<sup>rd</sup> June 2015.

<sup>813</sup> Ibid.

<sup>814</sup> TK, 33.546; 22.112, 25<sup>th</sup> February 2013.

<sup>815</sup> TK, 33.546, nr 3, Fiche, 1<sup>st</sup> March 2013.

Besides, it is agreed that a plenary session will take place on 21<sup>st</sup> March. During this meeting, MPs get a chance to submit motions.<sup>816</sup>

The NP takes an active approach towards the Fourth Railway Package in general, as it sets clear tasks to government at the beginning of the scrutiny process and applies a scrutiny reserve which thus shows the importance of this file to the NP.

#### Step 4 First ex post control phase

To be able to confirm the causal mechanism at this stage, evidence must be found showing that few attempts are made by MPs to hold government to account after the Transport Council has taken place.

On 11<sup>th</sup> March, the first Transport Council takes place. On 21<sup>st</sup> March 2013, the SC discusses the Fourth Railway Package during the plenary meeting. During this meeting four motions are submitted<sup>817</sup>, but none apply to the Interoperability Directive.<sup>818</sup>

On 22<sup>nd</sup> March the Secretary of State for I&E, Mrs Schulz, sends a letter to the Chair of the SC to give feedback about the Council meeting of 11<sup>th</sup> March 2013.<sup>819</sup> Most references that are made to the Fourth Railway Package relate to the free market of railway passengers and none in the field of the interoperability regulation.

No evidence is found of any signs of parliamentary activity aimed at impacting the interoperability regulation. Causal mechanism confirmed at this stage.

#### Step 5: Second ex ante influence phase

To confirm the causal mechanism during this stage, evidence needs to be found showing that the NP has had no extra chances<sup>820</sup> and had not tried actively to use standard procedures to influence the government's position, as the non-Euro-sceptic government does not want or need to spend too much time on EU discussions.

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<sup>816</sup> TK, 33 546, nr. 9, 7<sup>th</sup> March 2013.

<sup>817</sup> One by Hoogland (Social Democrat), two by Bashir (Socialist party) and one by Van Tongeren (Groen Links).

<sup>818</sup> TK, 33 546, nr. 4, 21<sup>st</sup> March 2013.

<sup>819</sup> TK, 1 501-33, nr.412, 22<sup>nd</sup> March 2013.

<sup>820</sup> More than one meeting or one form of correspondence with the responsible minister, whereby it actually intends to exert influence.

On 22<sup>nd</sup> May 2013, the Dutch government sends the agenda of the Transport Council to the I&E Committee. It informs the committee that the draft regulation regarding interoperability will probably be adopted during the next Council meeting of 10<sup>th</sup> June 2013.<sup>821</sup>

On 5<sup>th</sup> June 2013 a meeting takes place between the I&E Committee, EAC and the Secretary of State for I&E, Mrs Schulz (Liberal).<sup>822</sup> The VVD MP (coalition partner) argues that with regard to the interoperability regulation, this regulation should not lead to increased administrative burden and there should be a clear division between those who look after the railways and those responsible for the trains.<sup>823</sup> Mrs Schulz replies that concern about administrative burdens is shared by several member states. She also agrees about the separation of transport and the management of the railways.<sup>824</sup>

Only one reference to the interoperability regulation is found. This point is taken by the Secretary of State but as the point was made by an MP who is part of the same political party as the Secretary of State, this cannot be considered to be an impact. Causal mechanism is confirmed.

#### Step 6: Second ex post control phase

During this stage, evidence is expected to be found showing few attempts by the NP to hold its government to account. It will use a passive approach during which it receives information, but does not increase the use of formal powers by asking for any clarification concerning regulation in the field of the interoperability of European railways.

On 10<sup>th</sup> June 2013, another Transport Council takes place. During this meeting agreement is reached on the Interoperability part of the Fourth Railway Package. The final agreement has decreased the number of issues that would be dealt with at EU level, such as a centralised procedure to allocate permissions. Member states agree to keep this at the national level, as there is concern that at EU level it could lead to an increase in financial and administrative burdens. There will be a transition period of five instead of two years (as proposed by the EC).<sup>825</sup> The SC receives a letter from its

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<sup>821</sup> TK - 21.501-33, TK, 423, 22<sup>nd</sup> May 2013.

<sup>822</sup> TK, 21 501-33, nr. 430, 17<sup>th</sup> July 2013.

<sup>823</sup> Ibid.

<sup>824</sup> Ibid.

<sup>825</sup> Press Release, Council for Transport, Telecommunications and Energy, 6-10<sup>th</sup> June 2013, 10457/13.

government regarding the outcome of the Council meeting on 24<sup>th</sup> June 2013.<sup>826</sup> It also gives an overview of the discussion regarding the agreement reached on the interoperability file:

‘The Council finished a general orientation about this proposal regarding a directive for interoperability of the railways, which is part of the technical pillar of the Fourth Railway Package ... The Netherlands was already in favour about the original technical pillars about interoperability, but had initially some minor concerns about the practical workability of this proposal. This has been taken into account in the compromise proposal.

During the Council meeting the Netherlands has emphasised the importance of the technical pillar, and according to the views of the SC, the Dutch government has suggested to not make an agreement on the technical pillar dependent on the other proposals of the Railway Package..<sup>827</sup>

On 28<sup>th</sup> June 2013 the I&E Committee requested the government to give a reaction to the quick scan<sup>828</sup> which will be executed by Twynstra Gudde on behalf of the Federation Mobility Companies the Netherlands (FMN).

On 11<sup>th</sup> November 2013 the I&E Minister writes a letter to the SC with the national IA regarding the Fourth Railway Package. On 26<sup>th</sup> November 2013 the Minister for I&M sends a letter to the I&E Committee to give a reaction to the Quick scan.

In the letter to the NP, the government shows how it has put forward the parliamentary wishes to the Council meeting. However, as this position is in line with the government’s position (see EM, 1<sup>st</sup> March 2013) this cannot be considered as impact.

#### Step 7: Adoption

Although the Fourth Railway Package as such is not yet finally adopted by the Council, during the meeting of 5<sup>th</sup> June 2014, a political agreement is reached about the three proposals regarding the technical pillar of the Package (the interoperability, railway safety and Railway Agency). With the agreement of the technical pillar of the Fourth Railway Package, member states agreed to set up a dual system of vehicle

<sup>826</sup> Ministerie van I&M, 24<sup>th</sup> June 2013, Report of the Transport Council of 10<sup>th</sup> June 2013.

<sup>827</sup> Ibid.

<sup>828</sup> This is a form of impact assessment.

authorisations and safety certifications. Member states furthermore agreed that there will be a choice between submitting a request for authorisation to the European Railway Agency or to the national safety authority for those vehicles involved for national transport only.<sup>829</sup> The adoption of this new Railway Package will decrease the administrative burden in this field, which is supported by the SC.

The Dutch government feeds this back to the SC:

‘Many member states showed their appreciation for the result on the Technical pillar of the Fourth Railway Package. Some member states did not want to continue with the proposals regarding the opening of the market, because of the subsidiarity issue and the risks for smaller railway markets. EU Commissioner Kallas was happy with the result and the compromise reached in this field. During the second half of this year he wants to continue with the proposals regarding the opening of the market.’<sup>830</sup>

#### **6.3.4 Concluding remarks**

The scrutiny of this file seems to be a pretty standard one, as the NP reacts to government correspondence and during meetings asks for clarifications. At no occasion during the OLP does the NP use more than its formal powers and only once does the government show that it has taken the NP’s position on board (step 6). This is in line with what was expected. The theoretical argument in Chapter 3 links the scrutiny of a government not depending on a Eurosceptic party in order to get a majority in the NP to a limited use of formal powers. Although, this case shows the use of limited powers indeed, this seems to be a consequence of the topic content and not of the absence of the Eurosceptic element of the coalition government. Interviewees all argued that the parliamentary activities would not have been higher on this topic if the coalition government had been more Eurosceptic, as the topic did not cover the issue of EU integration.<sup>831</sup> According to the government representative on this file, however, the limited amount of formal powers used by the NP is due to the contents of the topic.<sup>832</sup> The topic of interoperability is quite technical and less controversial and political (in

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<sup>829</sup> Press Release, Council of the European Union, 5<sup>th</sup> June 2014.

<sup>830</sup> TK, 21 501-33, nr. 495, 5<sup>th</sup> June 2014.

<sup>831</sup> Van Dongen, 3<sup>rd</sup> June 2015, Den Boer MP, 4<sup>th</sup> June, Hoogland MP, 4<sup>th</sup> June 2015.

<sup>832</sup> Van Dongen, 3<sup>rd</sup> June 2015.

other words, less salient) than others (such as the freedom to provide domestic passenger services by rail, see case 7).<sup>833</sup>

### *Measurable impact*

During the process of the OLP, there has not been any moment during which the government shows it has adapted its position as a consequence of the NP's use of formal powers. Data extracted from interviews confirm this.<sup>834</sup> Accordingly, it can be argued that none of the NP's positions are reflected in the government's viewpoint or in its input to Council meetings; the impact here can therefore be classified as weak.

Data from interviews<sup>835</sup> also confirm that no use of informal influence has taken place.<sup>836</sup> The government confirms furthermore that it has retained its own position (as explained in the EM) and has not drafted its opinion with the views of the NP already taken on board. It has on one occasion included the NP's position into the Transport Council meeting (regarding the Quick scan) but as this was a position shared by government (see EM, 1<sup>st</sup> March 2013) and so cannot be considered as impact. It can therefore be concluded that during the scrutiny of this file, the impact was weak and even less than expected. The SC, however, did not really intend to change the government in this field and mostly asked for clarifications, which it received. In conclusion, although the SC had a weak impact on the government in this case, it also did not intend to have a stronger control over the government's position.

## **6.4 Pair-wise comparison between a coalition government depending on support of a Eurosceptic party and a coalition government not dependent on Eurosceptic support**

When comparing the scrutiny and use of formal powers in C3 (presence of the Eurosceptic condition) to C4 (absence of the Eurosceptic condition), ignoring the extra chances for the NP to use its formal powers as a consequence of the increased number of Council meetings in C3 (due to the two readings, which is not related to the relationship between the NP and government), there is roughly a similar amount of

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<sup>833</sup> Van Dongen, 3<sup>rd</sup> June 2015, Den Boer MP and Hoogland MP, 4<sup>th</sup> June 2015, Hartkamp, 7<sup>th</sup> July 2015.

<sup>834</sup> Van Dongen, 3<sup>rd</sup> June, Den Boer MP and Hoogland MP, 4<sup>th</sup> June 2015.

<sup>835</sup> Kisters, 19<sup>th</sup> May 2015, Van Dongen, 3<sup>rd</sup> June 2015, Den Boer, 4<sup>th</sup> June 2015.

<sup>836</sup> In the Netherlands, there is a rule that makes informal contact between the government and NP illegal during the scrutiny process. This was introduced during the Kok government in 1998, better known as the 'Oekaze' rule.

attempts by the NP in both cases to use its formal powers (see table 13). When examining in more depth the different discussions it becomes clear that, although during both cases, mostly technical remarks are made, the discussions during the First Railway Package include many more attempts by MPs to intend to have an impact. MPs are trying to change the government's views. Although the debates about the Interoperability file in C4 follow a similar pattern during the ex ante and ex post attempts of influence and control, the remarks by MPs are solely focused on clarification of technical issues. On no occasion do MPs try to convince the government to change its perception.

This is in line with the expected causal processes in both cases. However, the discussions in C3 between MPs and the government are very much focused on issues related to the extent to which railways should be liberalised and to which the EU should have control over the Dutch Railway Network. These are politicised and Europeanised issues, in which the Eurosceptic party plays a minor role (it does not raise the floor on many occasions and has no major objections against the proposal). In other words, although the use of formal powers is increased during the case where the Eurosceptic condition was present, there is no evidence that this is a consequence of the coalition government's dependence on a Eurosceptic party. Data extracted from the interviews disconfirm a relationship between the Eurosceptic dependence of the coalition government and the increased use of formal powers by the NP.<sup>837</sup> According to Atsma, I&E Minister during the Rutte I cabinet, the PVV had no views on technical issues, such as railways. Therefore, it could not be considered to be an obstacle in this dossier.<sup>838</sup> This is confirmed by the head for railway issues at the I&E Department:

‘Obviously, because of the dependence of the PVV to get a majority, the government has got less room to manoeuvre freely in EU issues. Both coalition partners had to water down their EU policies slightly for the sake of it. It is possible that the opposition has exploited this, knowing that the main coalition partners in fact agreed with them, but could not openly say so because of their relationship with the PVV. However, this was more visible

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<sup>837</sup> Kisters, 17<sup>th</sup> May 2015, Atsma, 29<sup>th</sup> May 2015, Van Dongen, 3<sup>rd</sup> June 2015, Den Boer MP and Hoogland MP, 4<sup>th</sup> June 2015, Hartkamp, 7<sup>th</sup> July 2015, Keulemans, 15<sup>th</sup> June 2015.

<sup>838</sup> 29<sup>th</sup> May 2015.

in issues related to EU integration, not in technical dossiers such as Railways.’<sup>839</sup>

Both Koolmees MP (D66) and Monasch MP (PvdA) confirm that as members of pro-European opposition parties in issues related to EU integration, the Rutte I coalition partners VVD and CDA often had to get support from the opposition since the PVV would oppose anything from Brussels.<sup>840</sup>

‘The PVV was against anything that came out of the EU. As a cabinet you could not work with that.’<sup>841</sup>

According to several MPs, such as Den Boer and Hoogland, the dependence of the PVV during the Rutte I cabinet has not increased the parliamentary opportunity to effect an impact. According to Hoogland MP, other factors play a more significant role in the increased scrutiny of EU dossiers, such as higher levels of Euro-scepticism (since the ‘no’ vote in the Referendum against the EU Constitution in 2005) and public opinion.<sup>842</sup> This is confirmed by Monasch MP<sup>843</sup> and Keulemans, EU Advisor at the SC<sup>844</sup>, who argued that the whole spirit of times became more Eurosceptic, it was not really related to the PVV.

‘Being euro-sceptic has sort of become part of the DNA of the SC’.<sup>845</sup>

‘The PVV is quite weak in the sense that it does not raise the floor about the contents of transport dossiers. This is because these issues do not deal with the EU as such, but it is more about the contents. In these cases they are only skeptical because they can be skeptical.’<sup>846</sup>

The dependence on the PVV by the coalition government during the Rutte I cabinet, limited the government’s the freedom to act freely, but increased the freedom to the opposition in the NP. According to the government representative, this is related to the lack of a majority which weakened the cabinet of Rutte I.<sup>847</sup> In other words, according

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<sup>839</sup> Van Dongen, 3<sup>rd</sup> June 2015.

<sup>840</sup> Koolmees MP, 6<sup>th</sup> July 2015, Monasch MP, 16<sup>th</sup> June 2015.

<sup>841</sup> Monasch MP, 16<sup>th</sup> June 2015.

<sup>842</sup> 4<sup>th</sup> June 2015.

<sup>843</sup> 16<sup>th</sup> June 2015.

<sup>844</sup> 15<sup>th</sup> June 2015.

<sup>845</sup> Monasch MP, 16<sup>th</sup> June 2015.

<sup>846</sup> Hoogland MP, 4<sup>th</sup> June 2015.

<sup>847</sup> Van Dongen, 3<sup>rd</sup> June 2015.

to the government, this was a consequence of the minority government and not because the tolerating party of the PVV was Eurosceptic. Rutte I always had to look for a majority in the NP (which it did not always get from the PVV, particularly not on EU issues). This gave power to the opposition.<sup>848</sup>

The increased use of formal powers in C3 is, therefore, most likely linked to the politicisation of the topic which cuts along the right/left cleavage of the political parties in the NP (this was a clear example of a divided NP)<sup>849</sup> and the minority government (in other words, the partisan composition condition). More specifically, as MPs seem to really care about the government's position in C3, we can confidently deduct the salience condition to be more relevant in this case than the Eurosceptic condition. This is confirmed by MPs who argued in interviews that the Interoperability file was of a more technical nature, and coalition partners and opposition in the NP came to an agreement without too many difficulties.<sup>850</sup>

Besides, the opposition in the NP would probably not have had so many chances to impact the government's position if the latter had a stronger majority in the NP. Interviews confirm this:

‘With this tolerating construction, the cabinet frankly had no majority. Rutte I had to look for support. One could see his cabinet was vulnerable for that reason. This would equally have been the case if the coalition of Rutte I had depended on another political party. It was not related to the PVV as Eurosceptic tolerating party as such.’<sup>851</sup>

In other words, just because the coalition partners could not always depend on support of the Eurosceptic ‘tolerating’ party, the support of other parties in the opposition was required in order to gain support for its position. It was not so much the Eurosceptic component here that made the government listen to the opposition, but the need for a majority in support of its position that forced the government to listen to the opposition in order to gain a majority for its input to the Council. The outcome of this pair-wise comparison is thereby in line with previous literature in the field of partisan

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<sup>848</sup> Koolmees, 6<sup>th</sup> July 2015, Atsma, 29<sup>th</sup> May 2015, Van Dongen, 3<sup>rd</sup> June 2015.

<sup>849</sup> Although the First Railway Package mainly deals with harmonisation, and not as such with an opening of the market, many MPs were already worried that this would happen eventually: it did indeed happen under the Fourth Railway Package, which explains the increased use of formal powers already in C3 (Mrs Kisters, 19<sup>th</sup> May 2015).

<sup>850</sup> Den Boer, 4<sup>th</sup> June 2015, Hoogland MP, 4<sup>th</sup> June 2015, Hartkamp, 7<sup>th</sup> July 2015.

<sup>851</sup> Van Dongen, 3<sup>rd</sup> June 2015.

composition, such as that of Holzacker (2005) which argued that parliamentary power is strongest in minority governments. Interestingly, when looking back at the pair-wise comparison in C1 and C2, the partisan composition condition was clearly not responsible for an increased use of formal powers, but in this case the minority government clearly is, as seen in the contents of the meeting documents and interviews.

### *Shadow pair-wise comparison*

In order to increase the internal validity of this pair-wise comparison outcome, two other cases have been compared, one dealing with the EU Integrated Maritime Policy (IMP) - which was scrutinised during the Rutte I 2010-2012 coalition government which depended on the support of a Eurosceptic government - and the Market Access for Port Services (PS) scrutinised during the Rutte II government which consisted of a coalition between the liberals and Social Democrats.<sup>852</sup> More information on the outcome of the use of formal powers in all four cases can be found in table 13 and 14. The contents of both EU legislatives files are of similar typical and technical nature whereby they are salient to the legislators, but not to the electorate. A comparison between C3a and C4a show that the use of formal powers by the NP is a lot higher in the case where the Eurosceptic condition is absent. This is contrary to the expected causal process.

Interviewees<sup>853</sup> also confirm in the case of the IMP and PS that there were no attempts made by MPs to informally influence the government in this field, as this was not allowed.<sup>854</sup> According to Abspoel, the government writes its first position (in the so-called 'fiche') in which it looks at subsidiarity and proportionality, its agreements on policies and possible sensitivities in the SC. It does not adapt its position to the wishes of the Chamber in the beginning. The NP only comes out with its position after this first opinion of the government, as it is the task of the NP to *control* government.<sup>855</sup>

The same can be said for the Ports Directive, according to the government representative in this file.

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<sup>852</sup> For more information about this pair-wise comparison, see appendix V.

<sup>853</sup> Abspoel, 3<sup>rd</sup> June 2015.

<sup>854</sup> Rule for External contacts with Civil Servants, better known as the 'Oekaze Kok', introduced by Wim Kok in 1998.

<sup>855</sup> Abspoel, 3<sup>rd</sup> June 2015.

‘Writing the position of the government happens based upon the agreement in the government, less on the SC. In this case, we first published our position, and after that the NP decided to apply a scrutiny reserve on this case.’<sup>856</sup>

Although both cases cover a similar topic and are dealt with by the same government department (I&E), the use of formal powers is clearly higher in the case where the Eurosceptic condition is absent (C4a). Interviewees indicate that in the case of the Port Directive, MPs felt that there was more at stake as it touched directly upon the Dutch main interest.<sup>857</sup> According to Abspoel, the IMP did not lead to significant changes to the member states.<sup>858</sup>

In case of the IMP, the government did not change its position according to the wishes of the NP, as there were not many. This is confirmed in interviews.<sup>859</sup>

According to De Boer MP, the Ports Directive is an important dossier.

‘Many ports in the EU are still financially supported by their governments. This is not the case in the Netherlands, so we argue that there needs to be a level playing field.’<sup>860</sup>

According to Kisters of the Permanent Representation of the Netherlands in Brussels, many left wing parties in the NP were lobbied by trade unions on this dossier.<sup>861</sup> This made MPs extra active, knowing the consequences would be directly noticeable amongst constituents.<sup>862</sup> This is confirmed by De Vries MP.<sup>863</sup>

Also in this dossier, the position of the government has not changed after negotiations with the NP.<sup>864</sup>

According to interviewees, as also became clear during the pair-wise comparison between C3 and C4, the first Rutte government was simply more Eurosceptic than previous administrations. This was not a consequence of the PVV, but of a general

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<sup>856</sup> Pol, 4<sup>th</sup> June 2015.

<sup>857</sup> De Boer MP, 4<sup>th</sup> June, Abspoel, 3<sup>rd</sup> June, De Vries MP, 8<sup>th</sup> June 2015.

<sup>858</sup> 3<sup>rd</sup> June 2015.

<sup>859</sup> Abspoel, 3<sup>rd</sup> June 2015.

<sup>860</sup> De Boer, 4<sup>th</sup> June 2015.

<sup>861</sup> 19<sup>th</sup> May 2015.

<sup>862</sup> 19<sup>th</sup> May 2015.

<sup>863</sup> 8<sup>th</sup> June 2015.

<sup>864</sup> De Boer, 3<sup>rd</sup> June 2015, Pol, 4<sup>th</sup> June 2015, De Vries, 8<sup>th</sup> June 2015, Keulemans, 15<sup>th</sup> June 2015.

timeframe which had changed since the negative outcome of the Referendum on the EU Constitution in the Netherlands.<sup>865</sup>

‘The position of the PVV in the transport dossiers is not relevant. They have no views on these topics. The government has come up with its own position on this, which was later on backed by the NP. This would have happened on the same way if the government had not depended on the support of the PVV.’<sup>866</sup>

‘The PVV chose strategically. It would not have an opinion on technical issues, such as Maritime Policy, but would focus more on political and real European topics, such as EU migration.’<sup>867</sup>

In other words, other variables such as salience, but also the partisan composition (minority government), prevail over a Eurosceptic government in two pair-wise comparisons. It seems that MPs increased their efforts in C3 as it was felt that there was more at stake and that they had higher chances of having an impact on their government as a consequence of its need to find a majority for its position. C4a really shows the importance of salience, as in the case of the Port Services Directive, MPs had support from interest groups such as trade unions which strengthened their position. The push from interest groups appeared to have increased the use of formal powers by the NP, as public opinion would likely put pressure on the government to listen to the NP and take its position. Based upon the outcome of the two pair-wise comparisons, it can be concluded that at least in technical EU dossiers, the presence of a Eurosceptic party, upon which the government depends in order to achieve a majority in the NP, does not increase the NP’s ability to effect an impact. The hypothesis can therefore not be confirmed. The outcome of this analysis could have been different, however, if one of the cases had been more Europeanised (during which, for example, the future of the EU would be discussed). This conclusion is in line with Auel and Raunio’s argument, stressing the very fact that it is upon EU issues that Eurosceptic parties can win votes (not technical dossiers, such as railways or ports).<sup>868</sup> It is the content of the EU file that is relevant.

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<sup>865</sup> Abspoel, 3<sup>rd</sup> June 2015, Pol, 4<sup>th</sup> June 2015, Kisters 19<sup>th</sup> May 2015.

<sup>866</sup> Kisters, 19<sup>th</sup> May 2015.

<sup>867</sup> Abspoel, 3<sup>rd</sup> June 2015.

<sup>868</sup> See Chapter 3.4.2

The next Chapter follows on from this conclusion, as it will look at a comparison between a case selected on the salience condition and a second which can be considered a non-salient one. It is expected that the case where the salience condition is present (C5) will follow a similar causal process as shown by C3 and C3a.

**Table 13 Outcome of the Pair-wise comparison between Case 3 and Case 4**

<b>Seven steps of OLP</b>	<b>Case 3 (<u>Eurosceptic gov</u>)</b>	<b>Case 4 (<u>Non-Eurosceptic gov.</u>)</b>
<b>1: publication</b>	X	X
<b>2: eight weeks</b>	X	X
<b>3: first influence phase</b>	EM government 2 letters government Letter NP + attempt to influence	2 letters government EM government Meeting gov. + NP Scrutiny Reserve
<b>4: first control phase</b>	Letter government	Plenary meeting Letter government
<b>5: second influence phase</b>	Letter government Meeting NP with gov. (attempts to influence)	Letter government Meeting government and NP + expression of opinions
<b>6: second control phase</b>	Letter gov.	Letter government Letter NP
<b>Extra influence phase</b>	Letter government Meeting NP + gov. (attempt to influence)	Not applicable
<b>Extra control phase</b>	Letter government	Not applicable
<b>Extra influence phase</b>	2 letters government 1 letter NP	Not applicable
<b>Extra control phase</b>	1 letter government	Not applicable
<b>Extra influence phase</b>	Letter government Meeting NP + gov. (attempts to influence)	Not applicable
<b>Extra control phase</b>	Letter government	Not applicable
<b>7: adoption</b>	X	X
<b>IMPACT</b>	Intermediate	Weak

**Table 14 Outcome of the Pair-wise Comparison between Case 3a and Case 4a**

<b>Seven steps of OLP</b>	<b>Use of formal powers CASE 3a (<u>Eurosceptic gov</u>)</b>	<b>Use of formal powers CASE 4a (<u>non- Eurosceptic gov</u>)</b>
<b>1: publication</b>	X	X
<b>2: eight weeks</b>	X	X
<b>3: first influence phase</b>	EM government Letter gov. Meeting NP-gov.	EM government 2 meetings I&E Committee, EAC and government (1 about scrutiny reserve)
<b>4: first control phase</b>	X	X
<b>5: second influence phase</b>	Letter gov. Questions to gov.. Answers from gov	Letter gov. Meeting EAC, I&E and gov. Letter gov.
<b>6: second control phase</b>	Letter gov.	Letter gov.
<b>Extra influence phase</b>	X	Letter gov. Meeting NP and gov.
<b>Extra Control phase</b>	X	Letter gov. to ESC Meeting NP and gov.
<b>7: adoption</b>	X	X
<b>IMPACT</b>	Weak	Weak

## Chapter 7

### Saliency

#### 7.1 Introduction

Following on from the previous Chapters in which we have seen how causal processes tend to confirm the saliency condition, it will be interesting to measure the very saliency condition itself this time.

This Chapter deals with a pair-wise comparison between a salient case (EU Water Policy) when scrutinised by the HC during the coalition government of Cameron-Clegg from 2010-2015, and a non-salient case (Ship Recycling) also scrutinised by the same NP during the same coalition government in the 2010-2015 period.<sup>869</sup> Although the HC is a NP with moderate formal powers focused on ex post control mechanisms, it is expected that in a salient case the NP will be able to increase its impact on the government's EU policy position.

The Chapter consists of three main parts, where the first part traces the different steps of the OLP during the scrutiny of the EU Water Policy in which evidence is added by data from interviews, while the second part of the Chapter follows similar steps during the scrutiny of the Ship Recycling Regulation, and the third part consists of a comparison between the two cases.

When selecting the saliency case, a distinction has been made between saliency for the electorate and for legislators (see also Chapter 4.3.3). Although in some cases the saliency condition had to be absent, as another condition was measured, the topic could still be salient to legislators (they are less politicised as there exists a gap between the voters and MPs on an issue, this happens particularly in EU files). However, in this pair-wise comparison in which a comparison has been made between a salient and non-salient case, the case where the salient condition is present is found to be so for the electorate. In other words, although the topic of water as such is not part of any party manifestos, it is part of public health, the wider EU environmental agenda and protecting the environment has an essential place in manifestos of the Liberal

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<sup>869</sup> For more information about the political parties in the UK, ESC members and other involved committees in the scrutiny of the selected cases, see appendix III.

Democrats<sup>870</sup> and Conservatives<sup>871</sup> (the coalition partners). Besides, the Euro-barometer of 2012<sup>872</sup> shows the commitment of European citizens to the environment<sup>873</sup>, and a press release by the EC shows that European citizens call for stronger EU action on water.<sup>874</sup>

C6, on the other hand, is non-salient to the electorate based upon the used indicators and is hardly salient to legislators. However, it was still discussed in the NP and is a topic on which disagreement between the political parties is expected; such disagreement between the government and NP is likely to ensure that the lack of salience is measured here and not a pure coincidence.

Other conditions are constant in both cases. The partisan composition variable is stable, as in the pair-wise comparison this case to another scrutinised post-Lisbon and during the Cameron coalition government. Besides, as the salience condition is the only one to vary between C5 and C6, any variation in parliamentary activity and the measurable impact is therefore most likely to be linked to the salience condition and not to that of partisan composition. The analysis of the partisan composition condition has also been shown in Chapter 5 not to be relevant for any variation in parliamentary activities, but that salience is. The presence of the multi-party government in both cases, therefore, should not intervene with the independent variable here.

Both the Eurosceptic and Lisbon variable are considered to be absent, as the coalition government does not depend on Eurosceptic support<sup>875</sup> and the NP does not send any ROs to the EC regarding a subsidiary objection.

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<sup>870</sup> Liberal Democrat Manifesto 2010.

<sup>871</sup> Conservatives Manifesto 2010.

<sup>872</sup> Standard Euro-barometer 78, 2012, annex question 7.

<sup>873</sup> European Commission, DG Environment: [http://ec.europa.eu/environment/water/water-framework/info/intro\\_en.htm](http://ec.europa.eu/environment/water/water-framework/info/intro_en.htm)

<sup>874</sup> European Commission, press release, Environment: Europeans call for stronger EU action on Water, 22<sup>nd</sup> March 2012.

<sup>875</sup> David Cameron held his Bloomberg speech on 23<sup>rd</sup> January 2013 which can be considered as the start of a more Eurosceptic Conservative party attitude. This case deals with an EU draft directive, of which the scrutiny mainly takes place before the Bloomberg speech (the document is cleared in June 2013).

## 7.2 Case 5: The EU Water Policy Directive (COM(2011)876)<sup>876</sup>

### 7.2.1 Policy positions EU water policy

It is expected that the contents of this EU legislative file will lead to some level of disagreement between the different parties in Parliament (and government) on the extent to which the scope of the directive should reach, which could lead to an increased use of formal powers. Tony Juniper writes in *The Guardian* about the views of MPs on EU environmental issues:

‘Some ministers see EU laws, including the Habitats directive and the Water Framework directive<sup>877</sup>, as constraints to "growth" and believe they need to be weakened in order to promote economic activity.’<sup>878</sup>

Besides, the UK government has done very little to respond to the EU Water Framework Directive (WFD)<sup>879</sup> and different conservation and environmental groups, such as the WWF and RSPB<sup>880</sup> have lobbied the EC and UK government to improve the situation. The NP also put pressure on government to do more to implement the WFD:

‘Mr Richard Benyon MP, Parliamentary Under-Secretary of State at DEFRA, quoted the figure of 27% of rivers as fully functioning ecosystems, and added that there was "a desperate need to improve this situation. We pressed Mr Benyon and his officials on whether the UK was approaching implementation of the WFD with sufficient ambition.’<sup>881</sup>

The friction between the UK government and other interest groups during the implementation of the WFD has been largely one of getting the right balance between

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<sup>876</sup> <http://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1436526352676&uri=CELEX:52011PC0876>

<sup>877</sup> The current EU water policy directive is a proposal to amend the WFD (2000/60). This directive has the following as its main aims:

Improvement of drinking water across the continent,  
Reduction in water pollution, in particular groundwater,  
Protect and enhance the status of wetlands and water ecosystems,  
Lessen the effects of flooding and droughts. (BBC, ‘Consumers face new water torture’, 30<sup>th</sup> March 2006).

<sup>878</sup> Juniper T., ‘David Cameron's EU speech is grave news for our environment, *The Guardian*, 25<sup>th</sup> January 2013.

<sup>879</sup> Burns, J. UK rivers failing new EU standard, BBC, 21<sup>st</sup> September 2009.

<sup>880</sup> Lightwater, ‘Facts that are presented to scare and shock’, 31<sup>st</sup> August 2010.

<sup>881</sup> House of Lords, European Union Committee, 33<sup>rd</sup> Report of 25<sup>th</sup> April 2012.

costs (UK government concern) and the environmental value of the directive (concern of part of the opposition).<sup>882</sup> It is evident that at the start of the coalition government, during which the scrutiny of this file takes place, the emphasis was, at least for the Conservatives, mainly focused on financial cuts.<sup>883</sup> Another EU directive which could increase governmental expenditure has most likely not been in the interests of just the Conservatives. On the other hand, the Liberal Democratic coalition partner has during its campaign strongly focused on the benefits of the EU<sup>884</sup> and the importance of the environment.<sup>885</sup> For that reason, it is likely that the coalition partners have different views on this directive than their Conservative coalition partner. Also in the opposition, similar levels of disagreement might be expected. Labour will potentially be interested in following the recommendations of this legislative file, as this is in line with its environmental views of its party manifesto.<sup>886</sup> It is therefore likely that the HC will do its best to use more than its formal powers here since the main coalition partner, the Conservatives, are not expected to accept any of the proposals in the directive linked to more public spending. As the different political parties in the HC have no specific views on water policies, table 15 gives an overview of the main British parties in the NP on wider environmental policies, to which this Directive belongs.

**Table 15 Party policy positions on environmental policies in the UK, 2010-2015**

<b>Labour</b>	<b>Conservatives</b>	<b>Liberal -Democrats</b>	<b>UKIP</b>
Environmental policy is focused on creating more green jobs and lower fuel bills. <sup>887</sup>	Encourages sustainable water management. <sup>888</sup>	Tougher limits on pollution across Europe. <sup>889</sup>	Not part of UKIP's party manifesto. <sup>890</sup> However, on environmental and climate change issues, UKIP MEPs have failed to show up. <sup>891</sup>

<sup>882</sup> Kaika, M. 'The Water Framework Directive: A New Directive for a Changing Social, Political and Economic European Framework' *European Planning Studies*, Vol. 11, No. 3, 2003, p. 306.

<sup>883</sup> Nicholas Watt, 'Spending cuts will make me unpopular admits David Cameron', *The Guardian*, 14<sup>th</sup> February 2011.

<sup>884</sup> Civitas, 'UK Political Parties Positions on the European Union', 2014.

<sup>885</sup> Clements, B., 'Greener than thou?' Party Supporters and the Environment in Britain', University of Leicester, <http://www.britpolitics.co.uk/academic-articles-all/greener-than-thou-party-supporters-and-the-environment-in-britain>

<sup>886</sup> Labour Manifesto: General election 2010, Chapter 8.

<sup>887</sup> Labour Manifesto: General election 2010 party policy.

<sup>888</sup> Conservative Manifesto: General election 2010 party policy.

<sup>889</sup> Liberal Democrat Manifesto: general election 2010 party policy.

<sup>890</sup> UKIP Manifesto, April 2010. *Empowering the people*.

<sup>891</sup> Casson, L., *Will the UKIP 'earthquake' shake up EU environmental policy?*, British Influence, 12<sup>th</sup> June 2014.

### 7.2.2 Expected causal process

Previous research has shown that the more salient a topic is in the NP, the tighter the scrutiny of the government. Actors are likely to bargain more keenly when the topic is salient to them.<sup>892</sup> This makes it more likely that the NP will have an impact on its government's EU policy position.

I therefore expect to see the following causal process in this case:

NPs dealing with a salient topic → NPs use more than their formal mechanisms to influence and control the government regarding the position of the EU proposal; for example, outside of committee meetings, it will use publicity, party meetings or hold informal discussions with civil servants → NPs show high level of *visible* influence and control → government wants to show it is willing to respond to its representatives and is put *publicly* under pressure → government more inclined to adopt the NP's position → parliamentary impact.

### 7.2.3 Background of the proposal

The Water Policy directive will revise the WFD by adding 12 new substances to the list of those that should be monitored during water quality checks, such as E2 and EE2.<sup>893</sup> The EU agreed about the WFD after increasing demand by citizens and environmental organisations for cleaner rivers and lakes, groundwater and coastal beaches. The European Water policy intends to clean polluted waters and makes sure that clean waters remain clean.<sup>894</sup>

### 7.2.4 Parliamentary scrutiny of the EU file during the seven OLP steps<sup>895</sup>

This section discusses all different steps of the OLP of the EU legislative file regarding the EU Water Policy and whether the HC used its formal powers to either influence and/or control their government's EU policy position at any point of the scrutiny and if so, whether its attempts had any effect.

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<sup>892</sup> Slapin, 2014:35.

<sup>893</sup> <http://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1436526352676&uri=CELEX:52011PC0876>

<sup>894</sup> Euractiv, 'New chemicals, drugs added to EU water pollution watch list', 4<sup>th</sup> July 2013.

<sup>895</sup> For more information on these steps, see Appendix I and II.

### Step 1

The proposal is published on 31<sup>st</sup> January 2012.<sup>896</sup> The document is only deposited in the HC on 7 February 2012.<sup>897</sup>

### Step 2 NPs have eight weeks to respond

The deadline to submit subsidiary objections to the EC is 28<sup>th</sup> March 2012.<sup>898</sup> The HC shows no objections against the publication of the proposal (none of the other EU NPs have objections either).

### Step 3 Ex ante influence phase

As evidence to confirm the causal mechanism during this stage, it must be established whether during this salient case, the levels of scrutiny by the NP are higher than in non-salient cases.<sup>899</sup> Consequently, evidence must be found linking these extra levels of scrutiny to higher levels of impact by the NP on the government's EU policy position as a consequence of the salient topic.

On 20<sup>th</sup> February 2012, DEFRA publishes its EM for this legislative proposal<sup>900</sup> (initial position). The government welcomes the review of the WFD and the proposal to adapt the list of priority substances in order to ensure that the environment is protected from significant harm.<sup>901</sup> The government will publish an IA soon, but the Minister does expect that costs will be dependent upon the inclusion of particular substances, so these could change during discussions.<sup>902</sup> The Environment Agency (EA) has estimated that installing the necessary advanced waste water treatment plant in England and Wales to deal with some of the pharmaceuticals being classified as new priority substances could cost about £27 billion over 20 years and, thus, have a major impact on the water industry and consumers.<sup>903</sup> DEFRA therefore suggests that consideration should be

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<sup>896</sup> <http://eur-lex.europa.eu/legal-content/EN/HIS/?uri=CELEX:52011PC0876&qid=1436529127884>

<sup>897</sup> HC ESC, 56<sup>th</sup> Report of session 2012-2013, 22<sup>nd</sup> February 2012.

<sup>898</sup> See website of IPEX: <http://www.ipex.eu/IPEXL-WEB/dossier/document/COM20110876.do>

<sup>899</sup> More than one meeting and/or correspondence with the minister, during which the NP shows its own opinion with the intention to influence the government.

<sup>900</sup> HC ESC, 56<sup>th</sup> Report of session 2012-2013, 22<sup>nd</sup> February 2012.

<sup>901</sup> Ibid., par. 5.4.

<sup>902</sup> Ibid., par. 5.6.

<sup>903</sup> Ibid.

given to regulating these through the extensive body of EU legislation on pharmaceuticals.<sup>904</sup>

On 22<sup>nd</sup> February 2012<sup>905</sup>, the ESC discusses the EU Water Policy file during its meeting.<sup>906</sup> MPs focus thereby mainly on the government's EM.<sup>907</sup> They do show concern, however, especially about the very high water treatment costs.<sup>908</sup> These would arise if certain pharmaceuticals were to be included in the list of priority substances. It will wait for the government's IA and brings the file to the attention of the House. It keeps the draft directive under scrutiny.<sup>909</sup>

### *Discussion in the House of Lords*

Although only the scrutiny of the HC is followed during the different steps of the OLP for this case, it is worthwhile examining the House of Lords in this instance as well, as it shows a more neutral, and independent from government, context of the UK's dealing with this directive. The House of Lords debates this file on 25<sup>th</sup> April 2012.<sup>910</sup> The meeting deals particularly with the implementation of the WFD in the UK. It becomes clear that the UK has not been able to implement the WFD and other related ones to the expected standard:

‘Existing directives have already brought into force measures that are relevant to the implementation of the WFD. These include some under which the UK has previously been subject to infraction proceedings, such as the Urban Waste Water Treatment (91/271/EEC), Shellfish (79/932/EEC) and Nitrates (91/675/EEC) Directives. Other directives also clarify and co-ordinate WFD objectives to be in RBMPs, such as the Environmental Quality Standards Directive (2008/105/EC), which sets out limits on concentrations of the priority substances in surface waters; the list of priority substances is currently under revision.’<sup>911</sup>

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<sup>904</sup> Ibid., par. 5.6.

<sup>905</sup> HC ESC, 56<sup>th</sup> Report, 22<sup>nd</sup> February 2012 session 2012-2013.

<sup>906</sup> For more information on the ESC and its members, see appendix III.

<sup>907</sup> HC ESC, 56<sup>th</sup> Report, 22<sup>nd</sup> February 2012, session 2012-2013, par. 5.4-5.6.

<sup>908</sup> Ibid., par. 5.7.

<sup>909</sup> Ibid.,

<sup>910</sup> House of Lords, European Union Committee, *An Indispensable Resource: EU Freshwater Policy*, 33<sup>rd</sup> Report of Session 2010–12, 25<sup>th</sup> April 2012.

<sup>911</sup> House of Lords, European Union Committee, *An Indispensable Resource: EU Freshwater Policy*, 25<sup>th</sup> April 2012, par. 4.

The House of Lords concludes that the objectives of the WFD review are too rigid and unrealistic, as Mr Benyon explained to the House that 100% of UK waters would not attain a good status by 2027, and that the provisions in the current WFD on disproportionate cost and technical feasibility meant that a lower level than 100% was in keeping with the Directive.<sup>912</sup>

#### *Further discussions in the ESC*

On 19<sup>th</sup> December 2012, the ESC publishes a report<sup>913</sup>, in which it notes that the ESC had been informed by the government about a significant shift in views during discussions in the Council. Initially, the UK had been isolated in its opposition to have certain substances included<sup>914</sup>, but other member states now seem to share this view. The EP, however, is still of the opinion that these should be included. Negotiations on this topic should probably start in the New Year, with the aim to complete the file by the summer after the first reading.<sup>915</sup>

The government also promised to have a final IA<sup>916</sup>, which would be forwarded once the outcome of the negotiations became clear (in order to have a clearer idea of possible costs implications).<sup>917</sup>

From the publication of the EU draft directive at the beginning of the year until the first Council meeting about this topic (11<sup>th</sup> June 2012)<sup>918</sup>, the ESC discusses the file twice. During the meetings, it mainly focuses on the contents of the new proposals and there is no attempt to have an impact. No increased use of formal powers has been found, which could eventually lead to a higher impact. The ESC in fact takes a very reactive attitude by waiting for further information and does not show an own position.

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<sup>912</sup> Ibid., par. 44.

<sup>913</sup> HC ESC, 4<sup>th</sup> Report, Session 2013–14, 19<sup>th</sup> December 2012.

<sup>914</sup> E2, EE2 and diclofenac.

<sup>915</sup> HC ESC, 4<sup>th</sup> Report, Session 2013–14, par. 19.5.

<sup>916</sup> This, however, is not published during the scrutiny of the EU legislative file.

<sup>917</sup> Ibid.

<sup>918</sup> Press Release, 3173<sup>rd</sup> Council meeting Environment, Luxembourg, 11 June 2012.

#### Step 4 Ex post control phase

On 11<sup>th</sup> June 2012<sup>919</sup> the Water Policy Directive is discussed by the Environmental Council. After this meeting, no follow-up takes place between the HC and government.

To confirm the causal mechanism at this stage, evidence needed to be found showing more attempts than normal by the NP to hold its government to account.<sup>920</sup> However, there are no signs of any scrutiny at all at this stage.

#### Step 5 Ex ante influence Phase

To confirm the causal mechanism at this stage, evidence needs to be found showing that the NP has increased its scrutiny as a consequence of the high salience of the topic. To do so, the HC is expected to use more than its normal formal powers (for example, not only asking questions, but a more active approach, such as showing its own opinion and/or including sectoral committees with more expertise).

Because of its technical character, the HC forwards the draft directive to the Science and Technology (S&T) Committee.<sup>921</sup> This committee organised an inquiry into the quality of water as a result of the new draft directive regarding Water Policy.<sup>922</sup> On 27<sup>th</sup> February, 4<sup>th</sup> March, 6<sup>th</sup> March and 13<sup>th</sup> March 2013, the S&T committee receives different witnesses who give oral evidence in this field. The involvement of the S&T committee can be considered as an increased use of formal powers, as it is a choice for the NP in cases of salient or technical files. The decision of the S&T Committee to hold an inquiry on the topic can be considered a clear sign of salience. After all, the S&T committee thereby shows that it is interested in the topic to such an extent that it makes time and resources available to hear witnesses give their views on the matter. It would not make such a decision on a non-salient topic. This is confirmed in interviews.<sup>923</sup> According to Hywel Williams MP, the NP has higher chances to effect an impact on its government in one of these select committees instead of the ESC. The ESC will only

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<sup>919</sup> Ibid.

<sup>920</sup> I.e. not only receiving information, but a more active form of control, such as asking questions.

<sup>921</sup> For more information on the composition of the S&T Committee, see appendix III.

<sup>922</sup> The S&T Committee gives the government scientific and engineering advice. It is an unusual committee amongst departmental select committees, as it also scrutinises the Government Office for Science (GO-Science) which is a "semi-autonomous organisation" based within the Department for Business, Innovation and Skills (BIS).

<sup>923</sup> Benyon, 25<sup>th</sup> June 2015, Williams MP, 25<sup>th</sup> June 2015, Smith, 2<sup>nd</sup> July 2015.

involve a select committee if it wants to influence or control the government on an issue:

‘Select committees make recommendations, which the government then consider and accept or reject. If an EU file goes to a select committee, there are more chances to influence the government than in the ESC. In the ESC they deal with issues fairly quickly, often only one meeting about a certain topic. Select committees sometimes have three or four or even more evidence sessions, taking views from experts, to give technical advice.’<sup>924</sup>

First of all, Thames Water, the Environmental Industries Commission and the Association of the British Pharmaceutical Industry (BPI) give evidence on 27<sup>th</sup> February 2013.<sup>925</sup> All three organisations oppose the inclusion of the new substances to the WFD as suggested in the new Water Policy Draft Directive.<sup>926</sup> There is not enough evidence that these substances will do any harm and adding them will lead to extra costs according to the witnesses.<sup>927</sup> The BPI stresses that in particular the three pharmaceuticals should be excluded, as there is no evidence of any population effect in the environment that could be attributed to the low levels of these pharmaceutical residues which are found in the environment.<sup>928</sup>

On the same day, the Centre of Ecology and Hydrology, Natural Environment Research Council and a representative of the Blueprint for Water Coalition is heard to give evidence.<sup>929</sup> All witnesses plead this time for an inclusion of the new substances to the WFD, contrary to the three witnesses heard during the morning of the oral evidence session.<sup>930</sup> However, they do agree with the previously heard witnesses that some of the substances require more research by the EC.<sup>931</sup>

Thames Water (TW) continues to lobby against the inclusion of the new substances to the WFD. In its written evidence, received by the S&T Committee on 4<sup>th</sup> March 2013, the proposals are described as ‘unsubstantiated’ and ‘unlikely to have any

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<sup>924</sup> Williams MP, 25<sup>th</sup> June 2015.

<sup>925</sup> HC, S&T Committee, Water Quality, 1<sup>st</sup> Report of session 2013-2014, 27<sup>th</sup> February 2013.

<sup>926</sup> Ibid., Q3.

<sup>927</sup> Ibid.

<sup>928</sup> Ibid.

<sup>929</sup> HC, S&T Committee, Water Quality, 1<sup>st</sup> Report of session 2013-2014, 27<sup>th</sup> February 2013.

<sup>930</sup> Ibid., Q.38.

<sup>931</sup> Ibid.

environmental benefit'. TW is therefore mainly worried about the extra costs which will have an impact on customers.<sup>932</sup>

On 4<sup>th</sup> March 2013, the EA gives evidence in front of the S&T committee.<sup>933</sup> It does not see an added value of including extra substances to the WFD.<sup>934</sup> It suggests, however, to include a *watch list* of substances which could be monitored more uniformly across the EU in order to gather improved data around the substances in question before adding them to the list.<sup>935</sup> It furthermore suggests the improvement of innovation in this field, and argues that it is important to find ways to manage waste water.<sup>936</sup> It is thus supportive of the UK government's proposals in the Water White Paper.<sup>937</sup> MPs ask the EA for its opinion regarding the level of engagement of the UK government with the EU in the drawing up of these proposals.<sup>938</sup>

The EA is very positive about government involvement:

'It is fair to say that the government has probably led the way in terms of mounting an evidence-based challenge against some of these proposals. They have always pressed for an evidence-based approach within Europe ...'<sup>939</sup>

On 6<sup>th</sup> March 2013, the EC comes to give evidence before the T&S Committee.<sup>940</sup> The EC representative explains why it has selected an extra 12 substances to be added to the directive. Mr. Gammeltoft states

'The patterns of use of chemical substances change over time; the emissions to the environment change over time. Therefore, it is natural that the list of priority substances will have to evolve over time, and this can, in principle, include adding new substances and taking substances off the list. I consider this to be a routine matter.'<sup>941</sup>

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<sup>932</sup> HC, S&T Committee, Written Evidence Submitted by Thames Water, 4<sup>th</sup> March 2013.

<sup>933</sup> HC, S&T Committee, Water Quality, 1<sup>st</sup> Report of session 2013-2014, 4<sup>th</sup> March 2013.

<sup>934</sup> Ibid., Q.100.

<sup>935</sup> Ibid., Q.38.

<sup>936</sup> Ibid., Q.110.

<sup>937</sup> HM Government, Water for Life, December 2011.

<sup>938</sup> To be discussed in the EP in May 2013.

<sup>939</sup> HC, S&T Committee, Water Quality, 4<sup>th</sup> March 2013, Q.110.

<sup>940</sup> HC, S&T Committee, Water Quality, 6<sup>th</sup> March 2013.

<sup>941</sup> Ibid., Q138.

MPs ask the EC how to sell these new plans, which will lead to increased costs, to a sceptical public and how to communicate the benefits of what is done in a way that is understandable to the wider public.<sup>942</sup> Although MPs do not show any attempts to alter the proposal, the active questions it raises on communicating its implications shows a genuine interest by the Committee. In other words, it does not only want to be informed by the different witnesses, it also considers itself to play an active role in that (communication to the public). This might not imply impact, though it does surely show signs of salience and parliamentary activity.

The EC answers that, just like explaining the benefits of biodiversity, it is a challenge to do so.

‘... [W]hat we will have is cleaner water; probably fewer costs in drinking water treatment; and fewer costs in treating things like polluted sediments, because a lot of these substances will end up in sediments and may have to be cleaned up for other purposes ... There is a whole series of benefits. Some of them are easier to visualise than others ...’<sup>943</sup>

The committee also asks about the levels of contact between the government and EC on this matter.<sup>944</sup> The EC replies that the UK government has been quite active on priority substances and co-chaired some of the expert groups. It has also been responsible for developing the environmental quality standards proposed for E2 and EE2.<sup>945</sup> The MPs, however, insist and want to know whether the UK government has pulled its weight when comparing it with other European countries.<sup>946</sup> This question shows that the relationship between the government and NP is more than solely one belonging to the trusteeship. The HC is active in finding out to what extent the government has been doing its job. This is a way of holding government to account in this file. The EC answers positively:

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<sup>942</sup> Ibid., Q.156.

<sup>943</sup> Ibid.

<sup>944</sup> Ibid., Q.177.

<sup>945</sup> Ibid.

<sup>946</sup> Ibid., Q.178.

‘Yes, definitely. In terms of participation in the preparatory work, yes, the UK has definitely pulled its weight. It has probably been more active than the average member state.’<sup>947</sup>

On 13<sup>th</sup> March, finally, DEFRA is heard for oral evidence and Richard Benyon and two civil servants attend the S&T Committee.<sup>948</sup> To the question asked by one of the MPs as to whether DEFRA thinks that the new substances should be listed, the Minister replies affirmatively with regard to most of them.<sup>949</sup> Some of them, however, seem to have been unnecessarily added to the list, in the Minister’s opinion.<sup>950</sup> They pose no form of unacceptable risk. The committee goes on to ask what the Minister considers to be an ‘unacceptable risk’, to which the Minister replies:

‘When unacceptable risk might be faced by people or the environment, government and regulators should intervene. The government’s role is to protect people and the environment, and for chemicals we need to balance the value of being able to use a substance against its potential human and environmental impacts ...’<sup>951</sup>

The committee also wants to know why the UK lags behind other European countries when it comes to innovation and water treatment.<sup>952</sup> This is a critical question, which goes further than the solely passive form of being informed. It is a way of holding the government to account. The government responds that the UK is catching up rapidly and that the new approach to the price review in 2014 is encouraging more innovation with water companies.<sup>953</sup> This answer is not sufficient for some MPs who continue to ask about some of the evidence received by the Committee, which shows a lack of political support regarding the importance of water policy. It asks clarification of the government to find out whether water policy is a priority for its administration.<sup>954</sup>

The government responds that water policy is a massive issue across the government.

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<sup>947</sup> Ibid.

<sup>948</sup> Ibid.

<sup>949</sup> Ibid., Q.189.

<sup>950</sup> Ibid.

<sup>951</sup> Ibid., Q. 191.

<sup>952</sup> Ibid., Q.213.

<sup>953</sup> Ibid.

<sup>954</sup> Ibid., Q.215-216.

‘This is about growth, jobs, the bills households are paying, public health, safety and particular issues of social deprivation. How do we enable people who are in water poverty to pay their bills? It is massive.’<sup>955</sup>

MPs continue to ask why the UK has not been more involved in this within the EU and why it has been absent from some of the EU negotiations.<sup>956</sup> Benyon says that DEFRA does attend the meetings. He is backed up by his civil servants who say that this suggestion has no evidence and that the UK has always played an active role in this. The UK has only been inactive in the European innovation partnership.<sup>957</sup> But that is not just for the government to attend. Benyon continues:

‘What we are concentrating on is where we think we can bring about change, with the right proportionate evidence-based decisions to how we do stuff.’<sup>958</sup>

Finally, the committee wants to know about the involvement of the public and how much it is aware of the issue of substances.<sup>959</sup> DEFRA replies that in its *Water for Life* White Paper, the government set out several proposals on this issue. Within the paper, it outlines proposals on how to reduce burdens, simplify and deregulate existing regulation.<sup>960</sup>

The contents of the questions raised by the HC show that the topic is indeed salient. It is obvious that the relationship between the government and the HC increases towards the level of delegatory during which the HC uses more than its normal powers of being informed, but goes further and holds the government to account by asking about the (lack of) achievements in the UK within this field, even though the NP does not try to change the position of the government.

### *Letter from government*

On 20<sup>th</sup> May 2013, the DEFRA sends a letter to the ESC. Mr Richard Benyon informs the committee that a compromise has been reached with the EP.<sup>961</sup> This compromise sees the three pharmaceuticals which caused concern for the UK being removed from

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<sup>955</sup> Ibid., Q.216.

<sup>956</sup> Ibid., Q.217.

<sup>957</sup> Ibid., Q.217.

<sup>958</sup> Ibid., Q.219.

<sup>959</sup> Ibid.

<sup>960</sup> Ibid., Q.220.

<sup>961</sup> HC ESC, Fourth Report, 2013-2014, 5<sup>th</sup> June 2013.

the list of priority substances.<sup>962</sup> They will now appear on some kind of watch list, as has also been requested by the S&T committee<sup>963</sup> (however, this request is also made in the governmental EM). The Minister furthermore notes that as a consequence of the compromise the EC must now develop a strategic approach regarding the pollution of water by pharmaceuticals. This could result in new priority substances to be added in the next review of Directive 2008/105/EC in 2017.<sup>964</sup>

Finally, the Minister notes that the proposed lowering of the Environmental Quality Standards (EQS), to which the ESC had drawn attention during a previous meeting, had for some substances been accepted. According to the Minister, there still remains uncertainty around the costs involved:

‘These substances had for the most part already been restricted under source control legislation, and technological means of removal are currently limited and expensive.’<sup>965</sup>

This letter includes direct references to the issues raised by the NP. Although there are no signs of impact (there is no proof that the issues discussed during the Council meeting come from the UK and could indirectly be influenced by the HC), the contents of this letter show that the government is aware of the HC’s position and feeds back about it. In other, less salient cases, a letter would just refer to the adoption of the file, if mentioned at all (as we have seen, for example, in the cod recovery (C2a)).

#### *ESC discussion*

On 5<sup>th</sup> June 2013, the ESC published a report in which it shows its relief for the agreement between the EP and Council to remove the famous three pharmaceuticals as this would have led to a significant increase in costs in the UK.<sup>966</sup> The ESC clears the scrutiny of this file. Again, this shows the HC’s opinion on the topic and its relieved because its concerns, known by DEFRA, were solved.

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<sup>962</sup> Ibid., par. 19.7.

<sup>963</sup> Ibid., par. 19.7.

<sup>964</sup> Ibid.

<sup>965</sup> Ibid., par. 19.8.

<sup>966</sup> Ibid., par. 19.9.

During this stage, more scrutiny than normal was expected to be found (so, active influencing instead of solely being informed about the topic, as is expected in a trusteeship relationship).

The HC indeed shows signs of actively wanting to know about the contents, the consequences and its own role as a communicator to the public in this. Therefore the causal mechanism seems to be confirmed at this stage. The ESC has involved the S&T committee in the scrutiny of this legislative file, because of its technical and salient nature. This committee organised an inquiry into the suggested changes of the WFD and put in a lot of effort to obtain more information about the contents of the draft directive and the actions of the government.

Although from the meetings it is not directly clear that the HC has actively tried to convince the government of its own opinion, in the last ESC report, the government is quoted as referring to some of the points to which the ESC attached importance. Another aspect accepted in the Council, according to government, is the introduction of a watch list of some substances, as was supported by the S&T Committee. However, this watch list was already part of the government EM and cannot therefore be considered as impact.

It is remarkable that the active approach only began during the second influence stage. This corresponds to Chris Heaton-Harris MP and Robert Broadhurst's opinions about MP's contributions during the scrutiny of EU files:

'A clear opinion of MPs on an EU proposal is often not produced until the proposal has progressed a considerable way through EU decision-making. This means the influence the House can have on the formation of an EU law or other commitment is much reduced.'<sup>967</sup>

#### Step 6 Ex post control phase

The next Council meeting, during which the draft Water Policy Directive is discussed and adopted, takes place on 22<sup>nd</sup> July 2013.<sup>968</sup>

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<sup>967</sup> ESC, submission to the ESC of the HC for its enquiry into the HC European Scrutiny system, ESI 07, submitted by Chris Heaton-Harris MP and Robert Broadhurst.

<sup>968</sup> Press Release, 3254<sup>th</sup> Council meeting, Foreign Affairs, Brussels, 22<sup>nd</sup> July 2013.

Evidence was expected to be found showing the government being held to account after the Council meeting. However, no follow up meeting is held or correspondence has taken place after the Council meeting.

The causal mechanism cannot be confirmed at this stage.

### Step 7

Adoption of the legislative file on 22<sup>nd</sup> July 2013.<sup>969</sup> The Council adopts a revised list of chemicals, which present a significant risk to the environment in order to continue with sustainable water management.<sup>970</sup> However, it also agreed to the proposed to lower the Environmental Quality Standards (EQS), which was also suggested by the HC.

### **7.2.5 Concluding remarks**

For this case, a legislative file was selected which, according to both UK citizens and politicians, can be regarded as a topic of high salience. According to the theoretical argument, an EU legislative file which can be considered to be salient for the electorate will lead to the increased use of formal powers by the NP and, as a consequence, an increased impact on the government.

We can indeed infer from meetings and correspondence between the government and the HC that the latter has used more than its formal powers at this stage, as it has given its own opinion to the government *before* the actual Council meeting. The HC has therefore tried to influence the government by showing a huge concern over the inclusion of certain substances and over the actual commitment of the UK government to water policies. The interviewees confirmed the importance of the file and that MPs were appalled by the poor performance of the UK in this field.<sup>971</sup> In other words, both data extracted from the meeting documents and the interviews show that salience is the variable at work here, leading to an increased use of formal powers by the NP with the aim to impact (push for removing three pharmaceuticals) and control (ensuring active involvement of the government). This corresponds clearly to the theoretical argument, linking the salience of a topic to tightening the scrutiny of the government. The NP had a clear view on this file and on the way it expected the government to behave in this

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<sup>969</sup> Ibid.

<sup>970</sup> Ibid.

<sup>971</sup> Benyon, 25<sup>th</sup> June 2015, Williams MP, 25<sup>th</sup> June 2015, Smith, 2<sup>nd</sup> July 2015.

case which led to the tightening of its relationship with government to a delegatory one<sup>972</sup>, rather than having the intention of changing the government's position.

Although no evidence is found of the government taking on any parliamentary suggestions, the government does refer back to the NP's positions when discussing the outcome of the Council meeting (5<sup>th</sup> June 2013).

### *Measurable impact*

Interviewees confirmed that the government has followed its own position in this case, although government representatives do believe that they 'tweaked' their input to the Council as a consequence of the NP's efforts. This was a consequence of the many questions raised and technical advice offered during meetings, but not informally.<sup>973</sup> In other words, by increasing the use of formal powers in this case, the HC did raise awareness among government representatives and endeavoured to show how committed it is to EU water policy. More specifically, the increased use of parliamentary activities leads to an increased use of actions by the government.

As none of the HC's positions are reflected in the government's position or input into the Council, impact can therefore be considered weak. The increased use of formal powers were used to instruct the government to act in a certain way, but not to change the contents of its position vis-à-vis the EU Water Policy. A word of caution is necessary, as impact is extremely difficult here. The HC had many difficulties with the inclusion of certain substances, but this was shared by the government. Government representatives confirmed in interviews that they pressed the Council to have these substances deleted from the list because of the administration's own concerns about financial consequences and not because of the NP's worries.<sup>974</sup> However, government had been taken to court due to failing previous EU water rules. It therefore wanted to show the HC that it was taking the topic seriously.<sup>975</sup> In other words, although measurable impact is not visible here, some softer forms of impact are noticeable in this case (such as making sure that the government does take this topic seriously).

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<sup>972</sup> See also Saalfeld, 2005, Chapter 2.3.

<sup>973</sup> Benyon, 25<sup>th</sup> June 2015.

<sup>974</sup> Ibid.

<sup>975</sup> Ibid.

## 7.3 Case 6: The EU regulation on Ship recycling (COM(2012)118<sup>976</sup>)

### 7.3.1 Policy positions on (ship) recycling

Disagreements are expected to be found between the different parties in parliament and between parliament and government. Ship recycling is part of the wider environmental and, in particular, waste agenda of the UK government and its implementation is also being dealt with by the EA. In 2004, the poor dismantling of ships in the UK had led to objections from both the public and environmental groups because companies without the necessary permits were carrying out the work. This carried the risk of both health<sup>977</sup> and environmental consequences and both the EA and DEFRA (during the Labour government) carried out different reviews in order to learn from those lessons.<sup>978</sup> Political parties representing different regions, but also different interests, are likely to have opposing views on how to legislate ship recycling in the EU. In other words, political parties in which the environment and/or health and safety issues of employees play a prominent role - such as the Greens, Labour and the Liberal Democrats - might have opposing views than, for example, the Conservatives who are more likely to prevent companies dealing with ship recycling from being submitted to too much (EU) regulation.<sup>979</sup> Besides, next to this probable left/right wing cleavage, it is likely that those MPs representing constituencies depending on fisheries and marine resources, such as Cornwall, Devon, Wales and Scotland, are more likely to have an interest in this topic than others.

That is, although in this research this EU legislative file is considered to be of non-salience, it is still a topic on which certain MPs will use their formal powers to either influence and/or control their government. It is simply expected that the number of MPs doing so will be limited and that therefore, the parliamentary impact on the government is to be weak. Table 16 shows the views of British political parties on waste based upon their party programmes from 2010.

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<sup>976</sup> <http://eur-lex.europa.eu/procedure/EN/201456>

<sup>977</sup> Many UK ships are dismantled in Asia where health and safety protection for workers are often ignored or even non-existent (HC, Environment, Rural Affairs and Food Committee, *Dismantling defunct Ships in the UK*, Eighteenth Report, 2003-2004, p.3).

<sup>978</sup> EFRAC, *Dismantling defunct Ships in the UK*, Eighteenth Report, 2003-2004, p. 5

<sup>979</sup> Conservative Party European Election Manifesto, 2014, p.9.

**Table 16 Party policy positions on waste in the UK, 2010-2015**

<b>Labour</b>	<b>Conservatives</b>	<b>Liberal -Democrats</b>	<b>UKIP</b>
<ul style="list-style-type: none"> <li>- Working rights is one of its priorities</li> <li>- Focus on generating sustainable growth and new jobs in and through the waste industry.<sup>980</sup></li> <li>- Higher recycling and greater re-use of materials</li> <li>- Exporting materials for recycling can be more profitable than retaining them in the UK.</li> </ul> <p>Keen to consider views on how government can help promote ‘fair trade’ recycling.<sup>981</sup></p>	<ul style="list-style-type: none"> <li>- Working towards zero waste</li> <li>- Providing incentives to recycle.<sup>982</sup></li> </ul>	<ul style="list-style-type: none"> <li>- Work with other countries to develop an international labelling system for the environmental impact of products, helping consumers choose those with the least impact on resource use and pollution.</li> </ul> <p>Support a global fund for social protection to help developing countries build viable welfare systems.</p> <p>Set targets for ‘zero waste’, aiming to end the use of landfill.<sup>983</sup></p>	<p>No policy on recycling in general, but in favour of leaving the EU landfill Directive to cut refuse disposal costs.<sup>984</sup></p>

### 7.3.2 Expected causal process

When scrutinising a non-salient file it is expected that the NP will use few formal powers, which will lead to the following causal process:

NPs dealing with non-salient EU topic → NPs do not fully use their formal mechanisms to influence → MPs’ actions are not visible → no pressure on government → government responds to EU proposal based upon its own position → no parliamentary impact.

### 7.3.3 Background of the proposal

In 2006, the EU adopted a Regulation in order to control waste shipments and improve environmental protection. It also attempted to include the Basel Convention on the Transboundary Movement of Hazardous Wastes and their Disposal.<sup>985</sup> Despite this regulation, the concerns about health and environmental issues in this field have

<sup>980</sup> Labour’s Policy Review, *Resource Security: Growth and Jobs from Waste Industries*, 2012.

<sup>981</sup> *Ibid.*, 5.

<sup>982</sup> Conservative manifesto: 2010 general election party policy.

<sup>983</sup> Liberal Democrats, Manifesto 2010

<sup>984</sup> Jones, P. *Should the waste sector vote UKIP?* 22<sup>nd</sup> May 2014. <http://www.isonomia.co.uk/?p=2988>

<sup>985</sup> HC ESC, 64<sup>th</sup> Report of session 2012-2013, 24<sup>th</sup> April, 2012, par.8.1.

remained. After the publication of a few Green Papers (2006, 2007) and a Commission Communication (2008), the EC published two further documents in 2012; one draft Council Decision regarding the ratification of the Hong Kong Convention<sup>986</sup> and a draft Regulation on ship recycling which would replace the 2006 Regulation and, amongst other things, implement the key elements of the Hong Kong Convention. This draft regulation is used as this section's non-salient case.<sup>987</sup>

#### **7.3.4 Parliamentary scrutiny of the EU legislative file during OLP steps<sup>988</sup>**

This section discusses all different steps of the OLP of the EU legislative file regarding EU Ship Recycling and whether the HC used its formal powers to either influence and/or control their government's EU policy position at any point of the scrutiny and if so, whether its attempts had any effect.

##### Step 1

The EC document is published on 23<sup>rd</sup> March 2012.

##### Step 2 NPs have eight weeks to respond (deadline: 21<sup>st</sup> May 2012)

Parliaments have until 21<sup>st</sup> May 2012 to send their objections against the proposal in the case that they consider it to be inconsistent with the subsidiary principle. The HC withholds from sending a RO to the EC regarding this legislative file, just like all other NPs.

##### Step 3 Ex ante influence phase

As evidence to confirm the causal mechanism during this stage, meeting documents were expected to be found showing that MPs do not use anything other than their formal powers<sup>989</sup> to scrutinise government. No evidence showing that MPs try to have an impact on their government's position on this EU draft regulation is expected to be found.

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<sup>986</sup> Adopted in May 2009 by the International Maritime Organisation (IMO).

<sup>987</sup> HC ESC, 64<sup>th</sup> Report of session 2012-2013, 24<sup>th</sup> April 2012, par.8.2.

<sup>988</sup> For more information on these steps, see Appendix I and II.

<sup>989</sup> No more than one meeting and/or form of correspondence with the responsible government department, which consists of receiving information but not showing its own opinion with the aim of achieving an impact.

On 11<sup>th</sup> April 2012, the government publishes its EM.<sup>990</sup> This includes the government's position on the draft regulation and is therefore considered to be the initial government position. The responsible Minister for State for Agriculture and Food at DEFRA, Mr James Paice, argues in the EM that a new regulation in this field is necessary because the 2006 regulation has been proven to be difficult to enforce with respect to ships.<sup>991</sup> The Minister welcomes the publication of the new draft regulation, as it encourages Member States to implement the Hong Kong Convention. However, the government expresses some concern about the regulation:<sup>992</sup>

‘For example, it is looking very carefully at the provisions on penalties, noting that, whilst — as is appropriate — these do not require the imposition of *criminal* offences and/or penalties, it will still be necessary to ensure that they respect the allocation of EU competence in this field, that they are appropriate, and that they properly respect the UK's view that the setting of penalties should be primarily a matter for Member States.’<sup>993</sup>

The Minister argues as well that only member states can become a part of the HK Convention, thus, not the EU. Member states will therefore play an important role in the ratification of the Convention.<sup>994</sup> The Minister continues to explain in the EM that differences could exist between member states in the legal requirements for EU-flagged ships, as the ratification of the Convention might not have the same priority for all member states.<sup>995</sup> The UK government is therefore of the opinion that the Convention should be incorporated into EU legislation to ensure a harmonised implementation across all member states.<sup>996</sup>

Finally, the Minister is concerned about the ratification of the Convention within a specified deadline.

‘... The government does not consider this to be appropriate, and, if the Decision stands, it will seek modification to its wording to ensure that it

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<sup>990</sup> HC ESC, 64<sup>th</sup> Report of session 2012-2013, 24<sup>th</sup> April 2012, par.8.7.

<sup>991</sup> Ibid.

<sup>992</sup> Ibid., par.8.10.

<sup>993</sup> Ibid., par.8.8.

<sup>994</sup> Ibid., par.8.9.

<sup>995</sup> Ibid.

<sup>996</sup> Ibid.

"authorises" ratification of the Convention in respect of areas within the external competence of the EU, rather than "requires" it.<sup>997</sup>

On 25<sup>th</sup> April 2012, the ESC<sup>998</sup> holds a meeting, during which it discusses the draft regulation on ship recycling and the government EM (use of standard formal powers).<sup>999</sup>

The ESC refers to the environmental concerns associated with ship recycling. It therefore decides to draw attention to the file. However, even if the UK government is of the opinion that a less prescriptive requirement is necessary, according to the ESC the contents of the draft regulation, including the HK Convention, do not raise any fundamental issues. The ESC therefore clears the document and does not express its own views.<sup>1000</sup> It will not be forwarded to the House or any other (specialised) committee, such as the EFRAC which has dealt with this topic in the past.<sup>1001</sup> Based upon the lack of salience, the parliament will no longer need to use any formal powers to impact the EU file. It gives the government leeway to act as a trustee in this file.

As expected, the ESC dealt with this file in a minimal way. Although they pointed out the risks associated with the recycling of ships and the challenges the EC would have to deal with, it sees no need to further scrutinise this legislative file. If the legislative file were to have been considered more salient, the HC would most likely not have cleared the file but would have held the document under further scrutiny under which the government-parliament relationship would have been a delegatory one with more chances to effect an impact. In this case, the HC chooses not to have any impact. The causal mechanism is accepted.

#### Step 4 Ex post control phase

Although the HC is considered to be a NP, which is part of the trusteeship model in which the emphasis of the scrutiny is focused on holding government to account *after* Council meetings, the parliament has already cleared the document before it even made it to the Council meeting. This lack of use of formal powers corresponds to the expected causal process. Causal mechanism is confirmed.

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<sup>997</sup> Ibid., par. 8.10.

<sup>998</sup> For an overview of the composition of the ESC, see appendix III.

<sup>999</sup> HC ESC, 64<sup>th</sup> Report of session 2012-2013, 24<sup>th</sup> April, 2012

<sup>1000</sup> Ibid., par. 8.11.

<sup>1001</sup> Ibid.

### Step 5 Ex ante influence phase

As the HC has cleared the EU legislative file after one meeting, there is no parliamentary attempt to have an impact on the government's position before the Council meeting. This absence of use of formal powers by the HC confirms the causal mechanism.

### Step 6 Ex post control phase

The next Council meeting at which the draft Ship Recycling Regulation is adopted is held on 25<sup>th</sup> October 2012.<sup>1002</sup> It was expected that there would be little use of control mechanisms after this meeting to establish whether the government had acted according to parliamentary expectations. As parliament cleared the document during its first dealing with this draft regulation, it basically gave the government the freedom to follow its own judgement in this case. The causal mechanism is thereby confirmed.

### Step 7

Adoption of the legislative file on 15<sup>th</sup> November 2013.<sup>1003</sup> Member states agreed to regularly update the European list of ship recycling facilities. All ships must have on board an inventory of hazardous material contained in the ship structure, combined with an overview of their location and quantities.<sup>1004</sup>

### **7.3.5 Concluding remarks**

For this case, a non-salient EU legislative file was selected to examine the extent to which the NP used its formal powers to be able to have an impact on government's EU policy position. Based upon the theoretical argument, it was expected that the HC would not use any more than its formal powers in a non-salient case and that the impact therefore would be weak. When looking at this case, the NP has used even less than its formal powers, as it basically decided to clear this document after one discussion in the ESC. In doing so, the parliament gave the government the total freedom to follow its own judgement, which confirms the theoretical argument that in a non-salient case the government is more likely to act as a trustee and the NP will less-likely have a

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<sup>1002</sup> 3271<sup>st</sup> Council meeting of the Council of the EU, Economic and Financial Affairs, Brussels, 15<sup>th</sup> November 2013.

<sup>1003</sup> Ibid.

<sup>1004</sup> Ibid.

substantive impact on the government's EU policy position. This corresponds to Saalfeld, arguing that the represented does not mind delegating to the representative when salience is low.<sup>1005</sup>

#### *Measurable impact*

Interviews confirm that no informal influence had taken place for the scrutiny of this file and that when drafting the EM, the government only took into account the position of the coalition partners.<sup>1006</sup> The MPs have not introduced any points during the scrutiny of the EU legislative file and have shown no attempts to control the government's input into the Council meeting. As a consequence, the government has not changed its input into the Council regarding this file, nor has it increased its feedback to the HC. It can therefore be concluded that the parliamentary impact on this file is weak, but this is in line with the intentions of the HC.

### **7.4 Pair-wise comparison between case 5 (salience) and case 6 (non-salience)**

This pair-wise comparison very clearly shows different causal processes in the cases where in one case the salience condition is present and absent in the other, even though in both cases the impact can be considered as weak. The expected causal processes are thereby confirmed in both cases when examining the scrutiny of the salient EU dossier and that of the non-salient one. Table 17 shows very clearly how in the salient case MPs are more active than in the non-salient one, particularly during the second influence stage. Interviews confirm that the NP chooses carefully when to use its formal powers, as it is so busy. It will only do so if the topic is of importance to its constituents or if there is a lot at stake for the country.<sup>1007</sup> This was clearly not the case in the Ship Recycling file<sup>1008</sup> as seen in the following quotes: 'Ship Recycling is just not a controversial issue'.<sup>1009</sup> 'The EU Water Policy was important and the Ship Recycling file clearly was not'.<sup>1010</sup> The Water Policy, and especially its scientific underpinning,

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<sup>1005</sup> Saalfeld, 2005:354.

<sup>1006</sup> Cowperthwaite, questionnaire, 13<sup>th</sup> July 2015.

<sup>1007</sup> Benyon, 25<sup>th</sup> June 2015, Rees-Mogg, 22<sup>nd</sup> June 2015.

<sup>1008</sup> Rees-Mogg MP, 22<sup>nd</sup> June 2015, Hopkins, 30<sup>th</sup> June 2015, Sowrey, 6<sup>th</sup> July 2015, Cowperthwaite, 14<sup>th</sup> July 2015.

<sup>1009</sup> Rees-Mogg MP, 22<sup>nd</sup> June 2015.

<sup>1010</sup> Hopkins MP, 30<sup>th</sup> June 2015.

was considered to be of ‘huge importance’ by MPs and their government, that’s why the S&T committee spent three meetings on it’.<sup>1011</sup>

‘We were taken to Court, as there were a few issues the UK had not complied with during the Habitat and Water Framework Directive. Many organisations, like WWF and Anglian Trust and Client Earth were on top of this file, which put the UK under pressure. We were given £100 million by the Treasury to improve our rivers. That is a lot of money, taxpayers money. This increased scrutiny in the House.’<sup>1012</sup>

‘This is how a selection is made. We scrutinise about 1000 documents a year, only a limited number (35) gets to be discussed in the ESC and an even smaller number makes it to the House (half a dozen). The number that gets deep discussion, are quite small. We pick select issue that MPs have direct links with through their constituencies and therefore would like to get involved.’<sup>1013</sup>

According to Gammeltoft, former head of the Water Unit at the EC, the UK considered the Water Policy an important topic:

‘I think the UK government gave a lot of importance to it. There was quite a lot of discussion on it. The UK government played an important role and there was a lot of discussion in the HC.’<sup>1014</sup>

The evidence from the meeting documents, the interviews and this pair-wise comparison all show salience as the responsible factor for increased parliamentary activities, which is furthermore emphasised by the fact that the other possible rivaling variables were either constant or absent in this pair-wise comparison.

#### *Shadow pair-wise comparison*

In order to be more confident about confirming the hypothesis, another pair-wise comparison of two typical cases has been added; a salient case (the European Maritime and Fisheries Fund, EMFF), C5a, is compared to a non-salient case (Cod Stocks),

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<sup>1011</sup> Benyon, 25<sup>th</sup> June 2015, Williams MP, 25<sup>th</sup> June 2015, Smith MP, 2<sup>nd</sup> July 2015, Gammeltoft, 4<sup>th</sup> August 2015.

<sup>1012</sup> Benyon, 25<sup>th</sup> June 2015.

<sup>1013</sup> Rees-Mogg MP, 22<sup>nd</sup> June 2015.

<sup>1014</sup> 4<sup>th</sup> August 2015.

C6a.<sup>1015</sup> An overview of the use of formal powers during those cases can be found in table 18.<sup>1016</sup> Just like in C5 and C6, this pair-wise comparison shows very clearly how the use of formal power increases when the case is salient.

Interviews confirm that the EMFF was a more salient case, as there was money involved and that this leads to an increased scrutiny. It was also a major issue in the ESC, and this led to serious questioning of the government.<sup>1017</sup> Benyon's opinion about the reform of the EMFF:

‘This was an important topic. The European Fisheries Fund was outdated and together with some other countries, Germany, Netherlands and Scandinavian countries, we pleaded very hard for reform. We wanted a new fund to be spent on sustainability.’<sup>1018</sup>

‘The Cod stocks file was just less contentious. However, the chairman of the ESC, Bill Cash MP, was very keen to pursue the EMFF, it was almost a personal issue. The EU was seeking greater competences in an area that ESC felt it was unwarranted. This is a good example of why personalities in the ESC matter.’<sup>1019</sup>

‘Anything related to funding is important. Funding tends to be scrutinized more than anything else. Inevitably, because this is about tax payers' money.’<sup>1020</sup>

According to Smith MP, however, of all these files, the CFP was the most important one in the sense that it was mostly known among the voters:

‘If you would ask people on the street, they would have a view on CFP, but not on the EMFF.’<sup>1021</sup>

However, also on the EMFF, the government did not change its position as a consequence of input from the NP. The UK government and the NP shared the same

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<sup>1015</sup> As the selection of this case is the same as that from C1a (a non-salient case whereby no use of the Lisbon provisions was made and which is scrutinised during the multi-party government of Cameron-Clegg) the same file has been selected.

<sup>1016</sup> For more information regarding the scrutiny of these files, see appendix V.

<sup>1017</sup> Benyon, 25<sup>th</sup> June 2015, Sowrey, 6<sup>th</sup> July 2015, Hopkins, 30<sup>th</sup> June 2015.

<sup>1018</sup> Benyon, 25<sup>th</sup> June 2015.

<sup>1019</sup> Smith MP, 2<sup>nd</sup> July 2015.

<sup>1020</sup> Rees-Mogg MP, 22<sup>nd</sup> June 2015.

<sup>1021</sup> Smith, 2<sup>nd</sup> July 2015.

opinion on the importance for Britain of this dossier.<sup>1022</sup> However, the government did take the NP's position on board.

'We negotiated a position in the Council that was slightly different from the House's position, after the meeting we have to justify that. You have no time to clear that position in advance. The House already gave us that freedom before starting the negotiations. Before going to Brussels, you make sure that you get that flexibility to negotiate effectively.'<sup>1023</sup>

As there seem to be no rival variables at work during the different steps of the OLP in all four cases, and the evidence of process-tracing show that salience is the reason for increased parliamentary activities, we can therefore conclude that salience does imply an increased parliamentary activity. Although this does not automatically lead to more impact by the NP (the NP had no intention to change the contents of the government's policy position), the government's relationship is certainly tightened in salient cases, which decreases its leeway when negotiating in Brussels. The government gets clear instructions and is expected to give feedback to the HC after the Council meeting. The hypothesis expecting that the more salient an EU issue is to the NP, the more likely the NP will have a substantive impact on the government's EU policy position is therefore confirmed. Tables 17 and 18 give overviews of the outcome of the pair-wise comparisons used to measure the salience condition.

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<sup>1022</sup> Benyon, 25<sup>th</sup> June 2015, Rees-Mogg MP, 22<sup>nd</sup> June 2015, Smith, 2<sup>nd</sup> July 2015.

<sup>1023</sup> Sowrey, 6<sup>th</sup> July 2015.

**Table 17 Outcome of the pair-wise comparison between Case 5 and Case 6**

<b>Seven steps of OLP</b>	<b>CASE 5 (salient)</b>	<b>CASE 6 (non-salient)</b>
<b>1: publication</b>	X	X
<b>2: eight weeks</b>	X	X
<b>3: first influence phase</b>	EM government 2 x ESC meeting Reception of information	EM government ESC meeting
<b>4: first control phase</b>	X	X
<b>5: second influence phase</b>	Letter government Involvement of Sectoral Committee Inquiry with different organisations, including gov. and EC Questions about procedures Meeting ESC	X
<b>6: second control phase</b>	X	X
<b>7: adoption</b>	X	X
<b>IMPACT</b>	Weak	Weak

**Table 18 Outcome of the pair-wise comparison between Case 5a and Case 6a**

<b>Seven steps of OLP</b>	<b>CASE 5A (salient)</b>	<b>CASE 6A (non-salient)</b>
<b>1: publication</b>	X	X
<b>2: eight weeks</b>	X	X
<b>3: first influence phase</b>	EM government ESC meeting	EM government ESC meeting
<b>4: first control phase</b>	2 letters government 1 letter NP ESC meeting	X
<b>5: second influence phase</b>	Letter government European Committee A +gov	X
<b>6: second control phase</b>	X	X
<b>7: adoption</b>	X	X
<b>IMPACT</b>	Weak	Weak

## Chapter 8

### The Lisbon provisions

#### 8.1 Introduction

In this final Chapter of the empirical research, the use of the NP's right to submit a RO to the EC if it objects to an EU legislative proposal (also known as the EWM), introduced in the Lisbon Treaty, is studied. This Chapter consists of a section analysing a case in which the NP makes use of this right and a section where the NP scrutinises the government when it has not submitted a RO.

The multi-party and salience variables are constant for this case and the Eurosceptic variable is absent.

The multi-party variable is constant, as in both cases (C7 and C8) the NP scrutinises the same government.<sup>1024</sup> The Eurosceptic variable is absent because the scrutiny of both cases took place during the Rutte II cabinet (2012-present) which consists of the Liberals and Social Democrats, both pro-European parties, and the cabinet no longer depends upon the Eurosceptic PVV<sup>1025</sup> as it did during the Rutte I cabinet. It is expected that the NP, with moderate influence mechanisms, is able to increase its impact on the government's EU policy position when it decides to send a RO to the EC.

The topics of both cases are considered to be of non-salience to the electorate, as there are no references to the EU maritime policy in the national party manifestos of the governmental parties<sup>1026</sup> and the Euro-barometer of the year before publication does not refer to the Maritime Policy as being any of the major concerns of the citizens.<sup>1027</sup> It is, however, expected that the cases (Maritime Spatial (C7) planning and Port Services (C8)<sup>1028</sup>) are salient to the legislative actors on which the political parties in government and parliament have opposing views. Some of the political parties in the SC believe that the topic of maritime policies should be dealt with at national level (such as the VVD, PVV and CDA<sup>1029</sup>). Other political parties feel less worried about the EU intervening in

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<sup>1024</sup> For more information about the political parties in The Netherlands and the members of involved committees in the scrutiny of the selected cases, see appendix IV.

<sup>1025</sup> Party for Freedom.

<sup>1026</sup> PvdA Party Manifesto, 2012 and the VVD Party Manifesto, 2012.

<sup>1027</sup> Standard Euro-barometer 77, July 2012, and Standard Euro-barometer 78, appendix, question 7.

<sup>1028</sup> As the necessary conditions for this file (multi-party, non-salient, no use of Lisbon) are identical as for C4a, the same EU legislative file has been selected.

<sup>1029</sup> For more information on the different political parties in the Dutch SC, see appendix IV.

issues related to maritime issues, including ports (such as D66, Green Left (GL), and the PvdA). In its political manifesto for the European Elections, the PvdA indicates that it expects the EU to deal with sea and maritime issues and to what extent it should do so.<sup>1030</sup> The VVD, on the contrary, does not refer to the need for fishery and maritime policies at all in its 2009 EU manifesto, but does stress the need for less EU legislation in general.<sup>1031</sup> CDA follows a similar line. It does not refer to maritime policies, but sees the EU mainly as a helpful institution in the field of the internal market.<sup>1032</sup> Other parties, such as GL, see a very explicit role for the EU in the field of maritime and coastal policy, for example, in order to promote more wind energy and reduce state aids for ports.<sup>1033</sup> D66 and the SP follow a similar role for the EU in this policy.<sup>1034</sup> The extent to which maritime and coastal policies should be dealt with at either EU or national level, could therefore be a topic on which the NP and the government have different views.

The Chapter follows the same structure as the previous empirical Chapters and starts off by tracing the process of each case. This will be followed by a pair-wise comparison between the cases and analyses whether the use of formal powers change when the NP does make use of this ‘Lisbon-right’ compared to when it does not. The SC is a NP with ex ante influence powers and is expected to increase its impact on the government’s EU policy position even further in the case where it has sent a RO to the EC.

## **8.2 Case 7: the EU Framework for Maritime Spatial Planning (COM(2013)133)<sup>1035</sup>**

### **8.2.1. Policy Positions political parties**

Although the topic of Maritime and Coastal policies cannot be considered to be one of direct salience for the electorate, the topic is important for the Netherlands and political parties have different opinions about them. According to Abspoel, the government representative responsible for drafting the government position in this file:

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<sup>1030</sup> PvdA, Verkiezingsprogramma Europees Parlement, 2009-2014, p.18.

<sup>1031</sup> VVD-verkiezingsprogramma 2009 – 2014.

<sup>1032</sup> CDA, verkiezingsprogramma, 2009-2014.

<sup>1033</sup> Groen Links, Verkiezingsprogramma Europees Parlement 2009-2014.

<sup>1034</sup> D66, Verkiezingsprogramma voor het Europees Parlement, 2009 and SP Verkiezingsprogramma voor het Europees Parlement, 2009-2014.

<sup>1035</sup> <http://eur-lex.europa.eu/procedure/EN/202463>

‘The government was divided on this issue, as the PvdA wanted the coastal management to be included in the directive and the VVD wanted this to remain part of the national policies. However, when drafting the government position, it came out with a united view on this ... Although the PvdA did not agree with the VVD on this, it was convinced that coastal management should be out of the directive and that was its line as well once the EM was drafted.’<sup>1036</sup>

According to Kisters who is responsible for transport dossiers at the Dutch Permanent Representation in Brussels:

‘The government could understand the position of the SC to send a negative RO about this. Spatial planning is a national matter. The Dutch government includes the SC from the beginning by forwarding the Council agendas to the NP before the meetings and have a meeting before each Council meeting.’<sup>1037</sup>

Table 19 gives an overview of the different positions of the political parties on Maritime Policies.

**Table 19 Party policy positions on EU maritime policies in the Netherlands**

VVD	PvdA	CDA	PVV	D66	GL	SP
EU legislation in the field of maritime and coastal policies should be limited. <sup>1038</sup>	More legislation in the field of maritime and coastal policies is important for protection ports and stimulating environmental protective measures. <sup>1039</sup>	No position, but considers the EU to be an institution to promote the internal market, but not to increase more legislation. <sup>1040</sup>	No position in this field, but wants the Netherlands to completely leave the EU. <sup>1041</sup>	Wants more legislation in the field of maritime and coastal policies, as this can stimulate more equality between ports and stimulate economic growth and environmental protection. <sup>1042</sup>	EU maritime and coastal policies are beneficial for wind-mills and sharing energy between member states and environment. <sup>1043</sup>	EU maritime policies can help to create fairer competition between ports and new measures to protect the environment. <sup>1044</sup>

<sup>1036</sup> Abspoel, 3<sup>rd</sup> June 2015.

<sup>1037</sup> Kisters, 19<sup>th</sup> May 2015.

<sup>1038</sup> TK, 33.601, nr. 6, 24 July 2013.

<sup>1039</sup> Ibid.

<sup>1040</sup> Ibid.

<sup>1041</sup> PVV, Verkiezingsprogramma, 2012-2017.

<sup>1042</sup> TK, 33.601, nr. 6, 24 July 2013.

<sup>1043</sup> Ibid.

<sup>1044</sup> Ibid.

### 8.2.2 Expected causal process

Once the NP has sent a negative RO to the EC, it is expected that the salience will increase for that NP and as a consequence for its government (see the salience causal process in Chapter 6). More specifically, if the NP sends a negative RO to the EC stating that the topic should be dealt with at national rather than EU level, it will only do so if the topic is salient to the NP (it considers it to be important to keep control over the topic and for that reason, the topic should be decided upon at national level). The NP will be motivated by vote-gaining to use all its formal and informal mechanisms to influence and control. The resulting increased pressure on its government will in turn cause that body to be more likely to adopt its NP's position.

Based upon Kiiver's findings<sup>1045</sup>, therefore, it is expected that a negative RO to the EC will bind a government even more closely to its NP when it is negotiating in the Council:

EC proposal → sent to EP, Council and NPs → NP decides to send a negative RO to the EC → topic gets more visibility → domestically: discussion with government → NP uses domestic formal powers → pressure on government because of negative RO → government feels contentiousness of topic → increase of visibility for the government → government more likely to listen to NP as it fears negative publicity → adoption of NP's position → parliamentary impact.

### 8.2.3 Background EU proposal

The proposal concerns a framework with minimum standards for maritime spatial planning and strategies for integrated coastal management. The overall objective is to promote sustainable growth of maritime and coastal areas and the sustainable use of natural sources on the sea and coast.<sup>1046</sup>

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<sup>1045</sup> Kiiver, 2012, p.144.

<sup>1046</sup> TK, 33 601, nr. 3, 12<sup>th</sup> April 2013.

## 8.2.4 Parliamentary scrutiny of the EU legislative file during the different steps of the OLP<sup>1047</sup>

This section discusses all different steps of the OLP of the EU legislative file regarding the EU Maritime Policies and whether the SC used its formal powers to either influence and/or control their government's EU policy position at any point of the scrutiny and if so, whether its attempts had any effect.

### Step 1: Publication

The proposal is published on 12<sup>th</sup> March 2013.<sup>1048</sup>

### Step 2: NPs given eight weeks to oppose the EU legislative proposal

The deadline to submit ROs to the EC is 13<sup>th</sup> May 2013. Many NPs, including the Dutch SC, decide to do so<sup>1049</sup>, but in the end there are not enough parliamentary objections for a yellow card.<sup>1050</sup>

### Step 3 First ex ante influence phase

During this phase it is expected that the NP will increase its scrutiny levels as a consequence of sending a RO to the EC. It is expected that this RO has alerted the NP about the legislative proposal and will want to follow its proceedings as a consequence. In other words, the fact that the NP has sent a RO to the EC makes the EU legislative proposal a more salient one. It is expected that this will increase the scrutiny of the NP by using more than its normal formal powers.<sup>1051</sup>

On 27<sup>th</sup> March 2013, the I&E Committee decides during a procedure meeting that it will put the item on the agenda during a general discussion about the North Sea (scheduled for mid-April) and will do a subsidiarity check on the proposal.<sup>1052</sup>

<sup>1047</sup> For more information on these steps, see Appendix I and II.

<sup>1048</sup> <http://eur-lex.europa.eu/procedure/EN/202463>

<sup>1049</sup> Next to the Dutch SC and Senate, the Belgian Senate, the Finnish Parliament, the German Bundesrat, the Irish House of Oireachtas, the Seimas of the Republic of Lithuania, the Polish Senate and the Swedish Parliament sent ROs.

<sup>1050</sup> For a Yellow Card, at least a third of NPs need to send a negative RO to the EC.

<sup>1051</sup> More than just holding an *ex ante* meeting with the government, the NP is explicit in showing its opinion to the government with the intention to impact its position.

<sup>1052</sup> TK, 33 601, nr. 1, 27<sup>th</sup> March 2013.

On 12<sup>th</sup> April 2013, the Dutch government publishes its ‘BNC Fiche’<sup>1053</sup>, hereafter the EM (first government position). In the EM, it shows disapproval about the legal base of the proposal and will ask the EC to explain this in more detail. It will also ask legal advice of the Legal Service of the Council. The government argues that proposals with regard to the sea achieve a positive subsidiarity judgement, but it tends to be negative towards coast proposals.

In the current version, it would judge both proposals towards the coast and sea to be negative in respect of proportionality. Although the government supports the procedural objective of the proposal to promote economic growth for the sea and coastal areas based upon an ecosystem, the proposal goes too far with regard to its proposed regulation in the field of spatial planning on the sea and decentralised tasks on land which will increase the administrative burden. The Dutch government will in its negotiations try to adapt the proposals to the interest of the Netherlands. It will thereby focus on getting a compulsory legal framework for the procedures for the sea and coast, but states that the proposal will not lead to any obligations and the coast will only be included in case of an integral link to the activities on the sea.<sup>1054</sup>

On 18<sup>th</sup> April, the Chair of the EAC sent a draft letter to the EC to the Chair of the SC to ask the agreement of the Chamber to submit a negative RO to the EC.<sup>1055</sup> On 24<sup>th</sup> April 2013, the I&E Committee held a meeting to discuss this draft directive. The Committee decided to propose that the SC introduce a scrutiny reserve on this file. The scrutiny reserve is discussed during a plenary meeting of 14<sup>th</sup> May 2013 and is approved.<sup>1056</sup> On 25<sup>th</sup> April 2013 the SC voted about a concept letter to the EC regarding a negative subsidiarity judgement. With the exception of the fraction of the D66<sup>1057</sup>, the SC adopted the proposal to send a letter to the EC.<sup>1058</sup> On 14<sup>th</sup> May 2013, the SC voted about sending a letter to the I&E Minister about a scrutiny reserve on this legislative file. It is approved.<sup>1059</sup>

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<sup>1053</sup> TK, 33.601, nr 3, Fiche, 12<sup>th</sup> April 2013.

<sup>1054</sup> TK, 33.601, nr 3, 12<sup>th</sup> April 2013.

<sup>1055</sup> TK, 33.601, nr. 2, 18<sup>th</sup> April 2013.

<sup>1056</sup> TK, 33.601, nr. 4, 24<sup>th</sup> April 2013.

<sup>1057</sup> Democraats 1966.

<sup>1058</sup> TK, 33.601, nr. 80, item 18, p. 95, 25<sup>th</sup> April 2013, including a courtesy translation letter to the EC.

<sup>1059</sup> TK, 33.601, 14<sup>th</sup> May 2013, nr. 81, item 11, p.26.

### *Scrutiny reserve*

On 4<sup>th</sup> June 2013 a general discussion takes place about the scrutiny reserve regarding this draft directive between the NP and government.<sup>1060</sup> During this meeting MPs clearly show their own views on the EU proposal, which are considered to be the first position of the SC.

Mr Houwers (VVD, coalition partner) is of the opinion that this topic should be dealt with at national level, as there are no shared interests with other member states. That is why the VVD wants to send a RO about this proposal.<sup>1061</sup> The VVD fraction is of the opinion that there is already sufficient regulation in this field as well and therefore asks the opinion of the Secretary of State in this field. Specifically, it asks the government to:

‘Keep the SC informed in writing during the negotiations in the Council, but also in the Council working groups and in the Committee of Permanent Representation on those issues that could have implications for the Netherlands, and particularly in the field of the delegated competences for the EC ... Once there is a common position, the SC would like the government to send this to us together with an appreciation before it gets discussed in the Council, in both a first and second reading’.<sup>1062</sup>

The VVD wants the Secretary of State to ensure that it only concerns those member states which have borders on the North Sea.<sup>1063</sup>

The PvdA (Social democrats, coalition party) also takes the floor. Mr De Vries is less worried about the proposal than the VVD. According to the PvdA, this proposal could lead to a long-term investment, which is necessary, as it will be easier to set up sea routes and wind parks.<sup>1064</sup> According to the PvdA, the regulation offers the necessary supervision by governments to deal with new economic activities and the regulation is therefore more like an addition to existing national legislation.<sup>1065</sup> More sceptical is De

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<sup>1060</sup> TK, 33.601, nr. 6, 24 July 2013.

<sup>1061</sup> Ibid., p.2.

<sup>1062</sup> Ibid., p.2-3.

<sup>1063</sup> Ibid.

<sup>1064</sup> Ibid., p.3-5.

<sup>1065</sup> Ibid.

Vries about the fishery activities and the PvdA considers submitting a motion to regionalise the fisheries and increase the involvement of parties directly concerned.<sup>1066</sup>

Mr. Van Gerven from the SP (Socialist Party, opposition) is in favour of a maritime policy in which member states work together to protect their seas and coastal areas and support the government's approach of adapting the directive to limit the new rules to have a legal embedded process for spatial planning on the topic of the sea.<sup>1067</sup> With regard to the scrutiny reserve, the SP specifically asks the government for the following:

‘To be fully informed and to discuss the Dutch approach in this before the negotiations enter a decisive phase ...

Most importantly, the SP wants to be kept informed on the obligations to formulate spatial planning designs, designs for integrated coastal management, and goals to which these plans must contribute ... The Secretary of State has to inform the SC if it needs to deviate from its position. We want to be updated each term, including being informed on the progress of the negotiations in both the Council and the EP.<sup>1068</sup>

Minister Schultz replies that she shares most comments made by the MPs. She argues that the government has always been critical towards regulation in this field. The Dutch position is to stress its desire to limit the regulation of procedural agreements, but not to have any obligations with regard to the contents.<sup>1069</sup> Schultz also mentions that the government agrees with a negative subsidiarity judgement in the field of coastal management, but is positive with regard to cooperation on sea, but only under certain conditions. According to the Secretary of State, the main concerns are in fact about proportionality. Schultz argues that the proposal suggests more regulation in the field of energy provision, fisheries and nature, whereby some issues, like the extraction of sand, gain priority.<sup>1070</sup> There are issues which are hugely important in the Netherlands which it would prefer to keep control over. The Dutch government is of the opinion that cooperation in the field of spatial planning should happen on a voluntary basis. With regard to the specific questions by MPs, she responds:

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<sup>1066</sup> Ibid.

<sup>1067</sup> Ibid., p.5.

<sup>1068</sup> Ibid.

<sup>1069</sup> Ibid., p.6-8.

<sup>1070</sup> Ibid.

‘I was asked whether I agreed that there was already sufficient EU and national legislation in the field of maritime spatial planning. I do agree, but there is no legislation yet to make binding agreements cross borders, whereas we do need this. That is why I am in favour of procedural agreements ... Although the Netherlands uses good governance in this case, other member states will only follow rules if they are coming from the EU.

... I will try to stop the directive from going too far into the contents. The EC has not responded to our request for a voluntary instrument. Together with other member states with the same views and the EP, I will stress the importance of a cross-sectoral cooperation in this field, but on a procedural basis.

Obviously, I will keep the SC informed on any further developments in this field ...’<sup>1071</sup>

Some of the MPs take the floor again, like Houwers (VVD, coalition partner) and Van Gerven (SP, opposition) who would like to clarify the promise by the Secretary of State in providing regulation information on this directive.

Mr De Vries (PvdA, coalition partner) continues on the subject of the contents:

‘... It seems that the Secretary of State sees further fundamental effects as a consequence of this directive than the MPs did. This is worrying. It might be worth to have a discussion with the EC about this ... With regard to fisheries, we did not get an elaborate response. We are not a party that believes that everything should be regulated by the EU ...’<sup>1072</sup>

Schultz reiterates that the Dutch government is in favour of having agreements in the field of cross-border spatial planning. However, she states that it should not go further than that. She explains that going further is what the Dutch government opposes.<sup>1073</sup>

Other member states follow the same line as the Netherlands.<sup>1074</sup>

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<sup>1071</sup> Ibid.

<sup>1072</sup> Ibid., 10.

<sup>1073</sup> Ibid., 10-11.

<sup>1074</sup> Ibid.

At the end of the meeting, the chair summarises the agreements by the Secretary of State in the field of the scrutiny reserve on this legislative file:

‘The Secretary of State will inform the SC about important developments in the Council and other discussion groups and also when the Council forms a position; The Secretary of State will inform the SC on important changes in the position of the government.’<sup>1075</sup>

The Secretary of State agrees with these points and the meeting comes to an end.

On 18<sup>th</sup> June 2013, the SC votes regarding the end to its scrutiny reserve on this file on the condition that the Secretary of State of I&E will inform the SC on:

- Any movements in the Council and other discussion forums, such as the COREPER, which will have consequences for the Netherlands ...
- Any positions adopted by the Council;
- Information on these issues by the Secretary of State needs to happen in time, for example, before the negotiations in the Council and other discussion forums have reached a final stage in order to still have a chance to debate this issue in the SC.<sup>1076</sup>

#### *Correspondence with the government*

The Secretary of State of I&E sent a letter to the SC on 26<sup>th</sup> August 2013 to inform it on the state of affairs of the draft directive. She therein mentions that the Council aims to come to a general agreement during the Council of October 2013. This will be discussed during the Transport Council meeting of 5<sup>th</sup> September 2013.<sup>1077</sup>

It is expected that the EP will decide upon its position in September and send this to the Council. In case the Council and the EP are not able to reach an agreement, it will be discussed during a second reading.<sup>1078</sup> On 2 September 2013 the Secretary of State for I&E (Schulz) sent a letter to the SC to inform it about the agenda of the Informal Transport Council of 15<sup>th</sup> and 16<sup>th</sup> September 2013.<sup>1079</sup> The main topic of the agenda

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<sup>1075</sup> Ibid.

<sup>1076</sup> TK, 33.601, TK, 6, 18<sup>th</sup> June 2013.

<sup>1077</sup> TK, 33.601, nr. 7, 26<sup>th</sup> August 2013.

<sup>1078</sup> Ibid.

<sup>1079</sup> TK, 21 501-33, nr. 432, 2<sup>nd</sup> September 2013.

will be the *Single European Sky (SES)*. No information is given on Maritime Spatial Planning.

On 6<sup>th</sup> September 2013 the VVD fraction (the Liberals, coalition partner) sent a few questions to the I&E Department regarding the informal Transport Council of 15<sup>th</sup> and 16<sup>th</sup> September 2013.<sup>1080</sup> With regard to the EU draft directive on European Maritime Spatial Planning, the VVD fraction has a question:

‘The VVD fraction wonders whether more is known about the ‘lightened regime’ of the integrated coastal management. It wants to know what this exactly means and the extent to which this deviates from the Dutch position?’<sup>1081</sup>

On 11<sup>th</sup> September 2013, the I&E Department sent a reply confirming that the position of the Dutch government is still the same as that during the EM which corresponds to the EC approach to coastal management (so no impact by the NP). Other member states seem to support the idea to make the coastal management proposals optional in the case that a member state chooses to consider coast-sea interactions as part of the process of the maritime spatial planning. However, at this stage, the Dutch government thinks it is too early to be more specific on indicating what will happen during the negotiations.<sup>1082</sup>

During this phase, evidence was expected to be found of the NP making use of extra formal powers as a consequence of sending a RO. There are indeed several indications that show extra use of formal powers, such the use of the scrutiny reserve and the insistence on being informed. There is furthermore the use of the RO, the formal power via the EC as laid down in the Lisbon Treaty. In particular, during the meeting regarding the scrutiny reserve, MPs give very clear messages to the Secretary of State including their opinions and what they expect the government to do during the Council negotiations. However, the use of formal powers consists here mainly of tightening the government to keep the NP informed and to focus in the Council meetings on issues which are relevant for the Netherlands as a country. This is confirmed by one of the interviewees:

<sup>1080</sup> TK, 21.501-33, nr. 434, 13<sup>th</sup> September 2013.

<sup>1081</sup> Ibid., p. 4.

<sup>1082</sup> TK, 21.501-33, nr. 434, 11<sup>th</sup> September 2013.

‘Applying a scrutiny reserve to this file was a way to show the government to be kept informed pro-actively. This increases the relationship between the government and NP in this respect. As a civil servant you have to pay more attention to informing the SC and not take actions which have not been agreed with the SC beforehand.’<sup>1083</sup>

The government representative about the scrutiny reserve in this file:

‘On 18<sup>th</sup> June the Chamber lifted the scrutiny reserve, as long as they would be kept informed. It is useful to get such an instruction by the NP. The NP controls what we are doing. They will increase these controls with a scrutiny reserve. This helps us as well in the negotiations with the permanent representation in Brussels. We come with a double mandate.’<sup>1084</sup>

In other words, in this case the NP does not try to *change* the position of the government as such, but is more focused on making the government behave in a certain way. This corresponds to data extracted from interviews:

‘The SC agreed with the conclusions of the government, which is the mandate for the government. However, the SC indicated that it wanted to be kept informed. There is only one position of the government, that will not be changed. We had different views on what should be covered by the directive. The SC concluded that both the sea and the coast should be excluded from the directive. The government’s position was ‘sea should be covered, but not the coast. This led to discussions, but did not change our opinion. Only if they would have come up with a motion, we would have to include it in our position.’<sup>1085</sup>

Causal mechanism of an increased use of formal powers after sending a RO is confirmed during this stage.

#### Step 4 First ex post control phase

As evidence it is expected that extra attempts by the NP are found to hold the government to account on this file, as it explicitly requested to be kept informed on this dossier).

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<sup>1083</sup> Keulemans, 15<sup>th</sup> June 2015.

<sup>1084</sup> Abspoel, 3<sup>rd</sup> June 2015.

<sup>1085</sup> Abspoel, 3<sup>rd</sup> June 2015.

On 15<sup>th</sup> and 16<sup>th</sup> September 2013 an informal Transport Council meeting takes place.<sup>1086</sup>

On 26<sup>th</sup> September 2013 the SC receives a letter from the government with a report of the discussions during the informal Transport Council, but no reference is made to the Maritime Spatial Planning Directive, as the Council meeting focused mainly on the topic of a Single European Sky.<sup>1087</sup>

Although the NP did not hold the government to account after the Council meeting, this is likely because the topic of Maritime Spatial Planning was not on the agenda.

#### Step 5: Second ex ante influence phase

During this phase, evidence is expected to be found of the NP using more than its formal powers as a consequence of having sent a RO to the EC, an action which has increased the salience of the topic.

On 29<sup>th</sup> November 2013 the Secretary of State for I&E, Mrs Schulz, sends a letter to the SC, in which she gives an overview of the developments of the draft directive in the field of Maritime Planning.<sup>1088</sup> A majority of the member states seem to be in favour of a procedural framework directive which includes interactions between activities on the sea and on the coast. There was not enough support for an obligatory integrated coastal management. The Dutch government welcomes this outcome which is close to its own. The Presidency hopes to come to a final agreement during the Council of General Affairs of 17<sup>th</sup> December 2013.<sup>1089</sup> This letter is referred to during the meeting of the I&E Committee regarding navigation on sea on 3<sup>rd</sup> December 2013, but no questions or references about the contents are made.<sup>1090</sup>

On 6<sup>th</sup> December 2013, the government writes a letter to the SC including the agenda of the Council of General Affairs of 17<sup>th</sup> December 2013.<sup>1091</sup> This agenda is discussed during a meeting on 12<sup>th</sup> December by the Foreign Affairs Committee, the EAC and the

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<sup>1086</sup> Press release, 'EU Transport Ministers aim at faster and more comfortable travelling by air', Lithuanian Presidency of the Council of the EU, 2013.

<sup>1087</sup> TK, 21 501-33, nr. 437, 26<sup>th</sup> September 2013.

<sup>1088</sup> TK, 33.601, nr 8, 29<sup>th</sup> November 2013.

<sup>1089</sup> Ibid.

<sup>1090</sup> TK, 31 409, nr. 58, 3<sup>rd</sup> December 2013.

<sup>1091</sup> TK, 21 501-02, nr. 1310, 6<sup>th</sup> December 2013.

Minister for Foreign Affairs, Timmermans, but no reference to Maritime Spatial Planning is made.<sup>1092</sup>

It was expected that the SC would have increased the use of its formal powers now that the draft directive had reached such a crucial phase and as it had asked to be involved in any crucial developments. It seems, however, that the SC hardly deals with this topic at this stage, probably because the directive seems to go in the direction that the majority of the SC had hoped for; although some political parties, such as the PvdA and D66 would have liked to go further on this. Mrs Schultz's letter in that sense must have been a sort of reassurance for parties, such as the VVD (main political party in the SC and coalition party).

#### Step 6: Second ex post control phase

During this stage, it is expected that evidence of the NP making extra efforts of holding the government to account will be found, since, according to the NP, this topic should have been dealt with at national level which would have implied a stronger involvement of the NP.

On 17<sup>th</sup> December 2013, a Council Meeting of General Affairs takes place which discusses this legislative file. The Council reaches a general agreement and it asks the Lithuanian EU Presidency to start negotiations with the EP in order to reach an agreement between the two institutions.<sup>1093</sup> On 19<sup>th</sup> December 2013 a letter from the Secretary of Foreign Affairs, Timmermans, is sent to the SC about the outcome of the Informal Council, but no reference is made to the Maritime Spatial Planning Directive.<sup>1094</sup>

#### Step 7: Adoption

On 12<sup>th</sup> March 2014, the Committee of Permanent Representatives (COREPER) agrees a compromise between the Greek EU Presidency and the representatives of the EP. The

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<sup>1092</sup> TK, 21 501-02, nr. 1328, 11<sup>th</sup> February 2014.

<sup>1093</sup> Press Release, 3287<sup>th</sup> Council meeting General Affairs, 17<sup>th</sup> December 2013.

<sup>1094</sup> TK, 21 501-02, nr. 1316, 19<sup>th</sup> December 2013.

text still needs to be adopted formally during a plenary session of the EP and a Council meeting.<sup>1095</sup>

Final adoption of the regulation during the Council of General Affairs occurs on 13<sup>th</sup> May 2014.<sup>1096</sup> Member states agreed upon some new initiatives with consequences for Europe's seas and coasts (contrary to the wishes of the SC). Member states will get 10 to 20 years to implement these. The agreement furthermore contributes to the plans of the EC to develop 'Europe's Blue Economy'.<sup>1097</sup>

On 16<sup>th</sup> May 2014, the SC receives a letter from the Secretary of State for Foreign Affairs, Mr. Timmermans, regarding the outcome of this Council meeting for General Affairs, but no reference is made to the adoption of the Maritime Spatial Planning directive.<sup>1098</sup>

### 8.2.5 Concluding remarks

Although an agreement is reached on this EU legislative file during the first Council meeting about this topic, the NP makes many attempts to impact the government and reminds the Secretary of State of the delegatory relationship in this case, as the government cannot change its position without consulting the NP first. The use of formal powers is mainly focused on ex ante Council meetings and there are little signs of the NP holding the government to account afterwards. This is partly because the topic did not change direction and the government could stick to its original position regarding this file, but also because agreement on this topic was reached in the Council for General Affairs.<sup>1099</sup> This means that it had to compete with other topics, with higher salience for both government and MPs, such as climate change, energy and the European Semester.<sup>1100</sup>

According to the theoretical argument, the use of formal powers was expected to be higher in a case in which the NP makes use of a RO and this would lead to an increased measurable impact on the government's EU policy position. The outcome of the

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<sup>1095</sup> Council General Affairs, press release, 'Council confirms deal on maritime spatial planning Brussels', 12<sup>th</sup> March 2014, Press 132.

<sup>1096</sup> TK, 21 501-08, nr. 509, 22<sup>nd</sup> April 2014.

<sup>1097</sup> Council General Affairs, press release, 'Council confirms deal on maritime spatial planning Brussels', 12<sup>th</sup> March 2014, Press 132.

<sup>1098</sup> TK, 21 5021-02, nr. 1386, 16<sup>th</sup> May 2014.

<sup>1099</sup> This topic was discussed during the Council for General Affairs as various governmental departments are involved, such as Transport, Environment and Economy.

<sup>1100</sup> The *European Semester* is the EU's annual cycle of economic policy guidance and surveillance.

process-tracing analysis shows that, for example, by applying the scrutiny reserve, the NP indeed increases its parliamentary activities and makes it clear to the government that it needs to be involved in this case.

Tracing the different steps of the scrutiny process during this case, it seems that although the NP increased the use of its formal powers, it did not *change* the government's position. This is confirmed in interviews whereby Abspoel, a government representative in this field, argued:

‘The position of the coalition did not change after the scrutiny of the government. This dossier was in the interest of the country and the SC followed our position in broad lines. The NP did work on these dossiers, probably more than other NPs. In the end, if it is in the interest of the country, the NP will give the government enough freedom to act according to its own judgement, as long as we keep them informed.’<sup>1101</sup>

The government and part of the SC's disagreement is limited to the extent to which this topic should be dealt at national or EU level. This leads to debates in meetings, not the RO as such. This is confirmed in interviews whereby it is argued that the RO is a legislative tool, not one to impact the government.<sup>1102</sup> However, the SC applies formal powers, such as the scrutiny reserve in this case, not so much because it wants to change the opinion of the government, but mainly because the SC wants to be kept informed on case developments. As the positions of the SC and government are pretty close together, it is more likely that it wants to be kept in the loop because it sent a RO to the EC. This would imply indeed that the use of the RO does lead to an increased use of parliamentary activity, which is in line with the expected causal process. Data extracted from interviews show that because the NP felt that this topic should have been dealt with at national level, MPs felt strongly about the subject, resulting in the application of a scrutiny reserve.<sup>1103</sup>

According to Abspoel, the government representative for this file, the majority in the SC wanted this topic to be dealt with at national level. That makes them more involved in the scrutiny process.<sup>1104</sup> In other words, even if it is not the tool of the RO that

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<sup>1101</sup> Abspoel, 3<sup>rd</sup> June 2015.

<sup>1102</sup> Abspoel, 3<sup>rd</sup> June 2015.

<sup>1103</sup> De Vries, 8<sup>th</sup> June 2015.

<sup>1104</sup> Ibid.

increases the use of formal powers, the reasons behind it, namely the subsidiarity issue, is indeed linked to the increased use of formal powers which corresponds to the theoretical argument.

### *Measurable impact*

Interviews with government representatives and MPs in this field make clear that no forms of informal influence have been used and that the government did not include the NPs position when drafting the government EM, but took on board the political agreement and interest of the Netherlands when drafting the Dutch position:

‘When I drafted this *fiche*<sup>1105</sup> the position was based upon a subsidiarity and proportionality check and the position of the coalition. The SC then has a task to *control* the government. They will only do so *after* the EM has been published, so they will not try to influence the *fiche* of the government before this has been published.’<sup>1106</sup>

As the government did not change its position in this file, it can be concluded that no measurable impact has been found. The majority in the NP wanted to go further than the government in keeping this topic a national one, and tried to convince it of this need, although it did not make any attempt to change the contents of the government’s position. The impact the NP tried to effect in this case consisted more of tightening the government to the NP with regard to giving feedback. This is another form of ‘soft’ impact, but not the measurable one this thesis uses as a measurement. The measurable impact can therefore be concluded to be weak.

## **8.3 Case 8: the EU Regulation on Port Services (COM(2013)296)<sup>1107</sup>**

### **8.3.1 Policy Positions of political parties**

Although the main political parties consider this topic to be of national interest, rather than one that cuts along left/right cleavages,<sup>1108</sup> there are some disagreements to be found in the Ports Services (PS) case. This is mainly because the PvdA wanted labour issues to be part of the PS file, and the more liberal parties such as the VVD - the other,

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<sup>1105</sup> The EM.

<sup>1106</sup> Abspoel, 3<sup>rd</sup> June 2015.

<sup>1107</sup> <http://eur-lex.europa.eu/procedure/EN/202670>

<sup>1108</sup> Pol, 4<sup>th</sup> June 2015, Abspoel, 3<sup>rd</sup> June 2015, De Vries, 8<sup>th</sup> June 2015.

bigger coalition partner - wanted to keep this out.<sup>1109</sup> The main positions of the political parties are part of the maritime and coastal policies and an overview of these can be found in Table 19 (7.1.1).

### **8.3.2 Expected causal process**

If the NP decides not to send a RO to the EC, it is of the opinion that it agrees that this topic will be dealt with at EU level, a level on which the NP has few mechanisms to exert influence or control. In other words, if the NP is happy for the EP in this case to deal with the scrutiny, it will consider the file to not be of enough national salience to control it itself and will therefore not use many formal powers to influence and control the government on this file. It is therefore expected that the following causal process in the scrutiny of government will take place if the NP sends no negative proposal to the EC:

EC proposal → sent to EP, Council and NPs → NP uses formal mechanisms → NP decides not to send a RO to the EC → NP does not attach salience to topic → no need to discuss with government → government is not aware of NP's position → government does not adopt NP's position → no parliamentary impact.

### **8.3.3 Background EU proposal**

The regulation applies to all ports of the Trans European Network for Transport (TEN-T), which are together responsible for more than 90% of all forms of transport via the sea. It deals with ports management, pilots, towing, mooring, dredging and terminal services (goods and passengers). The regulation sets up a framework for access to the market for ports services and requires the transparent financing of ports. The harbour manager is allowed to set minimum standards to the service provider and can limit the number of providers of a specific service only in case that there is not enough space.<sup>1110</sup>

The national supervisors are required to exchange information to ensure a uniform implementation of the regulation. Member states must set up sanctions for those who violate the rules and they must ensure that they will be executed. The topic of the labour

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<sup>1109</sup> Pol, 4<sup>th</sup> June 2015.

<sup>1110</sup> COM(2013)296

market in seaports will be left to social dialogue for the time being. This regulation will not harm the social and labour laws of the member states.<sup>1111</sup>

### **8.3.4 Parliamentary scrutiny of the EU legislative file during the different steps of the OLP<sup>1112</sup>**

This section discusses all different steps of the OLP of the EU legislative file regarding the Port Services and whether the SC used its formal powers to either influence and/or control their government's EU policy position at any point of the scrutiny and if so, whether its attempts had any effect.

#### Step 1: Publication

On 23<sup>rd</sup> May 2013, the draft legislative proposal is published.

#### Step 2: NPs have eight weeks to oppose the EU legislative proposal

The deadline for NPs to submit a RO to the EC about this is 30<sup>th</sup> July 2013. Although many NPs do indeed decide to send a RO about this<sup>1113</sup>, the Dutch Second and First Chamber decide not to do so.

On 14<sup>th</sup> June 2013, the Dutch government publishes its EM<sup>1114</sup> which includes its first opinion. It supports the application of freedom of services, also in ports. This draft regulation offers sufficient space to continue the ways in which the Netherlands has executed these services in its harbours. The regulation suggests making financial transparency compulsory. The Dutch government agrees that this is a condition, although not yet sufficient to tackle state aid which could have a distorting effect on competition. The Netherlands will support this proposal as long as the current commercial freedom of the port manager can continue and as long as the current Dutch harbour policies, which have proven to be successful, will not be affected<sup>1115</sup>.

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<sup>1111</sup> Ibid.

<sup>1112</sup> For more information on these steps, see Appendix I and II.

<sup>1113</sup> French National Assembly, the Italian Senate, Saeima Parliament of Latvia, the Polish Sejm, the Spanish Cortes Generales and the Swedish Parliament.

<sup>1114</sup> TK, 22 112 33 677, 14<sup>th</sup> June 2013.

<sup>1115</sup> Ibid., 5.

### *Scrutiny reserve*

On 5<sup>th</sup> September 2013 a meeting takes place between the I&E Department and the Secretary of State, Mrs Schulz (VVD).<sup>1116</sup> This meeting is mainly held to discuss the parliamentary scrutiny reserve on this file<sup>1117</sup>, but can also be considered to be the first position of the SC, as MPs clearly express their own views during this meeting.<sup>1118</sup>

During this meeting, Mr. De Vries (PvdA<sup>1119</sup>, coalition partner), argues that his fraction is positive about the manner in which the government approached the Port regulation in its EM. However, in its view, the marginal comments that the government makes on the draft regulation, could be broadened significantly.<sup>1120</sup> The PvdA agrees with the government with regard to adding more legislation in order to increase transparency and improve the equal playing field between European harbours. In the regulation, however, there are no rules to harmonise modal shifts, state aid, labour law, external security and environment.<sup>1121</sup>

The Social Democrat fraction is furthermore worried about the attempts by the EC in this draft regulation to put forward proposals for liberalisation in the ports, even in areas which are part of semi-public services. In the Netherlands, there exists a sort of concession system with free access. The concession must guarantee quality and availability.<sup>1122</sup>

The Dutch government writes in its EM that the pilot services do not form part of the regulation. De Vries would like to know why the Secretary of State thinks so and why she does not further investigate whether this is really true.<sup>1123</sup>

The PvdA is also against a new system of independent supervision, as the current supervision of the Authority for Consumers and Markets (ACM) works well. If the regulation only has the aim of changing the competence of the ACM into a compulsory duty to deal with complaints, then we will not object, especially if this means that also

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<sup>1116</sup> TK, 22 112, nr. 1699, 30<sup>th</sup> September 2013.

<sup>1117</sup> This is why this meeting is not included in the first ex ante influence step.

<sup>1118</sup> Ibid.

<sup>1119</sup> Social Democrats

<sup>1120</sup> TK, 22 112, nr. 1699, 30<sup>th</sup> September 2013, p.2-3.

<sup>1121</sup> Ibid.

<sup>1122</sup> Ibid.

<sup>1123</sup> Ibid.

in other member states there will be a compulsory supervision.<sup>1124</sup> There are, however, different interpretations of this regulation possible.

According to De Vries, labour law has previously been an issue for a European Ports legislative proposal. He does understand that this has now been kept outside the regulation and that it will be left to the social partners to decide upon. However, the PvdA does notice that there are some issues with the labour law of seamen and asks the Secretary of State to keep actively following any developments in this field. The PvdA will ask parliamentary questions about this matter in due course.<sup>1125</sup> This is an issue that is not included in the first position of the government.

De Vries furthermore asks some questions about competition:

‘The Dutch harbours experience direct competition from neighbouring countries, as the governments in other member states pay for many issues, which in the Netherlands are financed by the harbour companies. This is reflected in the ports tariffs. We ask the Secretary of State to plead at the European Commission to stop these inequalities.’<sup>1126</sup>

Mrs De Boer (VVD, liberal, coalition partner) does support the government approach as explained in its EM, but her party does have a few comments and questions.<sup>1127</sup> It thinks the focus should be much more on competition between the ports. The current proposal, however, is too focused on compensation for the use of the infrastructure which should be set up by port managers. This is something that should not be regulated when the market between ports is opened up. Ports can only compete if there is no such regulation. There should, however, be transparency about user costs, for example, transparency about investments. Currently, governments in the South of Europe invest money in their ports, while here, the ports are responsible for their own financing. This is a form of state aid.<sup>1128</sup> De Boer continues:

‘The approach of the Dutch government should be focused on the transparency about this. There should be a level playing field about competition of ports in Europe. As long as ports receive government money,

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<sup>1124</sup> Ibid.

<sup>1125</sup> Ibid.

<sup>1126</sup> Ibid.

<sup>1127</sup> Ibid., 3-4.

<sup>1128</sup> Ibid., 3-4.

this will not be possible. That is why it is important that this will be the main input of the Dutch government.<sup>1129</sup>

De Boer also refers to the parliamentary scrutiny reserve, and argues that parliament asks (amongst other things) the following from government:

- That it receives written updates regarding any developments during the negotiations which have consequences for the Netherlands,
- Transparency of financial relations, including state aid;
- The delegated competence of the EC to elaborate upon the principles to establish port dues (articles 14.5 and 21);
- Issues related to the feasibility of the regulation, especially with regard to the wishes and possibilities of member states to implement such regulation; and
- Substantial new elements added to the regulation during negotiations.<sup>1130</sup>

Mrs de Boer adds that, contrary to Mr. De Vries (PvdA), she does not agree that labour issues of seamen should be regulated at EU level. The VVD is therefore happy that these issues are excluded from the regulation.<sup>1131</sup> The VVD shows thereby support for the government's position. She does ask the government to send a copy of the concept agreement before the negotiations take place in the Council to the SC (including an appreciation), both during the first and second reading.<sup>1132</sup> Besides, it asks of the government that it will be kept informed during every term/half year, depending on what is on the agenda.<sup>1133</sup>

Mr De Rouwe (CDA<sup>1134</sup>, opposition party) mentions that the EU is very much focused on details. However, particularly in this field, it is important to stress the importance of international competition. Previous proposals from the EC in this field (2007) were more focused on transparency and access to markets, but the EC has also admitted that these plans never worked, and in fact had an adverse effect.<sup>1135</sup> The CDA therefore wonders whether these decisions will be reversed.

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<sup>1129</sup> Ibid.

<sup>1130</sup> Ibid.

<sup>1131</sup> Ibid.

<sup>1132</sup> Ibid., 3-4.

<sup>1133</sup> Ibid.

<sup>1134</sup> Christian Democrats.

<sup>1135</sup> TK, 22 112, nr. 1699, 30<sup>th</sup> September 2013, p.4-5.

De Rouwe asked whether Dutch companies are ready to receive some money from this area.<sup>1136</sup> He continues about the supervision:

‘Supervision is necessary, but how will supervision look like? This can happen at either EU or national level. Supervision needs to be applied uniformly (just like with the truck drivers). We do not want that only our captains will be controlled, whereas they will not supervise captains from their own country.’<sup>1137</sup>

Bashir (SP<sup>1138</sup>, opposition party) wants to know whether this regulation has any consequences for the pilot service and what such consequences will be.<sup>1139</sup> According to the SP, this should remain as it is as the services offered by the pilot service are not suitable for competition. This concerns a public service. Bashir asks the secretary of state to give a reaction. Bashir also asks why the Dutch government supports the necessity of this regulation instead of, for example, a directive. A directive would give the member states more freedom to implement the new agreements according to their own circumstances.<sup>1140</sup>

Mrs Schultz, the Secretary of State, replies to the contributions of the MPs. She argues that the government welcomes the draft EC proposal, but that it is also hugely critical of it.<sup>1141</sup> The seaports are of huge importance for the European economy. It is important, therefore, to create a level playing field which also serves as an example to other continents. Member states are not able to do this by themselves, she states.<sup>1142</sup> She continues, summing up for the Dutch government the various positive points from the regulation:

‘The draft regulation is in line with the freedom of services, which we support. Positive points are the coordinating role for the ports manager. This will pave the way for financially independent ports management. Even more

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<sup>1136</sup> Ibid.

<sup>1137</sup> Ibid.

<sup>1138</sup> Socialist party.

<sup>1139</sup> TK, 22 112, nr. 1699, 30<sup>th</sup> September 2013, p.5-6.

<sup>1140</sup> Ibid. 5-6.

<sup>1141</sup> Ibid..6-8.

<sup>1142</sup> Ibid.

important is the proposal for transparency of financial relations between public authorities.’<sup>1143</sup>

Schultz continues to answer the questions of individual MPs:

‘Mr Bashir asked about the real issue of this regulation. There is a difference between our ports, which are completely financially self-supporting without any financial support of the government, and there are ports who still need a contribution.’<sup>1144</sup>

Schultz’s comments are not just positive about the draft regulation, however. Most of her concerns are similar to those mentioned by the MPs in the I&E Committee.<sup>1145</sup> The Dutch government will try to deal with these issues, for example, with regard to its arrangement concerning the pilotage service. In the Netherlands, there is a good arrangement for this. The Dutch government deliberately chose a monopoly in this field a few years ago, but in such a way that there would be enough supervision on tariffs which must be transparent.<sup>1146</sup> According to Schultz, it is dangerous to ask a member state to change the arrangement while there is as yet no competition. The Dutch government will focus on maintaining the option to decide what type of arrangement works best.<sup>1147</sup>

A second point of concern for the government is the delegated competence of the EC to make new provisions with regard to the differentiation of port dues and common levy principles. Ports should have the freedom to offer an attractive arrangement to companies in difficult economic times. Therefore, the Dutch government will plead for this proposal in the regulation.<sup>1148</sup> Schultz also responds to the request made by De Boer (VVD, coalition partner) to keep the SC informed and agrees to the list of requirements by the SC. She also mentions that the EC will set up some guidelines in this field to deal with state aid.<sup>1149</sup>

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<sup>1143</sup> Ibid.

<sup>1144</sup> Ibid.

<sup>1145</sup> Ibid., 6-8.

<sup>1146</sup> Ibid.

<sup>1147</sup> Ibid.

<sup>1148</sup> Ibid.

<sup>1149</sup> Ibid.

De Rouwe (CDA, opposition) responds that these guidelines should be integrated in the regulation and asks the Secretary of State to plead for this.<sup>1150</sup> Mrs Schultz responds that the Dutch government will ask that both the regulation and guidelines will be in line with each other. There will be no time to include them in the draft regulation (she goes on to explain why she cannot support the position of a member of the opposition).<sup>1151</sup>

Mr De Vries (PvdA coalition partner) explains the state aid issues which affect the southern ports of the Netherlands, as those in Belgium receive much financial funding. Dutch ports have to compete with this. This cannot be solved with guidelines, but should be laid down via proper regulation.<sup>1152</sup>

Mrs Schultz responds that issues, such as financial transparency must be laid down in the regulation and uniformly applied across all EU member states. With regard to the state aid rules, this will be looked at from a wider angle.<sup>1153</sup> Other issues in the regulation are also more suitable for a guideline, such as the arrangement issue. The Dutch government will request that this proposal be removed from the regulation.<sup>1154</sup> She continues to talk about the TEN-T network and mentions that the Dutch government decided to focus on the core network (rather than nine multi-modal corridors) and that Rotterdam, Amsterdam and the Westerschelde are included.

Mr De Rouwe (CDA) responds to Mrs Schultz' comments about the TEN-T that the situation has been changed since the adoption of amendments in the European Parliament.<sup>1155</sup> There are many ports in the Netherlands which would qualify for funding. It would be strange if the Netherlands would then simply say that it only accepts the funding for the three main ports. De Rouwe asks for the opinion of the Secretary of State on this.<sup>1156</sup>

Mrs Schultz says that it is the other way around. The Dutch government has always focused on the big corridors. A few of the smaller ports are also part of these big corridors. The Dutch government is aware of the EP amendments, but thinks that spreading all the funding would lead to a dilution of the available funds.<sup>1157</sup> Mr De

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<sup>1150</sup> Ibid., 8.

<sup>1151</sup> Ibid.

<sup>1152</sup> Ibid., 8.

<sup>1153</sup> Ibid.

<sup>1154</sup> Ibid., 9.

<sup>1155</sup> Ibid., 10.

<sup>1156</sup> Ibid.

<sup>1157</sup> Ibid.

Rouwe and Mrs Schultz continue their discussion about which ports are part of the TEN-T and Schultz agrees to get this on paper to him, but does not change her position.<sup>1158</sup>

At the end of the meeting, the chair summarises the promises made by the Secretary of State during the meeting (a map of the TEN-T corridors including the Dutch ports that will form part of that, regular updates on any progress of the negotiations that have implications for the Netherlands).

Although this meeting was not directly related to the official ex ante influence stages as known under the OLP, there are several attempts by MPs to impact the government. This is not as expected, as the NP has decided not to send a RO but nevertheless spends a lot of time on the scrutiny of the file and uses more than its normal formal powers (scrutiny reserve) to tighten the delegatory relationship with the government in this field. Causal mechanism cannot be confirmed at this stage.

### Step 3: First ex ante influence phase

During this phase, evidence is expected to be found of the NP not using anything more than its standard formal powers<sup>1159</sup>, as the topic is of no salience and no use of an RO is made.

On 15<sup>th</sup> November, the SC receives the agenda for the next Transport Council (5<sup>th</sup> December 2013) from government.<sup>1160</sup>

On 28<sup>th</sup> November 2013, a meeting takes place between the I&E Committee, the EAC, Secretary of State, Mrs. Schultz, and Minister Van Mansveld.<sup>1161</sup> During this meeting the Ports regulation is also discussed. Mrs Kuiken (PvdA, coalition partner) emphasises during this meeting that the PvdA can only support an EU ports directive if the commercial freedom of port service provision will continue to exist. It is her view that this is important for the monopoly of the pilotage service<sup>1162</sup>

Mrs Schulz responds:

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<sup>1158</sup> Ibid., 11.

<sup>1159</sup> The use of formal powers is limited to receiving information and clarifications.

<sup>1160</sup> TK, 21 501-33, nr. 445, 15<sup>th</sup> November 2013.

<sup>1161</sup> TK, 21 501-33, nr. 459, 27<sup>th</sup> January 2014.

<sup>1162</sup> Ibid., 7.

‘In my opinion, we will support and maintain this monopoly of the pilotage service, which is an example for the rest of the EU. It is supervised by the ACM, which determines its tariffs. I will plead to continue with this arrangement. The opinion of the EP in this field goes in the right direction. The discussions on the contents of the regulation have not yet started, but I will show that this is what we want.’<sup>1163</sup>

Although the Ports Regulation is not on the agenda for the next Council meeting, the Social Democratic fraction still tries to impact the government’s position in this field. It not only asks the government for information, but actively tries to impact the government’s position by stating a condition under which the fraction can give its support. This goes further than the NP was expected to do at this stage and therefore the causal mechanism cannot be confirmed at this phase.

#### Step 4: First ex post control phase

Another Transport Council takes place on 5<sup>th</sup> December 2013. No feedback on the Ports regulation is given, as this was not on the agenda. This is as expected and this stage sees the causal mechanism of the NP not using any extra formal powers as it has not made use of a RO here.

#### Step 5: Second ex ante influence phase

During this phase it is expected that evidence is found of the NP not using anything more than its standard formal powers<sup>1164</sup>, as the topic is of non-salience and no use of RO is made.

On 20<sup>th</sup> May 2014, the Secretary of State for I&E sent a letter to the chair of the SC to inform MPs about the agenda of the next Transport Council to be held on 5<sup>th</sup> June 2015. On 28<sup>th</sup> May 2014 a meeting takes place between the I&E Committee, the EAC and the I&E Minister, Mansveld, to discuss the forthcoming 5<sup>th</sup> June Transport Council meeting. During this discussion, various references are made to the Ports Regulation.<sup>1165</sup>

Mrs Visser (VVD, coalition partner) shows her support for the Dutch government’s position in this field. She asks the minister, however, what will happen with the

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<sup>1163</sup> Ibid., 10.

<sup>1164</sup> The use of formal powers is limited to receiving information and clarifications.

<sup>1165</sup> TK, 21 501-33, nr. 495, 31<sup>st</sup> July 2014.

amendments and how likely it will be that those amendments focusing on less administrative burdens will be accepted.<sup>1166</sup> She also stresses the importance to keep pushing for guidelines for state aid, as some member states, including the Italian EU Presidency, have different views on this.<sup>1167</sup>

The Minister, Mrs Mansveld, reacts to this and mentions that during the previous Greek EU Presidency no real discussions about the contents of the ports regulation had taken place.<sup>1168</sup> However, she expects that the amendments in the field of the pilotage service provision and its supervision will be accepted.<sup>1169</sup> With regard to the guidelines in the field of state aid, Mrs Mansveld says that these will not be part of the Ports regulation, but that the EC will publish some guidelines in this field at a later stage.<sup>1170</sup>

Although the issue of the Port regulation is raised, the contribution is not seeking to change or impact the government's position. This is as expected and the causal mechanism is accepted at this stage.

#### Step 6: Second ex post control phase

In order to confirm the causal mechanism at this stage, it is expected that evidence is found showing no use of extra formal powers by the NP and any information provided by the government will be accepted without raising questions or leading to any debates about the contents of the file.

On 5<sup>th</sup> June 2014 the Transport Council takes place. On 4<sup>th</sup> July 2014, the SC receives a letter from the government regarding the outcome of the Transport Council. It also includes an update on the Ports regulation:

‘The Council has taken note of the progress report. A few member states emphasized that it was important to better take into account the large diversity of ports and that unnecessary bureaucracy has to be avoided. EU Commissioner Kallas stressed the importance of efficient seaports for growth and jobs and he expressed the wish for more transparency in the sector.’<sup>1171</sup>

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<sup>1166</sup> Ibid., 8.

<sup>1167</sup> Ibid.

<sup>1168</sup> Ibid., 17.

<sup>1169</sup> Ibid.

<sup>1170</sup> Ibid.

<sup>1171</sup> TK, 21 501-33, nr. 495, 5<sup>th</sup> June 2014.

The NP receives this information, but does not raise any questions about the ports regulation. This is as expected and the causal mechanism is accepted during this stage.

#### Extra ex ante influence phase

During this phase, evidence is expected to be found of the NP not using anything more than its standard formal powers<sup>1172</sup>, as the topic is of non-salience and no use of RO is made.

On 18<sup>th</sup> September 2014, the SC received a letter from government with the agenda of the Transport Council meeting of 8<sup>th</sup> December 2014.<sup>1173</sup>

On 30<sup>th</sup> September 2014 a meeting takes place between the I&E Committee, the EAC, the Secretary of State for I&E, Mrs Schultz, and the I&E Minister, Mansveld.<sup>1174</sup> During this meeting, the EU Ports directive is also discussed.

Bashir (SP, opposition) asks what kind of objections other EU member states have against this regulation since the regulation has not been positively received in many member states (as it says on the agenda).<sup>1175</sup> Bashir also queries whether, in general, member states are in favour of opening up the market to the pilotage services. The SP is of the opinion that this should not happen and hopes that the government will oppose to this idea.<sup>1176</sup>

Mrs De Boer (VVD, coalition partner) also refers to the Ports directive. The VVD will support the position of the government, but would like to know what will be discussed in this field during the Transport Council.<sup>1177</sup> De Boer is also of the opinion that TEN-T corridors will broadly be part of the regulation. All ports in the Netherlands should be part of it.<sup>1178</sup>

Mr Hoogland MP (PvdA, coalition partner) also seeks clarification about the pilotage service provision and whether the Dutch government can protect this against the open

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<sup>1172</sup> The use of formal powers is limited to receiving information and clarifications.

<sup>1173</sup> TK, 21501-33, Nr 500, 18<sup>th</sup> September 2014

<sup>1174</sup> TK, 21 501-33, nr. 512, 11<sup>th</sup> November 2014.

<sup>1175</sup> TK, 21501-33, Nr 500, 18<sup>th</sup> September 2014

<sup>1176</sup> TK, 21 501-33, nr. 512, 11<sup>th</sup> November 2014, p.4.

<sup>1177</sup> Ibid., p.6.

<sup>1178</sup> Ibid.

market.<sup>1179</sup> It furthermore stresses the importance of a European level playing field in this regulation. At the moment there are many inequalities between European ports.<sup>1180</sup>

Schultz replies:

‘During our meeting of September 2013, the SC showed me their concerns. All these concerns seem to have been solved by now. The Dutch arrangement of pilotage services is protected. Freedom of services in Dutch ports is a fact, with the exception of the pilotage service. The Dutch government does support the current version of the regulation and it happy that this remains a regulation and will not become a directive, as this allows us to have a separate arrangement for the pilot service. In the regulation the EC is asked to come up with some guidelines in the field of state aid. We are on top of that.’<sup>1181</sup>

Bashir interrupts when Schultz wants to continue to a discussion of the next topic, as Schultz has still not responded to his question asking why so many other member states object to this proposal. He asks again if there is anything that these countries know that the Dutch do not.<sup>1182</sup> Schultz responds that now the Council working group has come to an agreement during the Italian EU Presidency. The difficulties that many EU member states had with the proposal have now been removed.<sup>1183</sup>

Several political parties, including the opposition, expressed their views at this stage, with the intention to impact the government’s position. MPs show what is important for them and give the Secretary of State clear instructions on what should be included. Causal mechanism cannot be confirmed at this stage.

#### Extra ex post control phase

In order to confirm the causal mechanism at this stage, evidence is expected to be found that no use of extra formal powers by the NP occurred and any information provided by the government will be accepted without raising any questions or leading to any debates about the contents of the file.

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<sup>1179</sup> Ibid.

<sup>1180</sup> Ibid.

<sup>1181</sup> Ibid., 9.

<sup>1182</sup> Ibid.

<sup>1183</sup> Ibid.

On 8<sup>th</sup> October 2014, a Transport Council took place.<sup>1184</sup> After this meeting, the SC received a report from the government with an update on the Transport Council.<sup>1185</sup>

‘During this meeting, most bigger EU member states pushed to have an exception on the TEN-T Network for smaller ports with regard to some of the transparency rules. This is to prevent disproportional administrative burden for smaller ports ... Finland and the Netherlands regretted this weakening of transparency rules, which increases the risk of abuse. In a written declaration together with Denmark and Estonia, they will confirm this in the hope that the EP will take this over.’<sup>1186</sup>

#### *Attendance of the government*

On 27<sup>th</sup> November 2014, another meeting takes place between the I&E Committee, the EAC and Secretary of State Schultz. During this meeting, the Transport Council of 8<sup>th</sup> October is also discussed, but is mostly focused on the actual attendance of the government at Council meetings.<sup>1187</sup>

Mr Bashir (SP, opposition) argues during this meeting that there is no point in asking the government anything, as it hardly ever attends the Council meetings.<sup>1188</sup> Mr Van Helvert (CDA, opposition) reacts to this and asks the Secretary of State to inform the SC whether she will attend the next Transport Council. He refers thereby to news articles in the press, stating that the Dutch Minister and Secretary of State rarely attend the Transport Council meetings.<sup>1189</sup>

Mrs Hachchi (D66, opposition) continues to stress the point further, pointing out the *Telegraaf*<sup>1190</sup> article discussing the absence of the government at Transport Councils.<sup>1191</sup> The press article mentioned that during the past two years, only once had a Minister or Secretary of State attended a meeting.<sup>1192</sup> Hachchi is worried about this situation:

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<sup>1184</sup> Council Press Release, 3335<sup>th</sup> Council Meeting Transport Council, 8<sup>th</sup> October 2014.

<sup>1185</sup> TK, 501 33, nr. 512, 11<sup>th</sup> November 2014.

<sup>1186</sup> Ibid.

<sup>1187</sup> TK, 21 501-33, nr. 523, 10<sup>th</sup> February 2015.

<sup>1188</sup> Ibid., 4.

<sup>1189</sup> Ibid.

<sup>1190</sup> Dutch newspaper, 3<sup>rd</sup> December 2014.

<sup>1191</sup> TK, 21 501-33, nr. 523, 10<sup>th</sup> February 2015, p.6.

<sup>1192</sup> Willems, M., *De Telegraaf*, 3<sup>rd</sup> December 2014.

‘If this is true, then I am worried. Even if civil servants are extremely good, it is a sign that the Netherlands does not consider these meetings to be important. This weakens our negotiation position. I would like to know whether this press article is true and if so, what the reasons have been for the Minister and the Secretary of State not attending more often?’<sup>1193</sup>

Schultz first responds to the questions regarding the contents of the EU dossiers. In relation to the attendance of the Secretary of State or Minister at the Transport Council, Schultz comments as follows:

‘It is true that we are not always present, but the numbers are not exactly right. The Transport Council takes place four times a year and two times there is an informal Council. The past two years, we have been present four times. Is this important? No, what is important, is the result ... However, I do always keep the time free in my agenda, so Brussels does get my attention. I did also attend one of the informal Councils this year ... As the Netherlands will take over the EU Presidency in 2016, attending the Council meetings will be increasingly important.’<sup>1194</sup>

Bashir (SP, opposition) is not satisfied with this reply. He argues that the I&E Committee has regular discussions with the government about the positions of the SC on EU policy dossiers and he, therefore, is of the opinion that the Minister or the Secretary of State should attend each Transport Council.<sup>1195</sup> Bashir is happy that the Secretary of State has promised to attend the Transport Councils from now on, but has also said so in the past without fulfilling this promise.<sup>1196</sup>

Mrs Schultz replies:

‘I assume that it is publicly known when we cannot attend a Transport Council meeting, but I think it is fine to include this in the reports. I still believe that there is no need for us always to attend. The Transport Council is not the place where so much information gets shared.’<sup>1197</sup>

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<sup>1193</sup> TK, 21 501-33, nr. 523, 10<sup>th</sup> February 2015, p.6.

<sup>1194</sup> Ibid., 14.

<sup>1195</sup> Ibid., 15.

<sup>1196</sup> Ibid.

<sup>1197</sup> Ibid.

Bashir still does not agree with the Secretary of State and argues that sometimes unannounced issues might be discussed. The Netherlands is a transport country and the government should therefore attend meetings.<sup>1198</sup> Mrs Mansveld (Minister, PvdA) also responds to the allegations in the field of the government attendance at the Transport Councils. She argues that she has a broad international agenda and you have to choose the right moment to be present and discuss important issues with colleagues.<sup>1199</sup>

During this meeting, which took place after the Transport Council, many more contributions to the outcome were made than expected. The MPs use many formal powers to hold government to account, both on the contents of the topic (ex post influencing) and on procedures (attending the Transport Council). This is much more than was expected to be found and therefore the causal mechanism cannot be confirmed at this stage.

#### Step 7: Adoption

The legislative file was informally adopted during the EU Presidency on 29<sup>th</sup> June 2016, whereby member states agreed on how to make ports more efficient and competition between them fairer.<sup>1200</sup> Outstanding issues were the social aspects as raised in the EP, but also in some of the NPs (such as the SC), which were discussed and solved in trialogue meetings between the Council, EP and EC. They were included in the Ports Regulations, as the PvdA in the SC had also stressed during meetings with the government about this topic.<sup>1201</sup>

#### **8.3.5 Concluding remarks**

The Ports Regulation was selected as a case to compare to another maritime transport case (C7) whereby the NP decided to make use of a RO. With regard to the Ports regulation, the SC decided not to do so and, as a consequence, based upon the theoretical argument, evidence was expected to be found of the NP using less formal powers to impact the government's position on this EU file. However, the expected causal process is not reflected in this case in which the NP uses many formal powers, including more than standard (such as the use of the scrutiny reserve). During various stages of the OLP, the NP tries to impact the government's position and on one

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<sup>1198</sup> Ibid.

<sup>1199</sup> Ibid.

<sup>1200</sup> <https://felixstowedocker.blogspot.co.uk/2016/06/eu-council-approves-new-port.html>

<sup>1201</sup> TK, 21 501 33, nr. 611, 14 July 2016.

occasion it even does so *after* the Council meeting. The use of formal powers is greater than expected and although this file was described as a non-salient one to the electorate, based upon party manifestos of the coalition parties in government and the Euro-barometer, the topic of ports is still of major concern for many MPs, because of the high economic and employment contribution of different ports in the Netherlands (such as Rotterdam, Amsterdam and the Westerschelde). Interviews confirm the importance of this file.<sup>1202</sup> According to data extracted from the interviews, many MPs were lobbied in this file by trade unions because of the potential impact on labour law which increased the importance and, as a consequence, the need to increase scrutiny.<sup>1203</sup>

In other words, the different steps of the OLP do not follow the expected causal process for this file and this case shows that even without sending a RO, the content of a file is enough for an MP to increase the use of formal powers.

#### *Measurable impact*

Interviews with government representatives and MPs confirm that no informal ways of influence took place in this field and that the initial position of the government as set out in the EM was not based upon the NP's position.<sup>1204</sup>

‘The government’s position is written based upon the positions in the coalition government, the NP’s scrutiny reserve only comes after that.’<sup>1205</sup>

The government did not change its position after influence by the NP (regarding labour issues) with the exception of raising some points on behalf of MPs (state aid and an exception for pilotage services).

‘We had requested the government to ask the Council to include State Aid into the Regulation. The Minister did ask this on our behalf. It was not in their original position. I am not sure whether the Council took it over or not.’<sup>1206</sup>

It also rejected MPs’ criticism on the attendance of the government at the Council meetings and the measurable impact can therefore be considered weak.

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<sup>1202</sup> De Boer MP, 4<sup>th</sup> June 2015, De Vries, 8<sup>th</sup> June 2015, Pol, 4<sup>th</sup> June 2015, Keulemans, 15<sup>th</sup> June 2015.

<sup>1203</sup> Keulemans, 16<sup>th</sup> June 2015, Kisters, 19<sup>th</sup> May 2015.

<sup>1204</sup> De Boer MP, 4<sup>th</sup> June 2015, Pol, 4<sup>th</sup> June 2015, Keulemans, 15<sup>th</sup> June 2015.

<sup>1205</sup> Pol, 4<sup>th</sup> June 2015.

<sup>1206</sup> De Vries, 8<sup>th</sup> June 2015.

## 8.4 Pair-wise comparison between the use and the non-use of Lisbon provisions

When looking at the use of formal powers by the SC in both cases, they seem to have been increased on similar levels, mainly by applying a scrutiny reserve in both cases, and in C7 this is added by a RO to the EC.

However, as mentioned in the concluding remarks of C8 and as shown in table 20, sending a RO to the EC, does not seem to be a guarantee for NPs to increase the use of formal powers. They can be equally active in other cases. For example, if MPs believe that this topic has enough importance to increase their use of formal powers, they will tighten the delegatory relationship with the government by giving it clear instructions on what to say during Council negotiations and what feedback it expects, as seen in C8. Interviewees confirmed that the RO as such does not lead to higher chances of impacting the government and is no reason for the NP as a consequence to increase the use of its formal powers.

‘In the government we are not really worried about the RO as such. It is another tool, like the scrutiny reserve. When we were going to discuss this with the NP, a majority in the NP (VVD, PvdA and CDA) wanted to have scrutiny reserve on this file and they told us about the RO, so the government is made aware of the importance of the topic to the NP.’<sup>1207</sup>

As expected in the theoretical argument in Chapter 3.4.4 the RO is used here together with other tools. According to interviewees<sup>1208</sup>, the RO is considered by MPs to be a tool to test the principle of subsidiarity.<sup>1209</sup> The scrutiny reserve is considered to be stronger way to nationally tighten the government to the NP’s wishes:

‘The scrutiny reserve makes MPs active. They will then think about whether to follow the government position or to go further.’<sup>1210</sup>

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<sup>1207</sup> Abspoel, 3<sup>rd</sup> June 2015.

<sup>1208</sup> Abspoel, 3<sup>rd</sup> June 2015, Van Dongen, 3<sup>rd</sup> June 2015.

<sup>1209</sup> This is also confirmed during interviews in the UK (e.g. with Alison Groves, representative of the HC in Brussels, 3<sup>rd</sup> July 2015).

<sup>1210</sup> Abspoel, 3<sup>rd</sup> June 2015.

‘The scrutiny reserve means that the government will take us more seriously.’<sup>1211</sup>

‘A scrutiny reserve makes a difference. The government includes the NP from the beginning. As a government representative you are more aware of the position of the NP and takes this into account during the negotiations in the Council. Although materially the scrutiny does not make a big difference (the position of the government remains the same), you know that this topic is important for the NP and we keep them involved.’<sup>1212</sup>

‘A scrutiny reserve is a strong instrument to check the government and to make sure the government does as agreed and keeps the NP informed on crucial developments in Brussels or if the direction of the government’s position needs to be adapted. This is a way for MPs to increase their knowledge on what is going on in Brussels.’<sup>1213</sup>

According to De Boer MP (Liberals), the NP was more active in the PS file than in the Maritime Spatial Planning case, as it was so important for the country:

‘This dossier is of huge importance, that is why we applied a scrutiny reserve. Other ports (mainly in southern Europe) are still getting state aid, which is not fair for our ports. When we ask for a scrutiny reserve, the government does take that serious.’<sup>1214</sup>

This is confirmed by De Vries MP.<sup>1215</sup>

According to Kisters, Transport Advisor at the Dutch Permanent Representation in Brussels, the PS case was more political than the Maritime Spatial Planning file, as there is a social angle included in the PS file. The left wing parties in the NP were lobbied on this by the trade unions. This increased the importance for the public opinion’, according to Kisters.<sup>1216</sup> She added that the RO is not directly a way to influence the government. The topic had a national interest, so the NP and government stood more or less on the same side, similar to the PS case, although this was more

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<sup>1211</sup> De Vries, 8<sup>th</sup> June 2015.

<sup>1212</sup> Pol, 4<sup>th</sup> June 2015.

<sup>1213</sup> Keulemans, 15<sup>th</sup> June 2015.

<sup>1214</sup> De Boer MP, 4<sup>th</sup> June 2015.

<sup>1215</sup> 8<sup>th</sup> June 2015.

<sup>1216</sup> 19<sup>th</sup> May 2015.

political because of the potential social implications. That is why the NP wanted a scrutiny reserve on this file. The interests for parts of Dutch citizens were at stake here, according to Kisters.<sup>1217</sup> More specifically, the NP did use the RO, not to impact government, but to impact the EC on this topic of national interest. However, as a consequence of its views that it should be a topic dealt with at national level, it did increase the use of formal powers at the domestic level as well. In conclusion, whereas the use of formal powers is increased in C7 as a consequence of having sent a RO to the EC, it has equally increased the use of formal powers in C8, when it did not send the RO. Saliency seems to have been the variable at work here.

### *Shadow pair-wise comparison*

In order to increase the internal validity of the outcome of this case, another pair-wise comparison has been made whereby in the scrutiny of one case, the Opening of market for domestic passenger transport services by rail<sup>1218</sup> (C7a), the NP made use of a RO. This is compared to another case during which the NP did not make use of a RO, the Interoperability directive<sup>1219</sup> (C8a).<sup>1220</sup> This pair-wise comparison indicates more clearly a difference in the use of formal powers which increased in C7a. An overview of the formal powers used in both cases can be seen in table 21.<sup>1221</sup> The use of the formal powers is hugely increased in the case where the NP has made use of a RO compared to that in which the NP has not. However, when tracing the processes of both files, it appears that a lot more is at stake in the case where the NP has decided to make use of a RO. In other words, saliency seems to be rivalling with the use of the RO here. C7a deals with the opening of the market for railway passengers, a topic dealing with the extent to which a public service should be liberalised. This issue touches the main ideologies for parties like the PvdA (Social Democrats) and the VVD (the Liberals). As a consequence, one can expect increased use of formal powers. C8a which also deals with the railways, however, is a technical dossier in which no controversies amongst political parties are found.<sup>1222</sup> This is confirmed during interviews.<sup>1223</sup>

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<sup>1217</sup> Ibid.

<sup>1218</sup> COM(2013)028.

<sup>1219</sup> COM(2013)030.

<sup>1220</sup> As the necessary conditions for this file (multi-party, non-salient, no use of Lisbon) are identical as for C4, the same EU legislative file has been selected.

<sup>1221</sup> For an elaborated tracing of the different steps of the scrutiny carried out on this case see Appendix V.

<sup>1222</sup> For more information about the political parties' positions on the European Railways, see Chapter 5, table 12.

According to Koolmees MP, MPs tend to become more active in political dossiers, such as opening up markets, but also when dealing with EU integration issues when the topic covers rescinding pieces of sovereignty to the EU.<sup>1224</sup> This is confirmed by Hartkamp, the Deputy Director Corporate Strategy at ProRail<sup>1225</sup>, and by Keulemans, EU advisor to the Dutch SC:

‘The interoperability dossier is one that deals with technical issues. Political parties have no different views on this. However, once you start to talk about opening up the market, it becomes more political.’<sup>1226</sup>

‘When a file has big political consequences it gets more discussed in the SC and it can lead to applying a scrutiny reserve. This happens on important dossiers. A scrutiny reserve is a clear signal to the government.’<sup>1227</sup>

This is supported by Van Dongen, the government representative responsible for the railways, De Boer MP and Kisters from the Dutch Permanent Representation in Brussels:

‘The coalition in government is divided on this file. The VVD is happy to open up the market, but the PvdA prefers to keep this a public service. This increases the chances for the opposition, as the coalition is divided and it needs a majority for its position.’<sup>1228</sup>

‘The open market for railways is a sensitive file. Very political. It touches the middle of the left/right division. The interoperability dossier is more technical and the different political parties agree upon them generally and the NP is less likely to give instructions to the government.’<sup>1229</sup>

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<sup>1223</sup> Van Dongen, 3<sup>rd</sup> June 2015, Hoogland MP, 4<sup>th</sup> June 2015, De Boer MP, 4<sup>th</sup> June 2015, Hartkamp, 7<sup>th</sup> July 2015, Koolmees, 6<sup>th</sup> July 2015.

<sup>1224</sup> Koolmees MP, 6<sup>th</sup> July 2015.

<sup>1225</sup> Organisation in the Netherlands responsible for the railway network.

<sup>1226</sup> Hartkamp, 7<sup>th</sup> July 2015.

<sup>1227</sup> Keulemans, 15<sup>th</sup> June 2015.

<sup>1228</sup> Van Dongen, 3<sup>rd</sup> June 2015.

<sup>1229</sup> De Boer MP, 4<sup>th</sup> June 2015.

‘The SC is more interested in the political part of this dossier and much less in the technical part. Most parties are not really worried about transport dossier, unless it deals with transport of passengers.’<sup>1230</sup>

These contributions show that the contents of the topic, in other words, the salience, is at work here. The government representative for the railways in the Netherlands considers the RO to be another (useful) tool for the NP.

‘It does help to make us realise that this is an important file for the NP. That makes us extra careful. This was mainly because of the sensitive contents of the dossier, but the RO helps. However, it did not have to be a RO, the NP could have used different methods to show us that this dossier is important. The contents are guiding. The topic deals with changing our system. That is what is important.’<sup>1231</sup>

According to interviewees, the RO is more a juridical instrument to indicate whether the subsidiarity principle has been breached. The topic can be equally salient or even more salient if this is not the case. In other words, the RO is used as a technical tool, not a political one.<sup>1232</sup> Despite these contributions, others - such as Hoogland MP who initiated the negative RO in name of the Dutch SC - do attach more value to this parliamentary power and argues that it is a useful tool:

‘It is a way to force the government to feedback carefully to the NP, because they know that we will remain alert. The feedback to the NP in such cases will be more precise. This does not mean that the government will change its position, but they will feel the pressure to report back, which keeps us involved during the further scrutiny.’<sup>1233</sup>

In other words, although the RO is a useful instrument, not only to influence the government, but it can also pressure it to act according to the wishes of the NP when its negotiating in Brussels. It does not increase the measurable impact of the NP, but it does lead to an increased alertness and as a consequence, it does increase the delegatory relationship between the government and the NP.

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<sup>1230</sup> Kisters, 19<sup>th</sup> May 2015.

<sup>1231</sup> Van Dongen, 3<sup>rd</sup> June 2015.

<sup>1232</sup> Dongen, 3<sup>rd</sup> June 2015, Abspoel, 3<sup>rd</sup> June, Pol, 4<sup>th</sup> June 2015.

<sup>1233</sup> Hoogland MP, 4<sup>th</sup> June 2015.

‘Sending a RO makes the NP more alert, and this makes the government more alert. They have to think more carefully about their input into the Council.’<sup>1234</sup>

This is confirmed by Keulemans who argued that both the scrutiny reserve and the RO to the EC are instruments used by the NP to increase alertness within the government to keep the NP on board during the scrutiny of certain files.<sup>1235</sup> According to Nollen, Representative of the SC in Brussels, the government will take the position of the NP more into account once it has sent a negative RO to the EC.<sup>1236</sup>

According to Hartkamp, it was the susceptibility of the government to include the NP’s position into its own here as a consequence of the majority in the NP in favour of keeping the opening of the market in national hands.

‘With another majority, the government would have decided differently. The RO as such has not influenced the government.’<sup>1237</sup>

The outcome of this case shows a clear example of intermediate impact by the NP. Although the main party in the coalition government is in favour of opening up the railways to the European market, it follows the majority position of the NP, which is against freedom to provide domestic passenger services by rail. According to interviewees, this topic was of huge importance to MPs and political parties have very different views on the extent to which this topic should be opened up to the market and the extent to which this topic should be kept at a national level. This explained the increased use of formal powers.<sup>1238</sup> The interview with the government representative of the Railways confirmed that although the coalition partners had different opinions on this issue, it followed the NP’s position, as it was such a clear majority.<sup>1239</sup>

In conclusion, sending a RO is considered to be another tool to impact EU legislation and is normally used as a legislative instrument to assess whether an EU legislative file is in breach with the subsidiarity principle.

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<sup>1234</sup> Hoogland MP, 4<sup>th</sup> June 2015

<sup>1235</sup> Keulemans, 15<sup>th</sup> June 2015)

<sup>1236</sup> Nollen, 8<sup>th</sup> July 2015.

<sup>1237</sup> Hartkamp, 7<sup>th</sup> July 2015.

<sup>1238</sup> De Boer, 4<sup>th</sup> June 2015, Hoogland, 4<sup>th</sup> June 2015.

<sup>1239</sup> Van Dongen, 3<sup>rd</sup> June 2015.

In spite of these opinions on the RO, it seems from tracing the processes in C7 and C7a and the extracted data from the interviews that sending a RO to the EC makes the topic salient as such, as the NP is of the opinion that it is a topic that needs to be dealt with at national level. In this sense, sending an RO can at least be linked to an increase in parliamentary activities since the fact that the NP considers it to be of national level importance causes it to tighten up the delegatory relationship with the NP, even if the topic is of non-salience to the electorate. Although the RO is not really used for political motivations, as stated in the theoretical argument, the subsidiarity issue linked to a topic increases the scrutiny at home as well. In other words, the subsidiarity issue is a form of salience that motivate the NP to give clear instructions to government and it will request to be informed. However, other variables do so as well, as the pair-wise comparison shows in C7 and C8. In both cases parliamentary activities were increased, but for different reasons (RO and salience). In conclusion the two pair-wise comparisons partly confirm the hypothesis that those NPs opposing an EU legislative proposal in a RO are more likely to impact their government's EU policy position.

**Table 20 Outcome of the Pair-wise Comparison between Case 7 and 8**

<b>Seven steps of OLP</b>	<b>Use of formal powers CASE 7 (<u>use of RO</u>)</b>	<b>Use of formal powers CASE 8 (<u>no use of RO</u>)</b>
<b>1: publication</b>	X	X
<b>2: eight weeks</b>	Yes	X
<b>3: first influence phase</b>	<ul style="list-style-type: none"> <li>- Procedure meeting</li> <li>- EM government</li> <li>- Letter EAC to gov. (RO)</li> <li>- Meeting I&amp;E</li> <li>- RO SC to EC</li> <li>- 2 Meetings scrutiny reserve with gov.</li> <li>- Meeting I&amp;E, EAC and gov. (expression of own opinion)</li> <li>- Letter gov. to SC (agenda informal Transport Council).</li> <li>- Questions MPs</li> <li>- Replies government.</li> </ul>	<ul style="list-style-type: none"> <li>-EM government</li> <li>- 2 meetings I&amp;E Committee, EAC and gov. (one about scrutiny reserve).</li> </ul>
<b>4: first control phase</b>	- Letter gov. to SC	X
<b>5: second influence phase</b>	- 2 letters gov. to SC	<ul style="list-style-type: none"> <li>- Letter gov. to SC (agenda Transport Council</li> <li>- Meeting EAC, I&amp;E and gov.</li> </ul>
<b>6: second control phase</b>	- Letter gov. to SC	- Letter gov. to SC
<b>Extra influence phase</b>	Not applicable	<ul style="list-style-type: none"> <li>- Letter gov. to SC (agenda)</li> <li>- Meeting EAC, I&amp;E and gov.</li> </ul>
<b>Extra control phase</b>	Not applicable	<ul style="list-style-type: none"> <li>- Letter gov. to SC</li> <li>- Meeting I&amp;E, EAC and gov.</li> </ul>
<b>7: adoption</b>		Not yet applicable
<b>IMPACT</b>	Weak	Weak

**Table 21 Outcome of the Pair-wise Comparison between Case 7a and 8a**

<b>Seven steps of OLP</b>	<b>Use of formal powers CASE 7a (<u>use of RO</u>)</b>	<b>Use of formal powers CASE 8a (<u>no use of RO</u>)</b>
<b>1: publication</b>	X	X
<b>2: eight weeks</b>	yes	X
<b>3: first influence phase</b>	- Reception of EM - Meeting with gov. (attempts to influence) - Letter gov. (attempt to influence) -Scrutiny Reserve.	- 2 letters government - EM government - Meeting gov. + NP
<b>4: first control phase</b>	-Letter gov. -Plenary meeting -Motions adopted.	- Plenary meeting - Letter government
<b>5: second influence phase</b>	- Letter gov. - Meeting NP-gov. (expressions of party opinions in order to impact gov.)	-Letter government - Meeting government and NP + expression of opinions.
<b>6: second control phase</b>	X	- Letter government - Letter NP
<b>Extra influence phase</b>	- Letter to gov. to ask for IA - Meetings with gov. - Expression of views in order to gain information - Letters gov.	Not applicable
<b>Extra control phase</b>	- Letter gov. - IA gov.	Not applicable
<b>Extra influence phase</b>	- Meeting gov. - Expression of views in order to impact	Not applicable
<b>Extra control phase</b>	X	Not applicable
<b>Extra influence phase</b>	- Meeting gov. - Expression of views in order to get more information.	Not applicable
<b>Extra control phase</b>	X	Not applicable
<b>Extra influence phase</b>	- Meeting gov. - Expression of views in order to get more information	Not applicable
<b>Extra control phase</b>	X	Not applicable
<b>7: adoption</b>	Expected in 2016	X
<b>IMPACT</b>	Intermediate	Weak

## Chapter 9

### Research findings and conclusions

#### 9.1 Introduction

This research has analysed the different conditions under which NPs operate and under which they are able to increase or decrease their impact on their government's EU policy position. It thereby tried to answer the following research question: *under what conditions will NPs have an impact on their government's policy on the EU?*

In this research, a theoretical framework was developed which combined normative standards and empirical research. The overall theoretical argument was that institutional design shapes parliamentary impact on government positions on EU policies via the mechanisms of influence and control, but this occurs only under certain conditions such as the composition of the government, the salience of EU issues, or when operating under the provisions of the Lisbon Treaty. The overall contribution of the thesis was therefore twofold; first, it adds to an existing literature on formal powers which so far focuses mainly on comparative quantitative studies of formal powers and, second, on the normative standards regarding political representation. Thus, it adds a huge variety of new data in the form of personally-collected meeting documents and interviews. The main novelty of this study is not only its attempt to link new external conditions under which NPs operate and their formal powers, but by measuring impact it also goes a step further than measuring their formal powers. It establishes whether using these is relevant and what happens when they are used under the new explanatory factors.

The outcome of the empirical research determining whether the relationship between government and NP varies when operating under different conditions in EU issues contributes to the normative standards on political representation, namely by inferring when authorisation and accountability in EU issues are most likely to take place. It also adds to the existing literature on institutional adaption and actual policy-makers, since in order for NPs to make a real difference via their governments on EU policies, they require incentives (for example, Europeanised or politicised EU topics) to use their formal powers.

The research began with a Chapter dealing with the conceptualisation of political representation and how to apply this concept to the relationship between the government and the NP in EU decision-making. It presented two tables, one matrix in which the NPs could be placed on a continuum between the delegatory and trusteeship models according to the formalistic and substantive strand of political representation based upon Pitkin's political representation theory. This matrix shows that according to the formalistic strand, the NP can either be acting according to the trusteeship model or the delegatory model depending on its formal powers. However, according to the substantive strand, the position of the represented<sup>1240</sup> can alter according to different external factors. A second table gives an overview of the formal powers of NPs in the EU, according to which they can either be described as forming part of the trusteeship or delegatory model. This table has been helpful in the selection of NPs for the empirical analysis for which two NPs were selected, one with stronger ex post control mechanisms (House of Commons) and the other with stronger ex ante influence powers (Second Chamber). A selection of these NPs with different types of formal powers was useful in order to establish whether there is a different outcome depending on the use of such formal powers or whether external conditions determine the outcome of the NP's use of formal powers when scrutinising their government over an EU legislative file.

The following Chapter gave an overview of previous research in this field and the theoretical arguments per hypothesis. It introduced the different independent variables for the thesis, namely partisan composition, euro-scepticism, salience and the Lisbon provisions.

Chapter 3 set out the research design and explained in-depth how to overcome the many challenges of measuring the dependent variable, that being measurable impact. It furthermore described the reasons for selecting a number of case studies for the empirical analysis and how a combination of qualitative methods would attempt to overcome the challenges of measuring impact. Combining process-tracing with the comparative method has proven to be helpful in looking at the expected causal processes per case and combining any different causal steps when the condition to be measured is either absent or present. Process-tracing has furthermore been useful in order to look at each step of the OLP to discover the extent to which it used more or less

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<sup>1240</sup> Although Pitkin's theory about political representation describes the role of the representative as trustee or delegate, this thesis applies these terms to the represented (in this case the NP), which can be part of a trusteeship (few ex ante influence powers) or delegatory model (strong ex ante influence powers).

than the expected formal powers and whether different variables other than the main explanatory factors were responsible for the outcomes.<sup>1241</sup>

Interviews were added in order to determine whether the causal steps as identified during the process-tracing analysis could indeed be linked to the expected condition or whether there were any rival explanations. Interviews were furthermore helpful in order to find out whether informal influence had taken place or the government had already included the parliamentary position when drafting its initial position (anticipated reactions).

The empirical section of the thesis was covered in Chapters 5-8 where each Chapter set out the analysis of one of the independent variables.

The outcome of the analysis has led to some interesting findings which will be presented in two separate sections: the first will deal with the empirical conclusions, looking at the outcomes of measuring impact and summarising the conclusions of each independent variable separately, followed by the implications for future research in this field. A second part consists of the contributions of these findings to the normative literature in the field of political representation.

## **9.2 Empirical Findings**

### **9.2.1 Measuring impact**

As predicted in Chapter 4 of the thesis, measuring impact has been difficult. In only a few of the case studies has measurable impact been identified. However, not identifying measurable impact does not mean that the NP has no impact on its government's EU policy position. During the scrutiny of the EU Water Policy dossier, for example, the HC sought clarifications from witnesses, such as the EC, about government attendance and actual involvement in this file. Interviewees have confirmed that increasing the use of formal powers, such as applying a scrutiny reserve, helps the government to realise the importance of the topic for the NP and will, consequently, increase its feedback to the NP. Using formal powers, therefore, does make a difference, even if it leads to softer forms of impact. Although the dependent variable consisted of real measurable impact, the softer forms of impact should not be underestimated. As Russell and Benton argue, if the HC does not use its formal right of a veto, it does not mean that it is

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<sup>1241</sup> George & Bennett, 2005, p. 81.

powerless.<sup>1242</sup> The NP can use formal powers not so much to change the government's position, but rather to make it behave in a certain way, like in the Ports Case (C4a and C8) where the NP wanted the government to attend Council meetings. This 'softer' type of impact would be extremely hard to measure which is why this research focused on the more tangible form of impact.

However, a few cautionary notes are needed here and generalisations in this field are limited. This thesis only looks at impact on governmental EU policy position in the area of legislative files. However, it should not be forgotten that next to this measurable impact and its softer forms discussed above, the NP can have an impact in non-EU legislative files and this is sometimes a more likely outcome. Interviews with MPs confirmed the importance of political dossiers linked to an increased use of formal powers, instead of EU regulations and directives.<sup>1243</sup>

For example, during the negotiations of the EU fiscal Treaty<sup>1244</sup> in 2011, UK MPs very actively lobbied their government.<sup>1245</sup> However, measurable impact would be hard to prove even though the NP clearly acted as a delegatory NP with strong formal powers in this non-legislative case. These crisis-related topics, which include those providing financial support to Greece, have led to much media attention<sup>1246</sup> and are therefore expected to increase the use of formal powers in the NP as well.

From the different case studies, it was indeed clear that in the case of topics dealing with the transfer of power from national to EU level (the CFP and the Fourth Railway Package) and in the case of topics dealing with left/right partisan cleavages (Fourth Railway Package: Opening of the railway market for passengers), MPs were most active and most debates took place with the government. The clearest example of some level of measurable impact was during the opening of the market to railway passengers, a political topic covering not only a left/right wing topic, but also dealing with the extent to which EU integration should continue. More specifically, impact was only noticeable in cases of conflict, either between left and right-wing topics or when discussing issues related to the extent to which the EU should be integrated.

The cases where impact was hardly noticeable were often technical ones where the issues of how far EU integration should stretch and the left/right cleavage are less

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<sup>1242</sup> Russell & Benton, 2009, p. 4.

<sup>1243</sup> Williams MP, 25<sup>th</sup> June 2015; Koolmees MP, 6<sup>th</sup> July 2015; Monasch 16<sup>th</sup> June 2015.

<sup>1244</sup> Signed on 2<sup>nd</sup> March 2012.

<sup>1245</sup> HC, Treaty on Stability, Coordination and Governance in the Economic and Monetary Union: political issues, Research Paper, 12/14 27 March 2012.

<sup>1246</sup> Kröger & Bellamy, 2016, p. 2.

relevant. In other words, during the interviews with most MPs and government representatives it became clear that if an EU legislative file was discussed, often the government and NP followed the same line - that of the national interest. In these cases, measurable impact is hardly noticeable, as government and NP would often support one another. This confirms O'Brennan and Raunio's findings that in member states with cohesive parties, the executive and NP are often so intertwined that measuring their independent influence in decision-making is at best difficult.<sup>1247</sup>

Future research in this field might therefore want to concentrate on more Europeanised or non-legislative and more political EU issues in order to establish the extent to which NPs have an impact compared to their influence on EU legislative dossiers.

A second cautionary note on measuring impact is that in some of the cases impact was considered to be weak because the government's EU policy position had not been changed after scrutiny by the NP. However, it had not been parliament's intention to change the government's position. In the maritime cases, for example, spatial maritime planning, ports and the IMP, the national interest seemed to be at stake and different opinions between the government and opposition were minimal. However, the NP still made use of formal powers, sometimes just to make sure that the government would not take any actions without informing the NP. The NP in these cases deliberately chose a more controlling role rather than that of influence, as it did not oppose the government's position on major issues. These are cases where impact has not been measured, but the salience variable still has been at work; this is reflected in both parliamentary actions and government responses (both were increased). The increased use of formal powers by the NP and the government's more active feedback to it show that the NP can still be powerful, even though there is no clear difference in their preferences with regard to the contents of the EU legislative files. This corresponds to Barry's paper about power and luck<sup>1248</sup>, in which he argues that an actor may not have the incentive to actually make a change if the position by these other actors coincides with his own position.<sup>1249</sup> Only if you have a specific interest in making a difference to a certain issue, the proportion of successful interventions is relevant.

Those with the courage to measure impact in future studies could therefore perhaps look at other forms of measuring impact, such as the increased feedback by the government

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<sup>1247</sup> O'Brennan & Raunio, 2007: 7.

<sup>1248</sup> Barry, 1980.

<sup>1249</sup> Ibid., p. 28.

to the NP. Operationalising measurable impact differently, could lead to a different outcome. This has also been noted in various studies of the power of the EP, often leading to different outcomes.<sup>1250</sup> This does not necessarily imply that one study is necessarily more valid than other ones. It is important to look at both the formal powers and the preferences of the parliament in order to be able measure its power.<sup>1251</sup> As discussed in the Chapter 4, dealing with the Research Design, a pragmatic response to measuring impact was followed in this study, as no single analysis will be able to cover all different aspects of the vast amount of theoretical literature on ‘power’.<sup>1252</sup>

Besides, one of the limitations of this research, as clearly stated in the research design, is that measuring impact remains extremely difficult and that some types of impact are just not quantifiable, as it consists of softer forms of impact or is due to, for example, anticipated reactions. Even though government representatives ruled these out during the interviews, it is still possible that when writing some government policy positions, representatives referred to previous positions to which different political parties did contribute. Although impact will be measurable only to a limited extent, the use of formal powers and government responses to their use, subject to the different conditions, do lead to interesting outcomes. These will be looked at in the next section.

### **9.2.2 Partisan composition**

The first hypothesis suggested that NPs scrutinising coalition governments have more chances to increase the impact on their government’s EU policy position than those scrutinising a single party government, even if it is a NP with few ex ante influence powers.

Two legislative files were selected as cases, both scrutinised by the HC; the first case<sup>1253</sup> occurring during the Cameron-Clegg coalition government and the second<sup>1254</sup> during the Brown single party (Labour) government.

During the scrutiny of CFP reform, when the UK government consisted of a coalition between the Conservatives and the Liberal Democrats, many more meetings took place to scrutinise the government. Several motions were adopted and meetings did not only take place in the EAC, but also in EFRAC and the European Committee A. Many more

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<sup>1250</sup> Selck and Steunenbergh, 2004: 40.

<sup>1251</sup> Ibid., 42

<sup>1252</sup> Dür and De Bièvre, 2007:2-3.

<sup>1253</sup> The Reform of the Common Fisheries Policy (COM(2011)425.

<sup>1254</sup> Control on compliance with the Common Fisheries Policy (2008)721.

in-depth discussions took place between the interested MPs (from both government and opposition parties) and the relevant department in government than in the second case (control on compliance with the CFP) when scrutinised under the Brown single party government. Formal powers are also used during the scrutiny of this second file, but with the exception of referring the file to the European Committee A, communication with the government during the seven steps of the OLP is limited to receiving information and at no single point did the NP intend to have an impact on its government's position. In other words, the causal processes for both the single- and multi-party government were confirmed.

However, the causal mechanism, namely finding a link between the different parties in government and a stronger dependence from government on the opposition in the NP, cannot be found here. From the contributions by MPs during meetings in C1, it appears that the simple reason for an increased use of formal powers during the reform of the CFP was the importance of the topic. There was a lot more at stake than during the file dealing with increasing the control of compliance with the CFP. Even if the CFP and its reform had been discussed several years before and also during the Brown single party government, the reason why it now led to the increased use of parliamentary activity in the HC seems to be related to the fact that during the reform proposal the topic became highly politicised.<sup>1255</sup> This was confirmed during interviews with MPs, government officials and interest parties. Both cases show weak impact by the NP on government, even with a difference in the use of formal powers. Miklin's argument that politicisation of EU legislative proposals increases parliamentary activities is hereby confirmed.<sup>1256</sup>

Interviewees described the Reform of the CFP as a highly politicised (in the media, concerns among public) topic, but also a Europeanised topic.<sup>1257</sup> Because MPs were Eurosceptic, they wanted to leave the CFP altogether. Other politicians, including Benyon MP himself due to his pro-European viewpoint, fought for reform of the CFP.<sup>1258</sup>

The salience condition seems even more predominant in the additional pair-wise comparison in which the cod stocks case scrutinised by a multi-party government is compared to the cod recovery file which took place during a single party administration. Although in the first pair-wise comparison the causal process is confirmed, rival explanations interfere with the partisan composition condition and evidence from the

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<sup>1255</sup> E.g. due to issues such as the discarding of fish.

<sup>1256</sup> Miklin, 2012, p. 132.

<sup>1257</sup> Clayton, 21<sup>st</sup> July 2015; Luk, 4<sup>th</sup> August 2015.

<sup>1258</sup> Benyon, 25<sup>th</sup> June 2015.

second pair-wise comparison even disconfirm the causal process. This shows us that a multi-party government is no guarantee for an increased use of formal powers, let alone an increased impact. Salience, however, does increase parliamentary activity, notwithstanding the number of political parties in government.

However, a number of cautionary remarks are made here. It is possible that variation in the use of formal powers between the multiparty case and the single party one as a consequence of the multi-party government of Cameron-Clegg (2010-2015) is less visible in this comparison, as it is an anomaly in UK political history. Previous research has indeed shown that NPs are more likely to increase the use of formal powers in cases where the government normally consists of different coalition partners. NPs are likely to design institutional capabilities to influence and control their government's EU policies according to the long-term history of conflict between government backbenchers and ministers.<sup>1259</sup> Change in the use of formal powers is often path-dependent, and NPs usually adapt their procedures gradually in response to changes in the environment.<sup>1260</sup> In other words, the use of formal powers by the NP in the case of a multi-party government - when it is used to scrutinising a single-party administration - is unlikely to take place overnight and a difference in scrutiny as a consequence of the number of parties in government can take more time to emerge. Interviews have indicated this in the Dutch case: 'The Dutch NP is used to scrutinising multi-party governments. They do this all the time. Governments always make compromises. This is part of our genes'.<sup>1261</sup> A more suitable indicator, especially for quantitative research, could thus be the frequency of coalition governments measuring the strength of the NP, such as that undertaken by Rozenberg.<sup>1262</sup>

Another point to consider is that in a situation where no single party has a majority, such as the Cameron-Clegg coalition government, an issue that centres on the UK's territorial concentrated interests - such as fishing - can give rise to more political leverage. It can be a deciding factor in how the vote goes in affected constituencies and determine the outcome of a future parliamentary or national vote on this or other topics. In other words, the government could have been pressured by the NP to keep this sectional interest sweet.

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<sup>1259</sup> Saalfeld, 2005, p. 357.

<sup>1260</sup> Raunio, 2005, p. 337.

<sup>1261</sup> Kisters, 19<sup>th</sup> May 2015.

<sup>1262</sup> Rozenberg, 2002, p. 3.

Thirdly, interviewees<sup>1263</sup> showed that it was easier to impact the multi-party government of Cameron-Clegg than the single party Labour administration because the Conservative party was so divided on EU issues, while the Labour government of 2005-2010 was unified in its pro-European stance. It is therefore possible that when discussing EU issues during the current conservative single party government, MPs will have an equal amount of chances to achieve parliamentary impact. This is as a consequence of the divided Conservative party when it comes to EU issues. The UK is a unique case in this instance, as most political parties in Europe under a coalition government would be united in either a pro-European or Eurosceptic attitude (as discussed in Chapter 3.4.2).

In conclusion, there seem to be many reasons explaining a possible higher use of formal powers by the NP in this case, but none are directly linked to the partisan composition condition. Since this is confirmed during analysis of the alternative cases (C1a and C2a), the hypothesis cannot be confirmed (with a cautionary remark that in other coalition governments the outcome could be different).

### 9.2.3 Eurosceptic government

Secondly, the paper hypothesised that the NP would have a greater impact on its government's EU policy position if the latter was depending on the support of a Eurosceptic party. In order to verify the causal mechanisms, two cases were compared dealing with the European Railways; the first<sup>1264</sup> was scrutinised by the Dutch SC during the first Rutte government (consisting of a coalition between Liberals and Christian-democrats, with the tolerating support<sup>1265</sup> of the PVV<sup>1266</sup>, an anti-EU party). The second case<sup>1267</sup> was scrutinised by the SC during the Rutte II government (consisting of a coalition between the Liberals<sup>1268</sup> and the Social Democrats<sup>1269</sup>). In both cases, the SC (from all different political parties) executed many formal powers throughout the OLP, consisting of debates with the government *before* Council meetings, and asking questions and receiving information from the government *after*

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<sup>1263</sup> E.g. Hopkins, 30<sup>th</sup> June 2015.

<sup>1264</sup> First Railway Package (COM(2010)475).

<sup>1265</sup> Although the PVV was not technically part of the government (it did not have any ministers in government), it gave its support to the administration's policy agenda in order that it would obtain a majority in the Second Chamber.

<sup>1266</sup> Freedom Party.

<sup>1267</sup> Fourth Railway Package: Directive for Interoperability (COM(2013)30).

<sup>1268</sup> VVD

<sup>1269</sup> PvdA

Council meetings. It was expected that in the case where the Eurosceptic condition was absent, the NP would use less formal powers. This causal process has not been confirmed. The causal processes in the additional pair-wise comparison have not been confirmed either. Process-tracing analysis in the first case, where the Eurosceptic condition was present, showed that the NP used less formal powers than in the case where the Eurosceptic condition was absent.

Interviewing both MPs and government representatives made clear that the Eurosceptic party did not indeed put any stamp on the direction of the debate of this case and that the Eurosceptic PVV only focused its attention on more political issues (such as EU integration or migration and asylum policies), but not on technical issues such as EU Railways.<sup>1270</sup> These findings are largely supportive of literature arguing that political parties tend to focus on issues which voters can then connect to them.<sup>1271</sup> It is also in line with previous research examining the relationship between euro-scepticism as an explanatory factor which appears to have little effect on the strength of oversight.<sup>1272</sup>

Interviews confirm that it was not so much the presence of the PVV, but rather other issues such as the ‘no’ in the Dutch referendum against the EU Constitution in 2005, that made politicians more aware of the importance of the scrutiny of EU legislative files and guarding against the EU dealing with issues that lie outside its competencies.<sup>1273</sup> This conclusion supports previous quantitative studies, such as that by Raunio, which conclude that having a Eurosceptic public opinion increases the chances of tighter scrutiny of government on EU issues.<sup>1274</sup>

It does become clear from the interviews that the opposition did, however, feel that the governing parties (Liberals and Christian-Democrats) could not often count on the PVV for support in the field of EU legislative files, leading to more EU control. In these cases, government members did have to rely on other parties within the NP for support - often the Social Democrats (the biggest opposition party during Rutte I), a pro-European party.<sup>1275</sup> In these cases, it can therefore be argued that the disagreement between coalition partners in government and their tolerating party, the PVV, regarding the extent of EU integration gave the opposition extra chances to use its powers and impact the government’s EU policy position. However, this, again, will be more visible

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<sup>1270</sup> Van Dongen, 3<sup>rd</sup> June 2015; Atsma, 29<sup>th</sup> May 2015; Kisters, 29<sup>th</sup> May 2015; Hoogland, 4<sup>th</sup> June 2015; De Boer, 3<sup>rd</sup> June 2015.

<sup>1271</sup> Netjes and Binnema, 2007, p. 40.

<sup>1272</sup> Winzen, 2015a, p. 317.

<sup>1273</sup> Atsma, 29<sup>th</sup> May 2015; Koolmees, 6<sup>th</sup> July 2015; Monasch, 16<sup>th</sup> June 2015.

<sup>1274</sup> Raunio, 2005, p. 336.

<sup>1275</sup> Monasch MP, 16<sup>th</sup> June 2015; Koolmees, 6<sup>th</sup> July 2015.

in dossiers dealing with EU integration rather than technical ones, such as these on which the PVV apparently had no clear position. This is confirmed in interviews.<sup>1276</sup>

The need for the government to seek support among the opposition would also have been present had it not depended on the PVV for its support; it is therefore more related to the fact that the existing government was a minority one and if it could not rely for support on one party (in this case the PVV), it would seek it from another.

Previous research draws similar conclusions. Auel and Christiansen argue that often in coalition governments, ministers from different parties must find compromises, and this is hardest in the case of minority governments where the administration cannot automatically rely on the support of the NP but must negotiate majorities for its policies.<sup>1277</sup> Minority governments give the opposition direct policy influence, as they cannot rely on their own parliamentary majority.<sup>1278</sup> The NP is more influential if it can threaten the existence of the government, as it becomes a necessity for the administration to take its opinions into account.<sup>1279</sup>

It is therefore more likely that any increased possibilities to effect an impact on government in both cases are mostly related to the fact that the government consists of a minority coalition cabinet and this, combined with the salience of the topic, gave opposition parties more opportunities to try to impact its EU policy position.<sup>1280</sup> The tradition of consensus decision-making within Dutch political culture<sup>1281</sup> could therefore be more decisive than the dependence of the government upon a Eurosceptic party. This is different from the outcome of the pair-wise comparison in Chapter 5 between a multi-party government and a single party one. There, it seemed that impact was not so much related to the increased use of formal powers as the divided views of Conservatives on EU issues. In contrast, in this pair-wise comparison the partisan composition seemed to have mattered, but not the Eurosceptic condition.

However, salience should not be ruled out in this case either. As Kisters argued in one of interview, ‘the composition of the coalition is not so relevant. What mostly determines the NP’s chances of influencing its government’s EU policy position is the subject itself. If a topic is important to a NP, it will try harder to convince the

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<sup>1276</sup> Van Dongen, 3<sup>rd</sup> June 2015; Koolmees, 7<sup>th</sup> July 2015; Monasch 16<sup>th</sup> June 2015.

<sup>1277</sup> Auel & Christiansen, 2015, p. 270.

<sup>1278</sup> Auel and Höing, 2015, p. 380

<sup>1279</sup> Rozenberg, 2002, p. 14.

<sup>1280</sup> Rutte I had no majority in the Second Chamber without the support of the PVV, and Rutte II has no majority in the First Chamber.

<sup>1281</sup> Holzhaacker, 2005, p. 438.

government.<sup>1282</sup> The importance of the salience condition indeed appeared from the analysis of this hypothesis and will also be discussed in the next section.

#### 9.2.4 Salience

The third hypothesis suggested that NPs have more chances to increase their substantive impact on governmental EU policy position where the case is salient. Two legislative files, both scrutinised during the Cameron-Clegg coalition government, were selected. One is a salient one<sup>1283</sup>; the other is not.<sup>1284</sup> While the measurable impact in both cases can be considered to be weak, there is a clear variation in parliamentary activity in both cases to be observed, corresponding to the expected causal processes. The HC refers the EU Water Policy case to be dealt with by the S&T Committee which receives a substantial number of witnesses before the committee adopts a standpoint. The HC not only focuses on the contents of the file, but also and more so, on finding out whether the UK Government is doing enough to play a role in the EU file. In the second case, the EAC refrains from the use of formal powers by not asking questions, not including any sectoral committee and limiting its use of formal powers to ask the government to inform it on the further developments of the file during the OLP. Interviews with MPs confirmed that they were more active in the case of EU Water Policy as they felt more was at stake, such as environmental issues and finance. MPs were also of the impression that the government had not been active enough in this field, so they felt it needed extra instruction from the HC. The alternative pair-wise comparison between the EMFF and Cod Stocks equally confirm both causal processes.

The hypothesis regarding the salience variable can therefore be clearly confirmed and it seems that even an NP without strong influential power can still increase its use of formal (ex ante) powers when the case is important enough. This corresponds to previous research in this field, such as that of Netjes and Binnema<sup>1285</sup> and Miklin<sup>1286</sup> who found that the salience of a given issue for legislators matters<sup>1287</sup> and is more influential in showing variation in impact than other variables.<sup>1288</sup> The EU often deals with issues, such as trade, industrial regulation, foreign aid or agricultural policy, which

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<sup>1282</sup> Kisters, 19th May 2015.

<sup>1283</sup> EU Water Policy, 2012.

<sup>1284</sup> Ship Recycling, 2012.

<sup>1285</sup> Netjes & Binnema, 2007.

<sup>1286</sup> Miklin, 2012.

<sup>1287</sup> Rozenberg & Heffler 2015, p. 26.

<sup>1288</sup> Saalfeld 2005, p. 367.

are simply less salient to European citizens those dealt with by national governments.<sup>1289</sup> According to most waves of the Euro-barometer surveys, European citizens are mostly worried about unemployment, the economy, crime, healthcare, immigration, the environment and terrorism. As we have seen in both pair-wise comparisons for this hypothesis, MPs do indeed increase the use of their formal powers when they scrutinise EU legislative files dealing with these issues (environment and funding). In other words, regardless of the actual outcome of weak impact, all evidence found in the four cases confirm the hypothesis.

### 9.2.5 Lisbon Treaty

The last explanatory factor deals with the use of the Lisbon provisions as the independent variable for the increased measurable impact an NP has on its government's EU policy position. In other words, in the case where the NP sends a reasoned opinion to the EC, it is expected to increase its chances of having an impact on the government's EU policy position. Again, two cases were compared, both dealt with by the same (Rutte II) government. In the first case<sup>1290</sup>, the NP sent a RO to the EC and in the second case<sup>1291</sup> it did not. There is clear difference in the use of formal powers between these two cases. In the first, where the NP sent a RO to the EC, it uses less formal powers than in the case where it did not make use of this right. This contradicts the posited causal processes. According to the interviewees, the increased use of formal powers in the port services case (no RO) was because there was more at stake. It seems that the salience condition is in competition with the condition to be measured again, namely the Lisbon provisions.

In the alternative pair-wise comparison there is an even clearer distinction in the use of formal powers in both cases. In the first case (Open market for Railway Passengers) many formal powers were used to influence its own government through motions, questions and debates with the responsible minister before the Council meeting. There is a remarkable continuity of debates between those parties with strong pro-EU and anti-liberalisation views, such as the Social Democrats<sup>1292</sup> and the Liberals<sup>1293</sup> (in this case also the coalition partners). In other words, the debate is clearly a political one, cutting across the traditional left/right cleavage. This corresponds to Miklin's research in the

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<sup>1289</sup> Moravcsik, 2006, p. 225.

<sup>1290</sup> Maritime Spatial Planning.

<sup>1291</sup> Port Services.

<sup>1292</sup> PvdA.

<sup>1293</sup> VVD.

field of EU politicisation and NPs, during which he argues that politicisation requires polarising legislative proposals on which centre- left and -right parties take different positions. EU proposals that cut along the traditional left/right cleavage lead to more parliamentary debates.<sup>1294</sup>

The use of formal powers in the second alternative case (interoperability), where the NP has not made use of a RO, is limited to receiving information and asking technical questions. In other words, in this second case the NP is looking for clarification rather than trying to influence the government's position. These outcomes are in line with the posited causal processes.

Interviews confirmed that in the case of opening the market for passengers, the NP was much more involved as it was a topic that many parties (on the left) feel should remain under control.<sup>1295</sup> This is a topical debate and there is therefore more at stake. However, the NP probably would have used the same amount of formal power if it had not had the right to send a RO in this case. In other words, the salience seems to be the main reason for the NP to increase its parliamentary activity.

This is the most obvious case of all in which the intermediate impact of the NP is noticeable. The government fully reflects the NP's objection to the EC taking over the mandate in this field during its contributions to the Council meeting.<sup>1296</sup>

In addition, according to interviewees, MPs consider sending a RO to be an objective subsidiarity assessment and not a political tool.<sup>1297</sup> For that reason, they therefore remain concise and focused on the legal aspects of the subsidiarity principle<sup>1298</sup>, and it was therefore not used for political reasons, as argued in previous research.<sup>1299</sup> It does not mean that as a consequence it will increase its scrutiny efforts. This depends on the topic and the extent to which the NP agrees with the government.

Other interviewees, such as Atsma, the responsible minister at the time of scrutiny, did argue that the RO can help the negotiation position of the government in Brussels because the government can indicate during negotiations that it has little leeway<sup>1300</sup>. This is confirmed by Kisters<sup>1301</sup> and Keulemans<sup>1302</sup>. In other words, if the EU legislative

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<sup>1294</sup> Miklin, 2012, p. 130.

<sup>1295</sup> Hoogland, 4<sup>th</sup> June 2015; De Boer, 3<sup>rd</sup> June 2015; Van Dongen, 4<sup>th</sup> June 2015.

<sup>1296</sup> The two parties in government have opposing views on opening the market up to railway passengers, but as a consequence of a majority in the NP that opposes it, the government confirms it will follow this line even if the bigger party in the coalition, the VVD, supports the EC plan to open up the market.

<sup>1297</sup> Nollen, 8<sup>th</sup> July 2015; Groves, 3<sup>rd</sup> July 2015.

<sup>1298</sup> Högenauer, 2015, p. 261.

<sup>1299</sup> Gatterman & Heffler, 2015, p. 306.

<sup>1300</sup> Atsma, 29<sup>th</sup> May 2015.

<sup>1301</sup> Kisters, 19<sup>th</sup> May 2015.

<sup>1302</sup> Keulemans, 15<sup>th</sup> June 2015.

file is of national interest and the government and NP are therefore supporting one another, as shown by the case studies in the field of maritime policies, it can increase the overall impact the NP has on an EU legislative file. However, this does not apply to the outcome on the government's EU policy position. This was supported by MPs<sup>1303</sup> and government representatives.<sup>1304</sup>

On those occasions the relationship between the NP and its government becomes one that is less hierarchical in a way and instead of controlling and influencing the government in its capacity as principal, the government and NP are more or less on the same level. Obviously, this is only the case if the NP and government agree on the negative subsidiarity judgement. If the government is in favour of an EU legislative proposal and the SC against, then there is a problem.<sup>1305</sup> In those cases, the relationship between the NP and government remains that of the represented and the representative where the NP controls what the government is doing. In those cases, increased use of formal powers by the NP is likely.

In conclusion, a negative subsidiarity judgement by the NP is definitely a way to increase the delegatory aspect of the relationship with government, as it is more likely to inform the NP after having sent a negative reasoned opinion to the EC.

More specifically, as the four cases have shown, contrary to the theoretical argument, the RO is often not applied in order to impact the government's EU policy position (as it is used as a legislative tool, checking for any possible breaches with the subsidiarity principle). However, once it used, the NP will increase the use of formal powers to scrutinise its government, since even if the contents of the topic are not salient to the electorate, the very fact that the NP considers this suitable to be dealt with at national level - in itself creating a form of salience - leads to increased parliamentary activities.

Whereas the causal mechanisms linking the use of a RO to an increased impact in the alternative case largely corresponded to the causal process, other observations were made, such as the national interest of the topic which led to a stronger relationship with the increased use of formal powers and the intermediate measurable impact.

It seems that a combination of the Lisbon Treaty and the generally more Eurosceptic views of public opinion seem to have jolted NPs into being more alert about new EU legislative proposals, although the subsidiarity tool as such is generally used as a legislative one. This does not automatically lead to a higher use of formal powers or more chances of having an impact on the government's EU policy position. The

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<sup>1303</sup> Hoogland, 4<sup>th</sup> June 2015.

<sup>1304</sup> Pol, 4<sup>th</sup> June 2015.

<sup>1305</sup> Keulemans, 15<sup>th</sup> June 2015.

variable of the Lisbon Treaty is very closely linked to the salience variable, as the use of the RO seems to increase the salience of the topic as a consequence it being deemed in need of national scrutiny. The causal processes for both the analysis of salience and Lisbon provisions appear very similar.

Table 22 gives an overview of the findings per hypothesis and causal process.

**Table 22 Findings per hypothesis and causal process**

<b>Hypotheses</b>	<b>Finding</b>
Multi-party gov. is a favourable condition for NPs to increase their substantive impact on its gov.'s EU policy position.	Disconfirmed
The more the gov. depends on the support of a Eurosceptic party, the more likely the NP will have a substantive impact on its gov.'s EU policy position.	Disconfirmed
The more salient an EU issue is to the NP, the more likely the NP will have a substantive impact on the gov.'s EU policy position.	Confirmed.
Those NPs opposing an EU legislative proposal in a RO have greater substantive impact on the gov.'s EU Policy position than those NPs that do not oppose the proposal.	Partly confirmed.

### **9.3 Main findings and implications for future research**

What this research clearly shows, in both the evidence from the process-tracing and the pair-wise comparisons, is that the use of formal powers by the NP is dependent on the contents of the topic. In other words, salience is all that matters. Although the analyses of the different hypotheses have shown a positive relationship between the minority government and the possible increased impact, the Eurosceptic link and the use of the Lisbon provisions cannot be confidently confirmed with any evidence.

We can however conclude with conviction that salience is a necessary condition for MPs to make increased use of parliamentary activities, which elicits a response in increased levels of governmental activities. In every topic that had a lot at stake for the electorate this causal process was followed, even if it did not always lead to measurable impact. Interviews confirmed that most influence is expected on more important dossiers which would draw interest from public opinion, such as the Euro crisis or

issues dealing with EU integration.<sup>1306</sup> However, as became clear during the analysis of the cases, there are different types of salience. In some cases salience consisted of the levels of Europeanisation (the extent of EU integration). For example, in the case of the Railways and the CFP, there is the left/right salience, such as liberalisation, but there are also other types of salience such as the importance of money (the case dealing with European funding), environmental salience (Water), a moral form of salience (the issue of discards in the reform of the CFP), but also the national interest has been found to be a form of salience (maritime policies). Even the use of the RO and the background objection against the publication of an EU legislative proposal because of a breach of subsidiarity implied a type of salience.

All these salience types are related to incentives, such as policy-shaping, vote-seeking and overcoming contestation and MPs select these topics to use their powers upon, as in these cases they are most likely to be effective (see also Chapter 3.4).

Conflict over either Europeanised or politicised topics was most likely to lead to an impact in the analysed cases. Conflict was in fact more noticeable between different parties within the NP (for example, the opening of the railway market led to an argument between a Liberal MP and a Social-Democrat) than between the NP and the government. In other words, conflict was more likely to take place along party political lines than by the NP as an overall institution.

As the variable of salience seems to be present in all cases it would be interesting for future research to look at breaking up these different types of salience, which this research has not done (with the exception of dividing electoral salience from salience to the legislative actors). An interesting research question in this respect would be the extent to which some salient issues in the EU might lead to more parliamentary activities and opportunities to effect impact than others.

From the process-tracing analysis it also became clear that when increasing the use of formal powers, it is more likely to impact the government's EU policy position. Even though measurable impact was hard to notice on many occasions, the government did increase its feedback to MPs (by letters and/or meetings) in order to keep the NP involved. This is confirmed in interviews with Dutch government representatives.<sup>1307</sup> In other words, sometimes impact is not so much reflected in the outcome of the actual government document, but is reflected in an increased use of feedback by the administration to its NP. The use of formal powers has been shown to be necessary for

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<sup>1306</sup> Keulemans, 15<sup>th</sup> June 2015; Koolmees, 6<sup>th</sup> July 2015.

<sup>1307</sup> Abspoel, 3<sup>rd</sup> June 2015; Pol, 4<sup>th</sup> June 2015.

impact, but it is no guarantee. The increased use of formal powers was, however, in all cases met with an increased use of feedback by the government. In all cases where the use of formal powers by the NP was absent, the government did not give feedback either. In other words, parliamentary activity is necessary as its absence prevents the outcome of the use of governmental feedback.<sup>1308</sup>

Turning to the existing literature in this field, three specific findings can be contributed as a consequence of this research. First, the most significant finding to be contributed is that no matter how many or few formal powers a NP possesses or whether they are ex ante influence powers or ex post control powers, its efforts mostly depend upon the salience or politicisation of the topic or the composition of the government (whether it has a minority or majority in the NP). All the while MPs feel that an EU legislative proposal will have consequences that touch upon the interests of voters or which are highly politicised<sup>1309</sup>, they will increase the use of their powers to influence government EU policy positions and therefore increase their chances of having an impact. In other words, salience is a necessary condition for a certain outcome and its absence will prevent this outcome.<sup>1310</sup> Existing contributions to the literature, such as that of Miklin, point in similar directions by arguing that politicisation increases parliamentary debates in which parties discuss and justify different views.<sup>1311</sup>

A second finding to be added to the literature on formal powers is that governments have been shown to be more open to include the wishes of NPs and keep them informed when they receive clear signals, such as motions, scrutiny reserves, attention to the House or a RO, even if this does not directly mean that the NP will have a substantive impact on its government's input into the Council meeting.

In other words, using formal powers does make a difference. All cases showed that increased parliamentary activities (MPs choose from different instruments, such as the scrutiny reserve, asking questions, debating) were responded to by increased governmental activities. Interviewees confirmed this as well. Most government representatives stated that they felt under pressure if MPs had an explicit opinion on a matter and would tell them what they expected the government to do.<sup>1312</sup>

A note of caution is necessary here. The use of formal processes proves relevant, but only when using them ex ante. It became clear that even the HC, selected by the NP selected on its weak ex ante influence and stronger ex post control powers, would have

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<sup>1308</sup> See also Beach & Pederson, 2013, p. 27.

<sup>1309</sup> i.e. they cut along the left/right cleavage.

<sup>1310</sup> See also Beach & Pederson, 2013, p. 27-30.

<sup>1311</sup> Miklin, 2014, p. 88.

<sup>1312</sup> Atsma, 29<sup>th</sup> May 2015; Benyon, 25<sup>th</sup> June; Clayton, 21<sup>st</sup> July 2015.

meetings before a Council meeting if it had more to say about a topic. After Council meetings, very little happened in most cases. Early information is thus relevant and MPs confirm that receiving the Council agenda and holding a pre-Council meeting, as happened in the Dutch cases, helps the NP to be better prepared and increase its chances to make a difference. In the HC cases the government was sometimes just too late in providing information, causing the NP to miss a chance to make a difference to the outcome.

A third finding is that although using formal powers does make a difference, impact was hardly ever noticed. This is not only a consequence of the difficulties of measuring impact, it is also related to the very fact that in all cases (16 in total) MPs hardly ever really try to impact the government. They mostly control it. They often ask for clarification and information. This could be a consequence of the fact that when scrutinising EU dossiers, the national interest often prevails which temporarily diminishes left/right differences, as raised during some interviews.<sup>1313</sup> It also became clear, however, that even when impact as measured in this research is rarely ever noticeable, the use of parliamentary activities did vary under different conditions; responded to by an increased use of feedback by the government. Again, this shows that it does make a difference when NPs use formal powers.

These outcomes indicate that an NP's involvement depend not so much upon its rules of Procedure, as on the importance of the EU case at stake. If MPs care about a topic their involvement does make a difference and can increase democratic control of EU legislation at domestic level.

Another cautionary remark is necessary here. Admitting that the salient condition and the impact are positively linked, other conditions may have a different outcome, such as the Eurosceptic condition where other cases had been selected. Although in the current two pair-wise comparisons, the condition between the Eurosceptic government and increased parliamentary activities (and impact) could not be established, it appeared from interviewees that this was likely because the Eurosceptic party was not interested in the technical dossiers used as cases. If the NP discussed topics such as, for example, Brexit or the Refugee crisis when having a Eurosceptic government, the levels of parliamentary activity could potentially be a lot higher. The Eurosceptic presence in part of the Conservative government did give Eurosceptic MPs more chances to make themselves heard in debates about the EU.<sup>1314</sup> The variable cannot therefore be

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<sup>1313</sup> Atsma, 29<sup>th</sup> May 2015; Pol, 4<sup>th</sup> June 2015; Van Dongen, 3<sup>rd</sup> June 2015.

<sup>1314</sup> Hopkins, 30<sup>th</sup> June 2015.

completely ruled out as a potential condition for increased parliamentary activities and a higher measurable impact.

As also discussed under the concluding remarks of measuring impact, one of the limitations of this research is the sole focus on EU legislative files. An interesting direction for future research would be to find out whether these types of scrutiny, outside the OLP, imply different types of formal power or whether the scrutiny of non-legislative files is less structured, for example, when discussing the Euro-crisis. In these cases, the Eurosceptic variable could be a lot more active in determining the outcome of the analysis. This is not only because of the more Europeanised and political nature of many of the non-legislative files discussed during EU summits, but also because the scrutiny process is different. For example, during the interviews it became clear that after EU summits the prime minister must go to the NP straight away in order to be held to account, whereas after a Transport Council meeting, for example, reports are often published a lot later.<sup>1315</sup> By that time the NP has already moved onto other topics.

Besides, the selection of the cases consisted entirely of technical ones, and as Miklin argued, more polarised EU legislative files could increase parliamentary debate.<sup>1316</sup>

Also the partisan condition could have had a different outcome if applied differently. For example, rather than looking at a multi-party and single party government, a minority administration could be selected. In this case, an increased use of formal powers as a consequence of this variable is highly likely, as became clear in Chapter 6.

Another topic that demands further research arises from the conclusions drawn from the Lisbon provisions condition. Although only an indirect link could be established between the use of the EWM and increased parliamentary activities (via salience), many interviewees were of the opinion that referring to NPs in the Lisbon Treaty has made a difference.<sup>1317</sup> It would therefore be interesting to find out the extent to which the increased involvement of MPs in EU issues is a consequence of actual new powers or increased euro-scepticism among citizens and many politicians which could be the result of this Treaty, viewed by many critics as another step towards further EU integration and loss of sovereignty. This was raised in many interviews.

Being a European tool, rather than one forming part of the national Rules of Procedure, it would be interesting to look further into the impact that NPs have on European negotiations during Council meetings after sending a negative RO to the EC, as it

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<sup>1315</sup> Pol, 4<sup>th</sup> June 2015; Monasch, 16<sup>th</sup> June 2015.

<sup>1316</sup> Miklin, 2014, p. 88.

<sup>1317</sup> Keulemans, 15<sup>th</sup> June 2015; Hoogland, 4<sup>th</sup> June 2015; Monasch, 16<sup>th</sup> June 2015.

appeared from interviews that making use of the RO can indeed improve the government's negotiation position in Brussels.

At the same time, other provisions included in the Lisbon Treaty applying to NPs have been underexposed in this research, such as inter-parliamentary cooperation. Finding out whether this provision has increased parliamentary chances of impact and whether NPs have a chance of becoming 'virtual third chambers', as expected by Cooper<sup>1318</sup>, would be an interesting follow-up study.

Another interesting direction for future research is to be found in extending similar explanatory factors in a cross-country comparison. The applied comparative methods are limited in that they can only treat dichotomised variables.<sup>1319</sup> This research focused on comparing different EU legislative files when scrutinised by the same NP, as this would lead to less chances of rival explanations. However, this impeded the research from explaining cross-national variation.

As this thesis consists of a small-N case study, generalisations of its findings are limited. Although it is expected that NPs with a similar amount of formal powers might respond similarly when operating under the conditions applied in this research, NPs with other characteristics such as those with more or less formal powers or those NPs in member states more geographically-remote from the EU, could lead to a different outcome. The non-representative nature of pair-wise comparisons is a well-known limitation in small-N comparative analysis.<sup>1320</sup> For example, the outcome of the analysis of the multi-party government versus a single party government is pretty unique for the UK for two reasons. First of all, the UK's multi-party government from 2010-2015 was an outlier in its tradition of single party administrations. Besides, the divided nature of the Conservative party on EU issues cannot be compared to other EU member states where mainstream political parties tend to be more united on EU issues. The outcome of other conditions, such as salience, on the other hand, is expected to be similar across all NPs, as this condition and its causal process was present in all 16 cases.

In thinking about how the findings of this study could be applied more widely, a quantitative study is suggested that focuses on measuring the levels of feedback from the government to its NP when operating under different types of salience.

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<sup>1318</sup> Cooper, 2012.

<sup>1319</sup> De Meur *et al.*, 2009, p. 148.

<sup>1320</sup> Tarrow, 2010, p. 28.

## 9.4 Normative contribution

This research applied Pitkin's categories of political representation to empirical research. The aim has been to find out whether her argument regarding the relationship between the represented and representative can change depending on different external factors. Her categorisation also applies to the relationship between the NP as the represented and the government as the representative when operating in EU issues. The research therefore looked at the formalistic strand of representation (the NP and its formal powers) and the substantive strand (the extent to which the relationship alters when operating under different conditions). The relationship between the NP and government was described as being on a continuum, where the relationship can be either on the trustee side (giving the government more leeway to act freely) or the delegatory side (the government is bound to tight instructions from the NP).

The empirical research showed that allocating a role to NPs means that this is not simply a matter of applying parliamentary processes of accountability and authorisation, but there are certain conditions under which they operate that determine their chances of being effective as well (such as the levels of politicisation and Europeanisation).

From the empirical research it indeed became clear that the use of formal powers did increase in cases where the NP's efforts had more chances of having an effect. This appeared to be the case in minority governments or when the topic was salient. The extra use of the NP's formal powers was in most cases (for example, the CFP, Fourth Railway Package and the Port Services file) responded to by increased responsiveness of the government (for example, by giving more information during letters and or meetings). In other words, it can be argued that in delegatory relationships the representative is more likely to increase its responsiveness to the NP as the represented in cases where the NP uses few formal powers (for example, Cod Stocks or Ship Recycling). In these cases the government was basically free to follow its own judgement and received no clear instruction from the NP. These examples of a lack of activity by the represented were responded to by a lack of governmental activity as well (no feedback). These were clear examples of a trustee relationship between the NP and the government. We can therefore also conclude that in a trustee relationship, the responsiveness of the representative is lower. This corresponds to Bowler's argument that the higher the responsiveness of the representative to the represented, the more

likely it is that the relationship will be delegatory.<sup>1321</sup> Without getting into a cross-country comparison here, when looking at the scrutiny by the HC (described as forming part of the trusteeship model) and by the SC (considered to be part of the delegatory model) it became clear that in most cases the SC, which normally meets before the Council meeting with the government, was a lot more explicit in expressing its own views and giving clear instructions to the government, as the representative. The HC, by contrast, seldom gave clear instructions to the government in which it explicitly told the government what it expected it to say during the Council meetings. This is likely related to the fact that HC meetings were often ex post the Council meeting and the scrutiny is thus more on controlling what the government has done than influencing it. The chance of impact is therefore indeed higher in cases where the NP forms part of the delegatory model, where meetings take place ex ante.

However, these relationships are not static. In other words, the use of formal powers does not solely depend on how these are laid down in the Rules of Procedure and whether, according to this, the NP can be considered to be part of the delegatory or trusteeship model.

Depending on the contents of the files, the HC would also increase the use of formal powers by giving clear instructions and binding the government to give regular feedback (for example, in the case of CFP reform). In all cases where the NP increased its use of formal powers, the government was also more responsive to the NP than when it had not done so. More concretely, the contents of the EU legislative file are more relevant in determining the parliamentary activities of the represented than the formal powers as such. The case studies showed that the selected NP with few ex ante influence powers (in other words, a NP forming part of the trusteeship model) could still act to form part of the delegatory model when the topic was judged to be salient enough (for example, the EU Water policy, EMFF, CFP). On the other side, the selected NP with higher ex ante influence mechanisms (forming part of the delegatory model) could act to form part of a trusteeship model in cases where the contents of the EU legislative proposal dealt with a more technical topic (Interoperability or the Integrated Maritime Policy). Next to the contents of an EU file (salient ones including Europeanised and political dossiers), other conditions seem to change the substantive strand of representation, such as a minority government and issues challenging subsidiarity that can alter the relationship between the government and its NP to a delegatory one.

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<sup>1321</sup> Bowler, 2016, p. 2.

Pitkin therefore correctly argued in her famous account of political representation that the relationship between representative and represented not only depends on formal powers, and that it is necessary to look at the wider context under which the relationship interacts. This also applies to the relationship between the NP and its government on EU issues. Different case studies showed that in the relationship between representative and represented, different contexts were dominant, such as geographical region (for example, in the CFP), the nation (Port Services), an ideology (Opening of the railway market to passengers) or a ministry (EU Water Policy).<sup>1322</sup>

Looking at what this could possibly mean for normative literature which has often described the mode of political representation as being problematic at EU level and has brought up as a solution involving NPs. As suggested by Bellamy (see Chapter 2), it seems that increasing government responsiveness to these NPs relating to EU issues could improve overall political representation at EU level as well. In other words, as Bowler argues, democratic responsiveness occurs when the government implements policies desired by citizens.<sup>1323</sup> Assuming that the NP, which represents the public, pleads on behalf of those whom it represents in relation to EU policies (as became clear in the case studies, MPs were indeed more active when the topic was salient to citizens), discussing more EU topics related to political or EU integration issues will increase parliamentary activities and, consequently, government responsiveness. When this occurs, it can be argued that responsiveness is a justification for democracy itself.<sup>1324</sup> Bowler indeed shows that responsiveness to voters is a prerequisite for democracy.<sup>1325</sup>

Including NPs in EU decision-making, as was the case during the Lisbon Treaty, can be considered as a way to respond to the democratic will of the various demoi and retain on-going support.<sup>1326</sup> Even if the use of the Lisbon provisions, such as the EWM as dealt with in one of the case studies, does not automatically increase the parliamentary activities of NPs, the Lisbon Treaty as such does seem to have been a wake-up call, making NPs more aware of EU activities that are relevant for voters, combined with the knowledge that they can play a role in policy-making. NPs can help particularly in normalising EU policy-making, bringing it closer to home. They are capable of domesticating EU debates when they control and influence their governments.<sup>1327</sup>

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<sup>1322</sup> See also Bray, 2011, p. 91 for more information on these different contexts.

<sup>1323</sup> Bowler, 2016, p. 4.

<sup>1324</sup> Bowler, 2016, p. 91.

<sup>1325</sup> *Ibid.*, p. 12.

<sup>1326</sup> Kröger & Bellamy, 2016, p. 9.

<sup>1327</sup> *Ibid.*

Government representatives indicated during the interviews their appreciation of clear signals from the NP in the form of a scrutiny reserve, but also a RO, as it places them in a better position when negotiating in Brussels.<sup>1328</sup>

As the relationship between the NP and government is more likely to be a delegatory one in cases of Europeanised or political topics, and if that relationship can be referred to as one of democratic responsiveness<sup>1329</sup>, EU issues covering these topics can be said to promote democracy since they are more likely to reflect the views of the electorate. However, an increased delegatory relationship, and consequently higher levels of responsiveness from the represented, is no guarantee for higher levels of democracy.

On the one hand, technical issues are more likely to be scrutinised along the trusteeship relationship, which is fine in democratic terms since they often do not include topics about which the public is worried (see the theories of Majone and Moravcsik, explained in Chapter 2). In other words, some topics simply do not require high levels of responsiveness when MPs have chosen not to offer input. The case studies showed how much pressure is placed on MPs to cover the vast amount of new EU legislative proposals, and carefully select topics on which to focus their efforts using formal powers which are most likely to have an effect.

On the other hand, on some occasions relating to EU issues, the government can only act in the interest of the represented and the citizens if it receives more freedom to act freely. In other words, in order to attain the result the government wants in Brussels, it must act as a trustee. This became clear in the interviews where government representatives argued that Brussels is more likely to give something if the member state is also free to give something back.<sup>1330</sup> The interviewees argued that member states such as Denmark, often referred to as an example in academic literature for the strong delegatory relationship between the NP and government, is often considered to hinder negotiations on EU issues when it has not obtained from its NP the freedom to act. This makes the achievement of a compromise more difficult. Not being able to negotiate in Brussels implies not taking part in creating a compromise.<sup>1331</sup> An increased delegatory relationship, therefore, can work counterproductively since in the end the country may not get what it wants simply because it did not gain the freedom to come to an agreement which had not previously been discussed with the NP. This is in line with Weale's book on Democracy:

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<sup>1328</sup> Atsma, 29<sup>th</sup> May 2005; Keulemans, 15<sup>th</sup> June 2015; De Vries, 8<sup>th</sup> June 2015.

<sup>1329</sup> Bowler, 2016, p. 4.

<sup>1330</sup> Benyon, 25<sup>th</sup> June 2015; Van Dongen, 3<sup>rd</sup> June 2015; Pol, 4<sup>th</sup> June 2015.

<sup>1331</sup> Pol, 4<sup>th</sup> June 2015.

... ‘A conception of political representation that stresses responsible government holds that political representatives can sometimes only act substantively in the interests of their constituents when they are free from the obligations of responsiveness. On such accounts, representatives may be accountable, but not overly responsive.’<sup>1332</sup>

This also corresponds to empirical research by Auel<sup>1333</sup> and Raunio<sup>1334</sup> who show that NPs are often cautious in giving the government a mandate that is too strict, as it could limit their government’s negotiation position.<sup>1335</sup>

In other words, there is a fine line between giving the government clear instructions but also allowing it the freedom to act if necessary. It would not be in the interest of the country to be *too* strict and MPs feel that governments need some kind of freedom to follow their own judgement during negotiations in Brussels. Sometimes, just because the topic is salient, also in Brussels, the government gains more leeway from its NP in order to increase its chances of returning with a result that most closely reflects the interests of citizens at home.

Too much of a delegatory relationship can, therefore, in the end be harmful for democracy because it can risk the interests of citizens by excluding when the government gets excluded from the final agreement.

An interesting normative follow-up question could be the extent to which a NP with stronger delegatory *ex ante* powers could impede the wishes of the public from being represented at EU level when its government has too little freedom to achieve a compromise with other member states. In these cases, the government might be sidelined at the negotiation table.

In conclusion, it can be argued that although those worried about the future existence of the EU as a consequence of current problems relating to the economic crisis (the emergency aid plan for Greece) and refugee crisis, these items of high salience (covering both political and Europeanised issues) will increase parliamentary activities with the result that the public’s views are more likely to be reflected in such salient EU topics. This is likely to at least remove one of the EU’s problems, that of the democratic deficit.

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<sup>1332</sup> Weale, 2007, p. 135.

<sup>1333</sup> Auel, 2007.

<sup>1334</sup> Raunio, 2007.

<sup>1335</sup> Auel, 2007, p. 493.

## Appendices

### Appendix I

#### Seven Steps of OLP and the National Input: use of parliamentary mechanisms, methods and evidence \*

Steps	Control and influence mechanisms used by the NP
<b>1) EC publication of EU legislative proposal</b>	X
<b>2) NPs get 8 week to respond to EC</b>	<ul style="list-style-type: none"> <li>- Meeting in EAC;</li> <li>- Discussion on whether to circulate the file to any relevant sectoral committees;</li> <li>- Request for a governmental referendum</li> </ul>
<b>3) First reading. Start of ex ante influence phase</b>	<ul style="list-style-type: none"> <li>- NP sends a letter to government;</li> <li>- NP requests a meeting with the government;</li> <li>- NP asks question to the relevant minister.</li> </ul>
<b>4) Common Position Council. Ex post control phase</b>	<ul style="list-style-type: none"> <li>- NP meets up in EAC and sectoral committee;</li> <li>- NP asks the relevant minister to attend the meeting;</li> <li>- NP asks minister questions about the outcome of the Council;</li> <li>- NP meets in plenary (with possible attendance of minister).</li> </ul>
<b>5) Second Reading. Ex ante influence phase</b>	<ul style="list-style-type: none"> <li>- NP sends a letter to government;</li> <li>- NP requests a meeting with the government;</li> <li>- NP asks questions to the relevant minister.</li> </ul>
<b>6) Common position. Ex post control phase.</b>	<ul style="list-style-type: none"> <li>- NP meets up in EAC and sectoral committee;</li> <li>- NP asks the relevant minister to attend the meeting;</li> <li>- NP asks minister questions about the outcome of the Council meeting;</li> <li>- NP meets in plenary (with possible attendance of minister).</li> </ul>
<b>7) Adoption of EU legislative proposal.</b>	X

Steps	Methods
<b>1) EC publication of EU legislative proposal</b>	X
<b>2) NPs get 8 week to respond to EC</b>	<ul style="list-style-type: none"> <li>- Trace any ROs (including other forms of correspondence) to the EC.</li> <li>- Trace any contact with other NPs during this stage (bilaterally or via COSAC).</li> </ul>
<b>3) First reading. Start of ex ante influence phase</b>	<ul style="list-style-type: none"> <li>-Trace the number and contents of meetings of involved parliamentary committees, plenary meetings, and meetings with the minister/civil servants.</li> <li>- Trace the position of the NP,</li> <li>- Compare the first reaction of the government to NP's reaction.</li> <li>- Hold interviews with MPs and govt representatives.</li> </ul>
<b>4) Common Position Council. Ex post control phase</b>	<ul style="list-style-type: none"> <li>- Trace the number and contents of meetings of involved sectoral committees and EAC, plenary meetings and meetings with civil servants/ministers.</li> <li>- Hold interviews with MPs and govt representatives</li> <li>-Analyse and compare the contents of documents (first position government) to input NPs and to outcome of govt's contribution to Council.</li> </ul>
<b>5) Second Reading. Ex ante influence phase</b>	<ul style="list-style-type: none"> <li>Trace the number and contents of meetings of involved parliamentary committees, plenary meetings, and meetings with the minister,</li> <li>-Trace the position of the NP,</li> <li>- Compare the first reaction of the government to NP's reaction.</li> <li>- Hold interviews with MPs and government representatives.</li> </ul>
<b>6) Common position. Ex post control phase.</b>	<ul style="list-style-type: none"> <li>- Trace the number and contents of meetings of involved committees, plenary meetings and meetings with civil servants/ ministers.</li> <li>- Hold interviews with MPs and govt representatives</li> <li>-Analyse and compare the contents of documents (first position government) to input NPs and to outcome of govt's contribution to the Council.</li> </ul>
<b>7) Adoption of EU legislative proposal.</b>	X

<b>Steps</b>	<b>Evidence</b>
<b>1) EC publication of EU legislative proposal</b>	X
<b>2) NPs get 8 week to respond to EC</b>	Real evidence will not be present at this stage other than differences in positions by NP and Government (minutes of meetings, governmental memoranda, letters and official positions by NP). These will be used during the later steps to compare any possible changes.
<b>3) First reading. Start of ex ante influence phase</b>	- Minutes of meetings between NP and govt, in which govt specifies which points of the NP (s)he can/cannot adopt, govt position into the Council in which it refers/does not refer to NP's position.
<b>4) Common Position Council. Ex post control phase</b>	- Council press release, in which the relevant government refers/does not refer to any of the points from its NP's position, - Letter from the minister in which it specifies that it has or has not adopted (some of) NP's points, - Minutes of meetings of the NP (with minister), in which is referred to which NP's points have/have not been adopted.
<b>5) Second Reading. Ex ante influence phase</b>	- Minutes of meetings between NP and govt, in which govt specifies which points of the NP (s)he can/cannot adopt, govt position into the Council in which it refers/does not refer to NP's position.
<b>6) Common position. Ex post control phase.</b>	- The Council press release, in which the relevant govt department refers/does not refer to any of the points from its NP's position, - Letter from the minister in which it specifies that it has or has not adopted (some of) NP's points, - minutes of meetings of the NP (with minister), in which is referred to which NP's points have/have not been adopted.
<b>7) Adoption of EU legislative proposal.</b>	X

The tables in Appendix I represents the seven different steps of the OLP during which NPs can have an impact on the government's EU policy position via the use of ex ante influence and ex post control mechanisms. It furthermore indicates which methods will be used to establish whether the use of these mechanisms have led to an impact and what counts as evidence during each step to either confirm or refute the hypotheses.

\* Even if the official EC procedure consists of 7 steps, in some cases, there are many more Council meetings wherein the relevant draft EC legislative proposal is discussed (also in cases where the EU legislative file only consists of one reading) and where different governments can give their opinion.

Press releases published after each Council meeting are often more useful than official Council position papers as there are no longer any references to the opinions of individual member states in final Council positions.

## Appendix II

### Seven Steps Process of OLP

- 1) The EC publishes its proposal and sends it to EP, Council and NP.
- 2) The NP get 8 weeks to decide whether it will send a RO to the EC indicating that it considers the principle of subsidiarity to have been breached. At the same time the influence and control of the government takes place, *ex ante* the Council meeting. The NP decides, for example, depending on the salience of the topic, to what extent it needs to use its formal powers, such as the number of EAC meetings, the involvement of sectoral committees, raising questions to the minister, inviting the minister to attend a meeting, government memoranda. If, for example, a case is of huge salience, the NP can at this stage also decide to use its informal powers, like raising the topic in the media to increase pressure on the government, informal email or phone contacts with civil servants and/or ministers.
- 3) First reading in the Council, (during which it either amends or adopts EP's position).
- 4) Common position in Council is sent to the EP. The vast majority of legislative proposals are adopted at this stage. The *ex post* control phase by the NP takes place here. NP decides again whether it is necessary to use formal powers, like asking questions to responsible minister, meeting ministers and/or civil servants to hold the government to account on its decision in the Council.
- 5) In case the EP does not accept the common position of the Council, it can submit amendments, which will lead to the second reading. During this phase the NPs get another chance to *ex ante* influence its government, see under 2.
- 6) Council adopts a common position in second reading, whereby it either accepts or rejects the EP's amendments.
- 7) Where it is accepted, the legislative proposal is adopted at this stage. In this case, the NP gets another chance to *ex post* control its government, see step 4. This seven-step procedure is normally preceded by an agenda-setting process and followed by an implementation phase, but because the influence and control mechanisms of the NP are not used during this stage of the EU legislative proposal, I will not include these stages in my research.

## Appendix III

### Overview of the main political parties in the United Kingdom and members of relevant committees during the Blair/Brown cabinet (2005-2010) and Cameron-Clegg cabinet (2010-2015).

#### *Political system and main political parties in the UK*

The UK has a parliamentary democracy and the UK Parliament consists of two chambers, the House of Lords and the HC. The HC is the most influential chamber and consists of 648 members. UK governments normally consist of one party, with the exception of the 2010-2015 government which consisted of a coalition between the Conservatives and Liberal Democrats.

Conservatives: The party of the political right, covering a broad range of traditional conservatives and royalists, neo-liberals and social conservatives.<sup>1336</sup>

The party is deeply divided over issues related to the EU. Part of the party wants to leave the EU, whereas others - including industrial and business leaders - are strongly pro-European.<sup>1337</sup> Since the Bloomberg speech of January 2013 by David Cameron, the Conservative party has adopted a more Eurosceptic view.<sup>1338</sup>

In the single party government of Blair/Brown from 2005-2010 the Conservatives had 198 seats, whereas after the election of 2010 when the party entered into a coalition with the Liberal Democrats, it had 307 seats.

Labour: The Labour party covers left wing politics in Britain.<sup>1339</sup> Since Tony Blair (1997), the party has adopted a more social-liberal centre left focus (*New Labour*)<sup>1340</sup>, which was later rejected under Ed Miliband.<sup>1341</sup>

With regard to the EU, it can be considered to be a pro-EU party, although it has a number of more Eurosceptic members and has been split over the question as to whether there should be an in/out referendum.<sup>1342</sup>

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<sup>1336</sup> <http://about-britain.com/institutions/political-parties.htm>

<sup>1337</sup> Ibid.

<sup>1338</sup> Liddle, Roger, Policy Network, 4th July 2014, [http://www.policy-network.net/pno\\_detail.aspx?ID=4677&](http://www.policy-network.net/pno_detail.aspx?ID=4677&)

<sup>1339</sup> Ibid.

<sup>1340</sup> Ibid.

<sup>1341</sup> Parker, G., *Financial Times*, 26<sup>th</sup> September 2010.

In the 2005-2010 cabinet, Labour had 355 seats, whereas during the Cameron/Clegg coalition its number dropped to 258.

SNP: The Scottish National Party is a nationalist party (pro-Scottish independence) which is on the centre-left.<sup>1343</sup> It's a pro-EU party, but on some issues, like the CFP, it would like to see that powers are given back to Scotland.<sup>1344</sup> In the 2005-2010 single party government of Blair/Brown, the SNP had two seats and in the 2010-2015 coalition government of Cameron/Clegg it had six.

Liberal Democrats: This party of the centre consists originally of a mixture of social conservatives and social democrats.<sup>1345</sup> The party is the most pro-European of the major British parties.<sup>1346</sup> In the 2005-2010 single party government of Blair/Brown it had 62 seats which after the 2010 election dropped to 57. This is when it entered into a coalition with the Conservatives.

The Greens: This left-wing party's main focus concerns to the promotion of environmental issues.<sup>1347</sup> In the 2005-2010 cabinet it had no seats, rising to one seat in the 2010-2015 coalition. On EU issues, the Greens are critical, as the party believes that governance should happen as closely as possible to the people.<sup>1348</sup>

UKIP: The UK Independence Party is a Eurosceptic party which wants Britain to leave the EU.<sup>1349</sup> It did not have any seats in Parliament in the 2005-2010 Labour cabinet nor in the 2010-2015 Conservatives-Liberal Democrats cabinet.

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<sup>1342</sup> *The Economist*, 'Labour's new Pro-Europeanism', 2<sup>nd</sup> July 2013.

<sup>1343</sup> <http://about-britain.com/institutions/political-parties.htm>

<sup>1344</sup> *Ibid.*

<sup>1345</sup> *Ibid.*

<sup>1346</sup> *Ibid.*

<sup>1347</sup> *Ibid.*

<sup>1348</sup> Civitas, EU Fact Sheets, UK political parties' positions on the EU.

<sup>1349</sup> *Ibid.*

*Composition European Affairs Committee (2005-2010 and 2010-2015), the European Committee A (2005-2010 and 2010-2015) and the Science and Technology Committee (2010-2015)*

*Members ESC 2005-2010*

Connarty, Michael (Chair)	Labour
Bailey, Adrian	Labour
Borrow, Mr David S	Labour
Cash, Mr William	Conservatives
Clappison, Mr James	Conservatives
Clark, Ms Katy	Labour
Dobbin, Jim +	Labour
Hands, Mr Greg	Conservatives
Heathcoat-Amory, Mr David	Conservatives
Hill, Keith	Labour
Hopkins, Kelvin	Labour
Hoyle, Mr Lindsay	Labour
Laxton, Mr Bob	Labour
Robertson, Angus	SNP
Steen, Mr Anthony	Conservatives
Younger-Ross, Richard	Liberal Democrat

*Members ESC 2010-2015*

Cash, Sir William (Chair)	Conservative
Bingham, Mr Andrew	Conservative
Clappison, Mr James	Conservative
Connarty, Mr Michael	Labour
Davies, Mr Geraint	Labour (Co-op)
Elliott, Ms Julie	Labour
Gilbert, Mr Stephen	Liberal Democrat
Griffith, Ms Nia	Labour
Heaton-Harris, Mr Chris	Conservative
Hopkins, Mr Kelvin	Labour
Kelly, Mr Chris	Conservative
Phillips, Mr Stephen	Conservative
Rees-Mogg, Mr Jacob	Conservative
Riordan, Mrs Linda	Labour (Co-op)
Smith, Mr Henry	Conservative
Thornton, Mr Mike	Liberal Democrat

*Members of the European Committee A 2005-2010*

Betts, Mr. Clive (chair)	Labour
Atkins, Charlotte	Labour
Cox, Mr. Geoffrey	Conservative
Farron, Tim	Liberal Democrat
George, Andrew	Liberal Democrat
Hill, Keith	Labour
James, Mrs. Siân C.	Labour
Jones, Lynne	Labour

Kumar, Dr. Ashok	Labour
Spellar, Mr. John	Labour
Steen, Mr. Anthony	Conservative
Watkinson, Angela	Conservative

European Committee A 2010-2015

Clark, Ms Katy (chair)	Labour
Connarty, Michael	Labour
Gardiner, Barry	Labour
Heaton-Harris, Chris	Conservative
Jones, Susan Elan	Labour
Kawczynski, Daniel	Conservative
Mills, Nigel	Conservative
O'Donnell, Fiona	Labour
Reid, Mr Alan	Liberal Democrat
Rudd, Amber	Conservative
Stuart, Ms Gisela	Labour
Watkinson, Angela	Conservative
Whiteford, Dr Eilidh	SNP

Members of the S&T Committee 2010-2015

Miller, Mr. Andrew (chair)	Labour
Byles, Mr. Dan	Conservative
Dowd, Mr. Jim	Labour
Heath, Mr. David	Liberal Democrat
Metcalf, Mr. Stephen	Conservative
Nash, Mrs. Pamela	Labour
Newton, Mrs. Sarah	Conservative
Stringer, Mr. Graham	Labour
Tredinnick, Mr. David	Conservative
Williams, Mr. Hywel	Plaid Cymru

## Appendix IV

### Overview of the main political parties in the Netherlands and members of relevant committees during the Rutte I (2010-2012) and Rutte II cabinet (2012-present)

#### Political system and main political parties in the Netherlands

The Netherlands has a parliamentary democracy and the *Staten-Generaal*, the Dutch Parliament, consists of two chambers; the First (Senate) and Second Chamber (House of Representatives). The House of Representatives is the most influential chamber and consists of 150 members, belonging to 11 political parties.

The Dutch government always consists of a coalition of two or three political parties.

#### *The Rutte I government 2010-2012*

The Rutte I government consisted of a coalition between the Liberals (31 seats) and the Christian Democrats (21 seats). As a coalition between those two parties did not give them a majority in the SC, the government needed the support of a third party - the PVV (24 seats) - which would 'tolerate' this minority government. In other words, the government would depend on the PVV for its support, but the PVV would not enter the government itself. The PVV was therefore referred to as the 'tolerating' partner of the Rutte I government.

#### *The Rutte II government 2012-present*

The Rutte II government consists of a coalition between the VVD (41 seats) and the PvdA (38 seats). This is a small majority and the government must often negotiate with other opposition parties in order to gain enough support for its proposals.

The main political parties in the House of Representatives:

VVD: The Liberal party which is a strong supporter of private enterprise in the Netherlands and is considered to be a centre-right party in favour of a free market with conservative values.<sup>1350</sup> In both the Rutte I (31 seats) and the Rutte II (41 seats) cabinet, this party is the biggest in the House of Representatives and is part of the government.

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<sup>1350</sup> The European Election Database:  
[http://www.nsd.uib.no/european\\_election\\_database/country/netherlands/parties.html](http://www.nsd.uib.no/european_election_database/country/netherlands/parties.html)

The leader of this party is the Prime Minister (Rutte). For the VVD, the EU is a way to guarantee a single market. Political integration is therefore only supported for pragmatic reasons.<sup>1351</sup>

PvdA: The Social Democratic party or Labour party. The main ideals of this party are shared responsibility, stewardship, justice, and solidarity.<sup>1352</sup> During the Rutte I government this party was in the opposition (30 seats), while in Rutte II (38 seats) it is part of the coalition. The PvdA is pro-European integration, but has problems with the current neo-liberal programme of the EU.<sup>1353</sup> For that reason it has reservations about a political EU integration, but expects the EU to restore international law and deal with poverty in less developed countries.<sup>1354</sup>

PVV: the Party for Freedom. This party has a conservative programme which is in favour of economic liberalism and stricter rules for immigration.<sup>1355</sup> It is also known as an anti-Islam party<sup>1356</sup> and anti-EU party.<sup>1357</sup> It won 24 seats in 2010 and 15 seats in 2012 (Rutte II). In the Rutte I cabinet, the PVV formed a formal alliance with the coalition government to which it gave its support. When it abandoned its support in 2012, the cabinet fell and new elections were held. While in its 2010 manifesto the PVV focused mainly on Islam issues<sup>1358</sup>, during the election campaign of 2012 the main objective in its manifesto was for the Netherlands to leave the EU.<sup>1359</sup>

CDA (Christian Democratic Appeal): The Christian Democratic Party represents a centre position in the field of the economy combined with conservative leanings.<sup>1360</sup> In 2010 it won 21 seats and joined the government together with the VVD in a minority coalition that was supported by the PVV. In 2010, the CDA falls back to 13 seats and enters the opposition. The CDA is in favour of further EU integration, mainly because it agreed so with the European People's Party's manifesto. This states that the EU as a

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<sup>1351</sup> WRR, Scientific Council for Government Policy, *Europe in the Netherlands, Political Parties*, The Hague, June 2007, p.22, figure 3 and 4, p.22-26.

<sup>1352</sup> Ibid.

<sup>1353</sup> WRR, Scientific Council for Government Policy, *Europe in the Netherlands, Political Parties*, The Hague, June 2007, p.22, figure 3 and 4, p.22-26.

<sup>1354</sup> Ibid. p.23.

<sup>1355</sup> The European Election Database:

[http://www.nsd.uib.no/european\\_election\\_database/country/netherlands/parties.html](http://www.nsd.uib.no/european_election_database/country/netherlands/parties.html)

<sup>1356</sup> Kanne, 2011: 31.

<sup>1357</sup> Ibid, 243.

<sup>1358</sup> Next to being an anti-Islam party during these elections, it was also already an anti EU party (see also party manifesto 2010.

<sup>1359</sup> *PVV, Hun Brussel, ons Nederland, Verkiezingsprogramma 2012-2017.*

<sup>1360</sup> Ibid.

political union must play an important role in the formation of the new world order.<sup>1361</sup>  
In the current cabinet it is a member of the opposition.

SP: The Socialist Party defends values based upon human dignity, equality and solidarity. Its core principles are employment, social welfare, and investing in education, public safety and healthcare.<sup>1362</sup> The SP is against the privatisation of public services and has a critical position regarding further EU integration, because it considers Europe to be mainly a neoliberal project.<sup>1363</sup> In 2010 and 2012 it had 15 seats in Parliament.

D66: The Democratic Party (founded in 1966) is known as a progressive-liberal and radical-democratic party.<sup>1364</sup> This left-liberal party supports further EU integration. In its view, the EU member states have a cultural unity and share the same values.<sup>1365</sup> In 2010 it had 10 seats and in 2012, it had 12.

GL: Green Left has democracy, respect for the environment, social justice and international solidarity as its main political principles<sup>1366</sup>. In 2010 it had 10 seats which fell to four in 2012. The Green Left party is one of the most willing parties to shift national sovereignty to the European level.<sup>1367</sup>

CU: The Christian Union is an orthodox reformed political party, combining conservative values on ethical and social issues with a more centre-left view on economic and environmental questions.<sup>1368</sup> In 2010 and 2012 it had five seats. The CU is in favour of economic EU integration, but not political.<sup>1369</sup>

PvdD: Party for the Animals claims not to be a single-issue party, but does have animal rights and animal welfare as its core values.<sup>1370</sup> It had two seats in both the Rutte I and

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<sup>1361</sup> WRR, Scientific Council for Government Policy, *Europe in the Netherlands, Political Parties*, The Hague, June 2007, p.22, figure 4, p. 22-24

<sup>1362</sup> Ibid.

<sup>1363</sup> WRR, Scientific Council for Government Policy, *Europe in the Netherlands, Political Parties*, The Hague, June 2007, p.22, figure 4.

<sup>1364</sup> Ibid.

<sup>1365</sup> WRR, Scientific Council for Government Policy, *Europe in the Netherlands, Political Parties*, The Hague, June 2007, p.23, figure 4.

<sup>1366</sup> Ibid.

<sup>1367</sup> Ibid.

<sup>1368</sup> Ibid.

<sup>1369</sup> WRR, Scientific Council for Government Policy, *Europe in the Netherlands, Political Parties*, The Hague, June 2007, p.22-24, figure 4.

<sup>1370</sup> Ibid.

Rutte II governments. The party is in favour of EU integration, but not until the democratic deficit has been solved first.<sup>1371</sup>

SGP: This political reformed party is an orthodox Protestant political party. It has had two seats in both the 2010 and 2012 governments. Just like the CU, it is in favour of economic integration, but no further political integration of the EU.<sup>1372</sup>

*Composition Committee Infrastructure and Environment and the European Affairs Committee in the Netherlands*

*Members Committee for Infrastructure and Environment 2010-2012*

Dijkma, S.A.M. (chair)	PvdA
Gent, W. van	GL
Snijder-Hazelhoff, J.F. (chair)	VVD
Slob, A.	CU)
Haverkamp, M.C.	CDA
Aptroot, Ch.B.	VVD
Samsom, D.M.	PvdA
Jansen, P.F.C.	SP
Graus, D.J.G.	PVV
Ouwehand, E.	PvdD
Rouwe, S. de	CDA
Bashir, F.	SP
Mos, R. de	PVV
Tongeren, L. van	GL
Monasch, J.S.	PvdA
Dekken, T.R. van	PvdA
Dijkgraaf, E.	SGP
Veldhoven, S. van	D66
Koolmees, W. (sub-chair)	D66
Jong, L.W.E. de	PVV
Leegte, R.W.	VVD
Caluwé, I.S.H. de	VVD
Holtackers, M.P.M.	CDA

*Members European Affairs Committee 2010-2012*

Van Bommel, H. van (chair)	SP
Van der Staaij, C.G.	SGP
Albayrak, N.	PvdA
Ormel, H.J.	CDA
Ferrier, K.	CDA
Eijsink, A.M.C.	PvdA
Van Dam, M.H.P.	PvdA
Knops, R.W. (chair)	CDA

<sup>1371</sup> <https://www.partijvoordedieren.nl/standpunt/europese-unie>

<sup>1372</sup> WRR, Scientific Council for Government Policy, *Europe in the Netherlands, Political Parties*, The Hague, June 2007, p.22-24, figure 4.

De Roon, R., de	PVV
Jansen, P.F.C.	SP
Voordewind, J.S.	ChristenUnie
Ten Broeke, J.H.	VVD
Ouwehand, E.	PvdD
Bontes, L.	PVV
Groot, V.A.	PvdA
Braakhuis, B.A.M.	Groen Links
Nieuwenhuizen, C.	VVD
Schouw, A.G.	D66
El Fassed, A.	Groen Links
Hachchi, W.	D66
Dijkhoff, K.H.D.M.	VVD
Driessen, J.H.A.	PVV
De Caluwé, I.S.H.	VVD

Members Committee for Infrastructure and Environment 2012-present

Dekken, T.R. van ( <i>chair</i> )	PvdA
Gesthuizen, S.M.J.G.	SP
Graus, D.J.G.	PVV
Jacobi, L.	PvdA
Ouwehand, E.	PvdD
Bashir, F.	SP
Elias, T.M.Ch.	VVD
Harbers, M.G.J.	VVD
Madlener, B.	PVV
Boer, B.G. de	VVD
Dekken, T.R. van	PvdA
Hachchi, W.	D66
Tongeren, L. van	GL
Veldhoven, S. van	D66
Leegte, R.W.	VVD
Bisschop, R.	SGP
Dijkstra, R.J.	VVD
Dik-Faber, R.K.	CU
Geurts, J.L.	CDA
Visser, B.	VVD
Vries, A.A. de	PvdA
Hoogland, D.	PvdA
Krol, H.C.M.	50plus
Cegerek, Y.	PvdA
Leenders, H.J.M.	PvdA
Veldman, H.S.	VVD
Helvert, M.J.F. van	CDA

European Affairs Committee 2012-present

Azmani, M. ( <i>chair</i> )	VVD
Bommel, H. van	SP
Omtzigt, P.H.	CDA
Broeke, J.H. ten	VVD
Dijk, J.J. van	SP
Ouwehand, E.	PvdD

Pechtold, A.	D66
Vos, M.L.	PvdA
Madlener, B.	PVV
Beertema, H.J.	PVV
Dijkhoff, K.H.D.M.	VVD
Klaver, J.F.	GL
Monasch, J.S.	PvdA
Schouw, A.G.	D66
Leege, R.W.	VVD
Caluwe, I.S.H. de	VVD
Klein, N.P.M.	Klein
Bisschop, R.	SGP
Maij, M.E.	PvdA
Rog, M.R.J.	CDA
Schut-Welkzijn, A.	VVD
Segers, G.J.M.	CU
Servaes, M.	PvdA
Vos, J.C.	PvdA
Wout, B. van 't	VVD
Vacancy PvdA	

## Appendix V Shadow Pair-wise comparisons

### Partisan composition pair-wise comparison

The two alternative cases (C1a and C2a) dealt with in Chapter 5 examined the partisan composition condition. The Eurosceptic and Lisbon conditions are absent in both cases, as the scrutiny of the single party case takes place during the Blair/Brown cabinet (pro-European) and the multiparty case takes place before 2013.<sup>1373</sup> Besides, the NP does not make use of a RO. Both cases deal with cod stocks/recovery and this topic is part of the wider CFP, which is why it is expected that the NP and the government might have opposing views (see for more information on the policy positions of British political parties on the CFP in Chapter 5).

C1a (presence of multi-party condition) takes place during one reading only and can be considered non-salient (as there is no separate chapter dedicated to this topic in any of the governing party manifestos<sup>1374</sup> nor any reference to this topic in the Euro-barometer of 2012<sup>1375</sup>). During this case, evidence is expecting to be found showing whether there are more or less attempts by the NP to scrutinise its government - as during a multi-party government there are more opportunities to do so - or whether there is no difference between the levels of scrutiny and consequently the measurable impact during a multi-party or single party scrutiny of the government.

C2a (absence of multi-party condition) will be used to find evidence of a case dealing with the same topic as C2 (Fisheries) being dealt with by the same Labour single party government, with the only difference being that the scrutiny of the draft regulation takes place before the Lisbon Treaty has come into force. This is useful, as in the pair-wise comparison between C1 and C2, both cases, including C2 (single party), took place *after* the Lisbon Treaty came into force. Neither of these cases makes use of the new Lisbon provisions for the NP, such as writing a RO to the EC, which decreases the chances of rival explanations. However, it is possible that *after* the Lisbon Treaty came into force, NPs improved the scrutiny of EU legislative files through their governments because the Lisbon Treaty worked as some form of incentive adapting NPs'

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<sup>1373</sup> January 2013 is the date of David Cameron's Bloomberg speech, which in this research is considered to be the start of the Eurosceptic phase of the Conservative party during the Cameron coalition.

<sup>1374</sup> Liberal Democrat Manifesto 2010, Conservative Manifesto 2010.

<sup>1375</sup> Euro-barometer 77 and 78, question 7 (annex).

consciousness to make a difference.<sup>1376</sup> This pair-wise comparison therefore does not only compare C1a to C2a, but also C2 to C2a (see also Chapter 5).

The multi-party variable is the only varying condition in the comparison between C1a and C2a and the Lisbon Treaty is the only varying condition in the pair-wise comparison between C2 and C2a. It is therefore important to emphasise that even though the OLP procedure was introduced with the Lisbon Treaty, replacing the COD procedure, the scrutiny during this previous procedure still took place over several steps whereby the NP had several stages during which it had a chance to use its formal powers either ex ante or ex post Council meetings. This depends on whether the NP could be considered a NP forming part of a delegatory model or being part of a trusteeship model. Out of consistency, the same 7-step model has been followed in this case, even if being dealt with before the Lisbon Treaty has come into force.

### **C1A The draft regulation establishing a long-term plan for cod stocks and the fisheries exploiting those stocks (COM(2012)21<sup>1377</sup>)**

#### Background of the proposal

Since the introduction of the conservation policy into the CFP in 1983, in particular the stocks of cod in EU waters have led to levels of concern. As a consequence, the EC published a new regulation in order to ensure that cod stocks are exploited on the basis of the maximum sustainable yield and, in order to reach these levels, the EC suggests the introduction of rules for establishing the total allowable catch (TAC) and maximum fishing effort.<sup>1378</sup> This proposal replaces the previous regulation of 2008 regarding cod stocks.

#### Step one: Publication

Publication 31<sup>st</sup> January 2012 and is deposited in the HC on 7<sup>th</sup> February 2012<sup>1379</sup>.

#### Step two: Subsidiarity deadline: 27<sup>th</sup> March 2012.

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<sup>1376</sup> Kiiver, 2012:47.

<sup>1377</sup> <http://eur-lex.europa.eu/legal-content/EN/HIS/?uri=celex:52012AE0835>

<sup>1378</sup> HC ESC, 64<sup>th</sup> Report, 25<sup>th</sup> April 2012.

<sup>1379</sup> On the website of both EUR-Lex and IPEX (the platform for EU Inter-parliamentary Exchange) it mentions the 31<sup>st</sup> January 2012 as the transmission date.

The HC has no objections against the publication of this EU legislative proposal.

Step three: First ex ante influence phase.

20<sup>th</sup> February 2012                      Publication EM<sup>1380</sup> by the government (first government position) (standard use of formal powers in the sense of reception of information by government).<sup>1381</sup>

DEFRA shows in its EM that it agrees with the proposal and that it is appropriate to adjust the biological reference levels, fishing mortality rates and spawning stock biomass in accordance with scientific advice to be dealt with in a delegated act. However, according to government, giving the EU the powers to adjust fishing efforts in certain circumstances would be an essential element of a recovery plan and therefore not eligible for a delegated act.<sup>1382</sup>

Earlier in March the proposal was discussed in a working group, during which most member states rejected the proposal, with the UK noting that the effort elements did not qualify as non-essential, and that the EC had not put forward most of the substantive changes as required by the Member States. The EM furthermore mentions the technical meeting of 20<sup>th</sup> March which was organised in order to discuss the nature of those changes which are a priority for the UK.<sup>1383</sup>

25<sup>th</sup> April 2012:                      ESC meeting

The ESC sees a parallel with the recently discussed recovery plan for the West of Scotland herring on which it reported. For that reason, the ESC decides not to draw the current draft regulation to the attention of the HC, but it clears the scrutiny for this document.<sup>1384</sup> The HC does not have the intention to impact the government's EU position in this case.

11<sup>th</sup> June 2013                      Adoption of regulation in the first reading.

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<sup>1380</sup> DEFRA EM on COM(2012)21, 20<sup>th</sup> February 2012, 13745/12.

<sup>1381</sup> HC ESC, 64<sup>th</sup> Report, 25<sup>th</sup> April 2012, p.32.

<sup>1382</sup> Ibid., p.33.

<sup>1383</sup> Ibid., p.34.

<sup>1384</sup> Ibid.

Member States agree to set up multi-annual management plans to check the stocks in the future.

### Concluding remarks

When comparing the current case to C1 during which the NP scrutinises the government on an EU legislative file in the same field (fisheries), it is evident that in C1 (multi-party), the HC is clearly much more active and uses more than its standard formal powers than in C2 (single party), and even less in C1a (multi-party). In the reform of the CFP in C1, there is apparently more for MPs to use their powers on. This leads to the preliminary conclusion that salience is more important than the number of parties in government. In C1, which dealt with the general reform of the CFP, there was clearly more at stake for MPs to work on than on C1a (multi-party) and C2 (single party).

Interviews confirm that there was much more at stake in the files on the reform of the CFP than in the case about cod stocks.<sup>1385</sup>

C2 also deals with a reform of the CFP, but this regulation is more focused on the *control* of the CFP and not so much on its whole reform, such as in C1.

In C1a, it appears from all parties involved (EC, Council, EP, NP) that there is not a lot to say about this topic. The draft regulation is adopted without much discussion after only one meeting. This means that the partisan composition variable is less decisive in determining the parliamentary use of formal powers than the contents (i.e. the salience) of the topic. The HC uses *more* formal powers if there is more at stake (C1) and it will not use its formal powers if there is not much to influence, as the EC, the Council and government themselves do not pay much attention to it (C1a). In other words, whereas the theoretical argument expected an increase in the use of formal powers if the government consists of various parties, this is not reflected in the analysis of the process-tracing of this case.

### *Measurable impact*

Interviews confirm that no informal influence had taken place in this case and that the EM was drafted based upon the position of the government (not anticipating the

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<sup>1385</sup> Benyon, 25<sup>th</sup> June 2015, Smith, 2<sup>nd</sup> July 2015, Rees-Mogg, 22<sup>nd</sup> June 2015.

position in the NP)<sup>1386</sup>. As there were no attempts by MPs to influence this EU legislative file and the government has not made any changes to its viewpoint as a consequence of the NP's position, the impact in this EU legislative file can be considered to be weak. As the NP believes that the government knows its position in this case (it had recently dealt with a similar one), it gives the government full freedom to act according to its own judgement, even knowing that the government consists of various parties.

### **Case 2a: The EU draft regulation regarding the cod recovery (COM(2008)162<sup>1387</sup>)**

#### Step 1: Publication

Publication 2nd of April 2008 and is deposited in the ESC on fourth of April 2008.

#### Step 2: Not applicable

#### Step 3: First ex ante influence phase

No evidence is found of any use of formal powers at this stage, which confirms the causal mechanism. The NP trusts the government to make its own judgement and does not receive any information or raise any questions about this topic. This is as expected and confirms my causal mechanism at this stage.

#### Step 4: First ex post control phase

14<sup>th</sup> April 2008 Council meeting regarding the Cod Recovery proposal.<sup>1388</sup>

25<sup>th</sup> April 2008 EM<sup>1389</sup> government (first position).

The UK government argues that there are good reasons for improving the operation of the cod recovery mechanism, since most of the stocks in question are still showing insufficient signs of recovery. The government therefore supports the EC's proposals, as they largely reflect the broad conclusions reached at a symposium in March 2007 led

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<sup>1386</sup> Benyon, 25<sup>th</sup> June 2015, Smith, 2<sup>nd</sup> July 2015.

<sup>1387</sup> <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52008SC0389>

<sup>1388</sup> Council Press Release, 2862nd Council meeting, Agriculture and Fisheries, Luxembourg, 14<sup>th</sup> April 2008.

<sup>1389</sup> HC ESC, 23<sup>rd</sup> Report of session 2007-2008, 14<sup>th</sup> May 2008.

by the Regional Advisory Council, and in particular the simplified regional approach to management.<sup>1390</sup>

30<sup>th</sup> April 2008 Ministerial statement with feedback from the Fisheries Council of 14<sup>th</sup> April 2008.<sup>1391</sup>

14<sup>th</sup> May 2008 Meeting ESC and publication of first report in this field.

The ESC concludes that it recognises the government's support for the cod recovery proposals, but notes its reservations vis-à-vis a number of issues, and therefore the ESC decides to draw the document to the attention of the House.<sup>1392</sup> It feels it would be sensible to await for the assessment before taking a firm view on its future handling.<sup>1393</sup>

The EC thereby asks the government for one clarification:

‘The Commission has referred in its Explanatory Memorandum to the need to introduce new mechanisms to encourage fishermen to engage in cod-avoidance programmes so as to reduce the level of discards. However, it is not clear to us from its proposal, or from the Explanatory Memorandum provided by the Minister, whether or how those measures are covered by the proposal (and, if not, what further steps the Commission envisages to tackle this long-standing problem). We would welcome the Minister's comments on this.’<sup>1394</sup>

#### Step 5: Second ex ante influence phase

No evidence found.

#### Step 6: Second ex post control phase

29<sup>th</sup> September 2008 Second debate in the Council takes place.<sup>1395</sup>

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<sup>1390</sup> Ibid.

<sup>1391</sup> HC, plenary, written Ministerial Statement, plenary 30<sup>th</sup> April 2008.

<sup>1392</sup> HC ESC, 23<sup>rd</sup> Report, 14<sup>th</sup> May 2008.

<sup>1393</sup> Ibid.

<sup>1394</sup> Ibid.

<sup>1395</sup> Press Release, 2892<sup>nd</sup> meeting of the Council Agriculture and fisheries, Brussels, 29-30<sup>th</sup> September 2008

10<sup>th</sup> November 2008

Mr Huw Irranca-Davies, Minister DEFRA, sent a letter to the HC:

Government expects a revised plan to be agreed at the meeting of the Agriculture and Fisheries Council on 18-20<sup>th</sup> November.<sup>1396</sup> The Minister asks the ESC to release scrutiny. The letter is accompanied by an IA.<sup>1397</sup>

Extra step: Ex ante influence phase

12<sup>th</sup> November 2008

ESC meeting discussion of the Cod recovery plan.<sup>1398</sup>

The meeting focuses thereby mainly on procedural issues, like the late arrival of DEFRA's letter which arrived only a day before the meeting of the ESC.<sup>1399</sup> Therefore, it was impossible for the ESC to deal with the matter then; any such consideration thus having to be delayed until after the Council meeting. No evidence of the use of formal powers is found other than the standard ESC meeting including the published report.

Extra ex post control phase

18<sup>th</sup> November 2008

Fisheries Council agreement on the Cod Recovery plan.<sup>1400</sup>

22<sup>nd</sup> November 2008

DEFRA letter to the HC to inform it on the outcome of the Fisheries Council meeting:

‘... [A] package of measures was agreed during Council last week, which the Government believes will significantly enhance the prospects for stock recovery (and which the UK supported on the grounds that it had been able to secure a number of changes to reflect its concerns) ...’<sup>1401</sup>

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<sup>1396</sup> HC ESC, fortieth report of session 2007-2008, 26<sup>th</sup> November 2008.

<sup>1397</sup> Ibid.

<sup>1398</sup> HC ESC, Thirty-Ninth Report, 12<sup>th</sup> November 2008.

<sup>1399</sup> Ibid.

<sup>1400</sup> Press Release, 2904<sup>th</sup> meeting of the Council Agriculture and fisheries, Brussels, 18-20<sup>th</sup> November 2008.

<sup>1401</sup> HC ESC, Fortieth Report, 26<sup>th</sup> November 2008.

The Minister also referred to the poor feedback it has given the NP during this case, which has challenged MPs to fully scrutinise government.<sup>1402</sup>

The Minister accepts that the circumstances under which the Government sought clearance were "far from ideal", and he says that "important lessons" have been noted. He also apologises for having given insufficient time to consider the IA on the proposal before the November Council, adding that the delay was caused by the difficulties of gaining the necessary information from the industry on the potential impacts of the new regime. Also, in expressing regret at having overridden the scrutiny process, he says that this was necessary in order that the UK should not have been put at a negotiating disadvantage.<sup>1403</sup>

26<sup>th</sup> November 2008

ESC has a meeting: the NP still cannot clear the document, as there are still a number of outstanding issues, including those mentioned in the letter of the Minister of 22<sup>nd</sup> November 2008.<sup>1404</sup> The ESC Argued:

‘We are therefore recommending the document for debate in the European Committee. In doing so, we are also conscious that the Commission has now put forward its wider proposals on the total allowable catches for 2009, although we have yet to receive an Explanatory Memorandum on these, making it unlikely that any debate on them could be held before decisions are taken at next month's Fisheries Council. That being so, it would be our intention, once we eventually consider those proposals, to recommend that they too should be debated in European Committee, albeit after the Council has taken a decision, and we think it might be sensible if any such debate were to be combined with the one we are now recommending on the cod recovery plan.’<sup>1405</sup>

The ESC is thereby explicit that it does not want its use of formal powers to be lost, but shows how they can be included in the Government's input into EU policies more generally.

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<sup>1402</sup> Ibid.

<sup>1403</sup> Ibid.

<sup>1404</sup> Ibid.

<sup>1405</sup> Ibid.

## Step 7: Adoption by Council

18<sup>th</sup> December 2008

Council adopts the Cod Recovery Plan. The plan covers different types of cods, but excludes the cod in the Celtic Sea, although it will receive increased attention.<sup>1406</sup> New mechanisms were introduced to encourage fishermen to engage in avoiding discards.<sup>1407</sup>

## Concluding remarks

Parliamentary activity is limited to asking for clarifications in this case and referring it to a European Committee. The NP does not make an active attempt to change the government's position. It is possible that the late publication of the IA by government prevented the HC from using its formal powers. When comparing the scrutiny of this case to the scrutiny of C1A (multi-party government), the use of formal powers is higher in C2A, and therefore one can rule out the single party government as the variable that leads to little parliamentary activity.

Interviewees argued that the topic of the CFP in 2009 may not have received as much attention because many MPs were not really alarmed about the issue of EU fisheries at that time.<sup>1408</sup>

During the other steps of the process, all causal mechanisms are confirmed, in the same way as during C2 and the Lisbon provisions can therefore confidently be ruled out from having influenced the causal mechanisms during this process. Both in C2 (post-Lisbon) and C2a (pre-Lisbon) the same causal steps took place during the scrutiny of the single-party government.

In other words, the theoretical argument set out the expectation that the NP is more likely to increase the use of formal powers when scrutinising a multi-party government as opposed to a single party administration and that it is more likely to impact the government's EU policy position is not reflected in the pair-wise comparison between C1 and C2 or in the comparison between C1a and C2a.

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<sup>1406</sup> Press Release, 2904<sup>th</sup> meeting of the Council Agriculture and fisheries, Brussels, 18-20<sup>th</sup> November 2008.

<sup>1407</sup> <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52008AP0487&rid=1>

<sup>1408</sup> Benyon, 25th June 2015, Hopkins, 30th June, 2015.

Besides, when cross-comparing these files, namely when comparing C1 to C1a (both multi-party governments) and C2 to C2a (both single party governments) it is evident that it is not the varying number of parties that increases the use of formal powers, but the contents of the topic. Saliency, in other words is at work here.

### *Measurable impact*

The NP did not make any attempts to change the government's position and the impact can be considered weak here. This is partly a consequence of the timings of scrutiny. The HC realises that there is not enough time to refer the file for discussion to the European Committee A before the meeting in the Council takes place, but it continues doing so anyway, expecting that it will be able to influence and control the government in future EU legislative files about similar topics.

## **Euro-scepticism pair-wise comparison**

The next two cases examine the Eurosceptic condition. The multiparty, the salient and the Lisbon conditions are constant in the sense that these conditions are similar in both cases (they both deal with a multi-party government and non-salient case which takes place post-Lisbon), and the pair-wise comparison will compare this case to one where only the Eurosceptic condition varies. C3a looks into the scrutiny of an EU legislative file, the Integrated Maritime Policy (IMP), which took place during the Rutte I coalition cabinet (depending on the support of a Eurosceptic party). C4a is one during which the Dutch SC scrutinises the Rutte II coalition (without Eurosceptic support), dealing with a case of similar non-saliency as C3a, namely the Regulation on Port State Control.<sup>1409</sup> The topics are considered to be of no saliency to the electorate, as none of the party manifestos<sup>1410</sup> of the political parties in government refer to the topic and it does not appear to be a concern for European citizens, based upon the Euro-barometer in 2010<sup>1411</sup> and 2012<sup>1412</sup>.

### **Case 3A The EU Integrated Maritime Policy (COM(2010)0494<sup>1413</sup>)**

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<sup>1409</sup> This case is the same case 8, as the selection of variables are similar (presence of multi-party, non-Eurosceptic government, non salient and no use of a RO).

<sup>1410</sup> VVD Partij-programma 2010-2014, CDA Partijprogramma 2010-2015, Party for Freedom Manifesto, Partij-programma 2010-2015.

<sup>1411</sup> Standard Euro-barometer 73 and 74, annex question 7.

<sup>1412</sup> Standard Euro-barometer 77, July 2012, and Standard Euro-barometer 78, December 2012.

<sup>1413</sup> <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52010PC0494>

## Policy Positions on EU Maritime Policy

Although EU maritime policy is not one that MPs can win many votes on<sup>1414</sup>, it is expected that in this particular case, there will be disagreements between the coalition partners and between the NP and government.<sup>1415</sup> This is mainly because of the financial implications of the proposal and several political parties feel that they cannot spend any more money on the EU and would resist increasing their annual budgetary contributions (such as the coalition parties VVD, CDA and PVV). The two main coalition partners (VVD and CDA) have, on the other hand, no objections to the EU dealing with this topic as such, as long as it does not imply contributing more money to the EU<sup>1416</sup>, whereas the PVV does not want the EU to intervene with any policy at all.<sup>1417</sup> Then there is the opposition, of which some parties are likely to want to go further on EU issues and would support the EU to take these topics on board, even if this would mean an increase in the budget, like D66 and Green Left.<sup>1418</sup>

### Background EC proposal

In 2007 the EC published a first plan for an IMP for the EU. In 2009, it published an action plan to further elaborate the EU maritime policy. One of the problems in setting up a proper EU maritime policy is the lack of financial resources. For that reason, the Council for General Affairs has requested the EC come up with proposals to enable the financing of the maritime policy. For that reason, the EC has published this draft regulation to establish a programme to support a further development of the integrated maritime policy. The proposal establishes, amongst others, the programme's general and specific objectives, the actions that will receive finance and the possible ways to finance. Besides, the proposal suggests the setting up of an advisory council to assess the annual work programmes.<sup>1419</sup>

### Step 1:

29<sup>th</sup> September 2010

Publication EU legislative proposal.

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<sup>1414</sup> As explained in the introduction of this case, it does not appear in any of the 2010 party manifestos or any of the Barometers of 2009 and 2010.

<sup>1415</sup> For more information on the views of Dutch political parties on EU Maritime policies, see Chapter 7.

<sup>1416</sup> Regeerakkoord VVD-CDA, *Vrijheid en Verantwoordelijkheid*, 2010, p.7.

<sup>1417</sup> PVV, *De agenda van hoop en optimisme Een tijd om te kiezen: PVV 2010-2015*, p.15.

<sup>1418</sup> Kanne: 2011, p.249.

<sup>1419</sup> TK, 22 112, nr. 1082, 8<sup>th</sup> November 2010.

## Step 2:

25<sup>th</sup> November 2010                      Deadline RO, none have been sent.

## Step 3: First ex ante influence phase

8<sup>th</sup> November 2010                      Publication governmental EM (first government position).

The Dutch government expresses its support for the EC proposals to further develop and execute the IMP. What plays a role, therefore, are the possible chances for Dutch knowledge institutions to make money from the EU programmes. However, the government is of the opinion that an early ex ante evaluation and better foundation of the proposal is crucial to be able to make a better estimate of the financial consequences. So far, the programme will cost approximately €50 million, of which the Dutch government would pay €2.5 million.<sup>1420</sup>

10<sup>th</sup> June 2011                              Letter by Minister for Foreign Affairs, Mr. Rosenthal, with the agenda of the Council for General Affairs which will take place on 21<sup>st</sup> June 2011.<sup>1421</sup>

16<sup>th</sup> June 2011                              Meeting between ESC and the Minister for Foreign Affairs, Rosenthal, to discuss the Council for General Affairs of 21<sup>st</sup> June 2011, but no reference is made to the IMP.<sup>1422</sup>

## Step 4: First ex post control phase

21<sup>st</sup> June 2011                              Council meeting to discuss IMP

No feedback is found on the outcome of this Council meeting.<sup>1423</sup>

## Step 5: Second ex ante influence phase

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<sup>1420</sup> Ibid.

<sup>1421</sup> TK, 21 501-02, nr. 1070, 10<sup>th</sup> June 2011.

<sup>1422</sup> TK, 21 501-02, nr. 1077, 19<sup>th</sup> July 2011.

<sup>1423</sup> TK, 21 501-02, nr. 1077-, 19<sup>th</sup> July 2011.

21<sup>st</sup> September 2011

Letter from Atsma, I&E Minister regarding the agenda of the Informal Council meeting about the IMP taking place on 8<sup>th</sup> October 2012, including a copy of the declaration which will be signed during the Council meeting.<sup>1424</sup>

The Dutch government supports the general approach of this agenda and is in favour of giving sustainable economic development combined with employment a central place on the agenda for the Integrated Maritime Policy. It requests, however, that more attention be paid to sustainable energy, food supplies and transport.<sup>1425</sup>

On 27<sup>th</sup> September 2011

Letter from NP to Minister about IMP who responds to them by letter as well.<sup>1426</sup> This is the first position of the NP.

The Social Democrat fraction (PvdA, opposition) is of the opinion that EU decisions will be taken in the field of *obtaining* energy from the sea. The oil prices will remain high. The members of the Social Democrat party plead for a ‘power point’ in the sea. This does not only mean placing many windmills to gain energy for millions of households, but also the connections of power networks between those countries bordering the North Sea.

The Christian Democrats (CDA, coalition partner), however, would like the Minister to clarify some of the agenda points for the informal Council meeting of 8<sup>th</sup> October 2011. It wants to know what the consequences of the execution of this agenda will be for any Dutch players in the Maritime sector. The CDA also asks whether the Minister will suggest other innovative fishing methods during the informal Council meeting.

The members of the Party for the Animals (PvdD, opposition) are disappointed that the current approach in Maritime Policy is only driven by economic interests in this field and not by the ecosystem approach. It therefore cannot sign the joint declaration and the agenda for ‘growth and employment’.<sup>1427</sup>

The Minister, Mr Atsma, replies to the different questions of the SC.

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<sup>1424</sup> Ministerie van I&M, Letter by the Minister of Infrastructure and Environment, J. Atsma, 21<sup>st</sup> September 2012.

<sup>1425</sup> Ibid.

<sup>1426</sup> TK, 22 112, nr, 1495, 23<sup>rd</sup> October 2012.

<sup>1427</sup> Ibid., p.3-5.

On the questions from the PvdA he says that the Netherlands undertakes many activities in the field of wind energy and electricity in the North Sea. As examples, he mentions the Green Deal with Dutch Wind energy Association (NWEA) to propose new legislation in the field of wind energy before 2015.<sup>1428</sup>

With regard to the question of the CDA which asks for further specifics regarding the agenda and consequences for the Dutch Maritime sector, Minister Atsma responds that all issues on the agenda of the informal council will be discussed. The declaration to be signed in the field of EU maritime policy emphasises the importance of an efficient policy to develop a ‘blue economy’ which would need to reduce all kinds of administrative burdens in the maritime sector.<sup>1429</sup>

Atsma continues to respond to the questions of the Party for the Animals (PvdD). He explains that the emphasis of the IMP is on sustainable economic growth, as the current economic situation in the EU is one that needs a quick and efficient recovery.

He furthermore reassures the PvdD that he requests a widening of the possibilities to improve animal welfare and animal health.<sup>1430</sup>

#### Step 6: Second ex post control phase

8 <sup>th</sup> October 2011	Informal Council about IMP.
23 <sup>rd</sup> October 2011	Letter from government to NP about the outcome of the informal Council meeting of 8 <sup>th</sup> October 2012 regarding the Integrated Maritime Policy. <sup>1431</sup>

#### Step 7: Adoption

24 <sup>th</sup> November 2011	Adoption of IMP, which include some broad recommendations in the field of economic development, employment and environmental protection through fostering integrated maritime and coastal affairs. No specific recommendations
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<sup>1428</sup> Ibid., p. 6-10.

<sup>1429</sup> Ibid., p.6-10.

<sup>1430</sup> Ibid.

<sup>1431</sup> Ibid.

are included in the field of obtaining energy from the sea.<sup>1432</sup>

### Concluding remarks

It takes the NP some time to become active regarding this file and not one parliamentary meeting takes place to discuss the item, but during the second stage of ex ante influence and ex post control of the OLP, the NP does feel the need to use its formal powers on this. However, this contradicts the expected causal process whereby it was expected that the scrutiny of an EU legislative file during a coalition government depending on a Eurosceptic party would lead to higher chances of impact for the NP. The analysis of the process-tracing confirms the outcome of the analysis of C3, that the dependence on a Eurosceptic party by the government does not necessarily create more opportunities for the NP to have an impact on their government's EU policy position.

### *Measurable impact*

Only during step 5, the second ex ante influence phase, does the NP increase the use of formal powers. It does so by asking questions in a letter sent to the responsible Minister, but without a clear aim of trying to impact the government position. This is the only occasion during which the NP uses its formal powers, and it only does so via a letter to which the government responds by offering information and showing no signs of changing its position. Interviews confirmed that the NP did not make use of informal types of influence in this case and the EM of the government was written based upon the position of the coalition partners without anticipating what the position of the NP would be.<sup>1433</sup>

During the scrutiny process the NP showed some positions (though via individual party comments, not a joint position): the IMP should have a stronger focus on obtaining energy from the sea, like windmills and protecting animal welfare. It thereby clearly had an intention of controlling the government's input to the Council.

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<sup>1432</sup> Press Release, 3127<sup>th</sup> meeting of the Council of Transport, Telecommunication and Energy, 24<sup>th</sup> November 2011.

<sup>1433</sup> Atsma, 29th May 2015, Abspoel, 3rd June 2015.



14<sup>th</sup> June 2013

Publication of EM<sup>1437</sup> (initial governmental position).

The Dutch government supports the application of the freedom of services, also in ports. This draft regulation offers sufficient space to continue the ways in which the Netherlands has executed these services in its harbours. The regulation suggests making financial transparency compulsory. The Dutch government agrees that this is a condition, although not yet sufficient to tackle state aid, which could have a distorting effect on competition. The Netherlands will support this proposal as long as the current commercial freedom of port managers can continue and as long as the current Dutch harbour policies, which have proven to be successful, will not be affected<sup>1438</sup>.

5<sup>th</sup> September 2013

Meeting government (including Secretary of State, Schulz (VVD), and I&E Committee. First expression of the parliamentary views on this file.

During this meeting, Mr De Vries (PvdA<sup>1439</sup>, coalition partner) argues that his fraction is positive about the ways in which the government approached Port regulation in its EM. However, according to the PvdA, the marginal comments made by the government on the draft regulation could be broadened a lot wider.<sup>1440</sup>

The Social Democrat fraction is furthermore worried about attempts by the EC in this draft regulation to put forward proposals for liberalisation in ports, even in areas that are part of semi-public services. In the Netherlands, there exists a sort of concession system with free access. The concession must guarantee quality and availability. This system works well.<sup>1441</sup>

The Dutch government writes in its EM that the pilot services do not form part of the regulation. Mr De Vries would like to know why the Secretary of State thinks so and why she does not further investigate whether this is really true.<sup>1442</sup>

According to De Vries, labour law has previously been an issue in another European Ports directive. Although this has been kept outside the current regulation, the PvdA

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<sup>1437</sup> TK, 22 112 33 677, 14<sup>th</sup> June 2013.

<sup>1438</sup> Ibid.

<sup>1439</sup> Social Democrats.

<sup>1440</sup> TK, 22 112 33 677, 5<sup>th</sup> September 2013, p.2-3.

<sup>1441</sup> Ibid.

<sup>1442</sup> Ibid.

does note that there are some issues with the labour law of seamen and asks the Secretary of State to keep actively following any developments in this field. The PvdA will ask parliamentary questions about this matter in due course.<sup>1443</sup> The issue of labour law is not part of the government's initial position.

Mrs De Boer (VVD, liberal, coalition partner) is of the opinion that the EC should focus much more on unequal competition instead of the regulation of ports internally.<sup>1444</sup> The VVD does support the government approach as explained in its EM, but does have a few comments and questions. The VVD thinks the focus should be much more on competition between ports. The current proposal, however, is too focused on compensation for the use of infrastructure which should be set up by port managers. This is something that should not be regulated when the markets between ports are opened. Ports can only compete if there is no such regulation.

Mrs De Boer adds that contrary to Mr. De Vries (PvdA), she does not agree that labour issues of seamen should be regulated at EU level. The VVD is therefore happy that these issues are excluded from the regulation.<sup>1445</sup> She also asks the government to send a copy of the concept agreement before the negotiations take place in the Council to the SC, both during the first and the second reading.<sup>1446</sup> Besides this, it asks that the government keep it informed every term/half year, depending on what is on the agenda.

Mr De Rouwe (CDA<sup>1447</sup>, opposition party) mentions that the EU is very much focused on details. However, particularly in this field, it is important to stress the importance of international competition. Previous proposals from the EC in this field (2007) were more focused on transparency and access to markets, but the EC has admitted as well that these plans never worked and had an adverse effect. The CDA therefore wonders whether these decisions can be reversed.<sup>1448</sup>

Bashir (SP<sup>1449</sup>, opposition party) would like to know whether this regulation has any consequences for the pilot service and if so, what the consequences will be.<sup>1450</sup> According to the Socialist Party, this should remain as it is, as the services offered by

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<sup>1443</sup> Ibid., p.2-3.

<sup>1444</sup> Ibid., p.3-4.

<sup>1445</sup> Ibid.

<sup>1446</sup> Ibid.

<sup>1447</sup> Christian Democrats.

<sup>1448</sup> TK, 22 112 33 677, 5<sup>th</sup> September 2013, p.4-5.

<sup>1449</sup> Socialist party.

<sup>1450</sup> TK, 22 112 33 677, 5<sup>th</sup> September 2013, p.5-6.

the pilot service are not suitable for competition. This concerns a public service. Bashir asks the Secretary of State to give a reaction. He furthermore asks the Secretary of State how to promote the transport of goods during short distances over sea ('short sea shipping').<sup>1451</sup>

Bashir asks why the Dutch government supports the necessity of this regulation instead of, for example, a directive. A directive would give the member state more freedom to implement new agreements according to its own circumstances.

Mrs Schultz, the Secretary of State replies to the contributions of the MPs. She argues that the government welcomes the draft regulation, but that it is also hugely critical of it.<sup>1452</sup>

Schultz continues to answer the questions of individual MPs:

'Mr Bashir asked about the real issue of this regulation. There is a difference between our ports, which are completely financially self-supporting without any financial support of the government, and there are ports which still need a contribution.'<sup>1453</sup>

Most of her concerns are similar to those mentioned by the MPs in the I&E Committee.<sup>1454</sup> The Dutch government will try to deal with these issues. Schultz also responds to the request made by De Boer (VVD, coalition partner) to keep the SC informed and agrees to the list of requirements by the SC. She also mentions that the EC will set up some guidelines in this field to deal with state aid.<sup>1455</sup>

Mr De Rouwe (CDA, opposition) responds that these guidelines should be integrated in the regulation and asks the Secretary of State to request the same.<sup>1456</sup> Mrs Schultz responds that the Dutch government will ask that both the regulation and guidelines be in line with each other. There will be no time to have them included in the draft regulation.<sup>1457</sup>

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<sup>1451</sup> Ibid.

<sup>1452</sup> Ibid., 6-8.

<sup>1453</sup> Ibid.

<sup>1454</sup> Ibid., 6-8.

<sup>1455</sup> Ibid.

<sup>1456</sup> Ibid.

<sup>1457</sup> Ibid., 8.

Mr De Vries (PvdA coalition partner) explains the state aid issues which affect the southern ports in the Netherlands, pointing out that those in Belgium receive much financial funding. Dutch ports have to compete with this. It cannot be solved with guidelines, but should be laid down in a proper regulation.<sup>1458</sup>

Mrs Schultz responds that issues, such as financial transparency needs to be laid down in the regulation and be uniformly applied across all EU member states. With regard to the state aid rules, this will be examined from a wider angle.<sup>1459</sup>

### Step 3: First ex ante influence phase

15<sup>th</sup> November 2013                      Government sent the agenda for the next Transport Council (5<sup>th</sup> December 2013).<sup>1460</sup>

28<sup>th</sup> November 2013                      Meeting takes place between the I&E Committee, the EAC, Secretary of State, Mrs. Schultz, and Minister Van Mansveld.<sup>1461</sup>

During this meeting the Ports regulation is discussed as well. Mrs Kuiken (PvdA, coalition partner) emphasises that the PvdA can only support an EU ports directive if the commercial freedom of port service provision continues to exist. According to Kuiken, this is important for the monopoly of the pilotage service.<sup>1462</sup>

Mrs Schulz responds:

‘In my opinion, we will support and maintain this monopoly of the pilotage service, which is an example for the rest of the EU. It is supervised by the ACM, which determines its tariffs. I will plead to continue with this arrangement. The opinion of the EP in this field goes in the right direction. The discussions on the contents of the regulation have not yet started, but I will show that this is what we want.’<sup>1463</sup>

### Step 4: First ex post control phase

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<sup>1458</sup> Ibid.

<sup>1459</sup> Ibid.

<sup>1460</sup> TK, 21 501-33, nr. 445, Brief van de Minister van I&M, 15<sup>th</sup> November 2013.

<sup>1461</sup> TK, 21 501-33, nr. 459, 27<sup>th</sup> January 2014.

<sup>1462</sup> Ibid., 7.

<sup>1463</sup> Ibid., 10.

5<sup>th</sup> December 2013

Council meeting.

No feedback on the Ports regulation is given.

Step 5: Second ex ante influence phase

20<sup>th</sup> May 2014

Letter from government to NP with Agenda of next Transport Council to be held on 5<sup>th</sup> June 2014.

28<sup>th</sup> May 2014

Meeting between NP and I&E Minister, Mrs Mansveld to discuss the next Transport Council to take place on 5<sup>th</sup> June 2014.

During this meeting, various references are made to the Ports Regulation.<sup>1464</sup>

Mrs Visser (VVD, coalition partner) shows her support for the Dutch government's position in this field. She asks the Minister, however, what will happen with the amendments and how likely it will be that those that focus on less administrative burdens will be accepted.<sup>1465</sup> She also stresses the importance of continuing to push for guidelines for state aid, as some member states, including the Italian EU Presidency, have different views on this.<sup>1466</sup>

The Minister, Mrs Mansveld, reacts to this and mentions that during the previous Greek EU Presidency no real discussions about the contents of the ports regulation took place.<sup>1467</sup> However, she expects that the amendments in the field of the pilotage service provision and its supervision will be accepted.<sup>1468</sup> With regard to the guidelines in the field of state aid, Mrs Mansveld says that these guidelines will not be part of the Ports regulation, but that the EC will publish some guidelines in this field at a later stage.<sup>1469</sup>

Step 6: Second ex post control phase

5<sup>th</sup> June 2014

Transport Council.

4<sup>th</sup> July 2014

Letter government to NP.

It also updates on the Ports regulation:

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<sup>1464</sup> TK, 21 501-33, nr. 495, 31<sup>st</sup> July 2014.

<sup>1465</sup> Ibid., 8.

<sup>1466</sup> Ibid.

<sup>1467</sup> Ibid., 17.

<sup>1468</sup> Ibid., 17.

<sup>1469</sup> Ibid., 17.

‘The Council has taken note of the progress report ... EU Commissioner Kallas stressed the importance of efficient seaports for growth and jobs and he expressed the wish for more transparency in the sector. He argued that he hoped that the Council would reach an agreement on this regulation during the Italian EU Presidency.’<sup>1470</sup>

#### Extra ex ante influence phase

18 <sup>th</sup> September 2014	Letter government to NP regarding the Transport Council meeting of 8 <sup>th</sup> December 2014. <sup>1471</sup>
30 <sup>th</sup> September 2014	Meeting government and NP (EAC and I&E Committee)

Bashir (SP, opposition) asks what kind of objections other EU member states have regarding this regulation, as it has not been positively received in many member states.<sup>1472</sup> Bashir also seeks to know whether in general member states are in favour of opening up the market to the pilotage services. The SP is of the opinion that this should not happen and hope that the government will oppose this idea.<sup>1473</sup>

Mrs De Boer (VVD, coalition partner) also refers to the Ports directive. The VVD will support the position of the government in this, but would like to know what will be discussed in this area during the Transport Council.<sup>1474</sup> She also asks for clarification in the field of dredgers and the position of pilots.<sup>1475</sup>

Mr Hoogland (PvdA, coalition partner) also requests clarification about the pilotage service provision and whether the Dutch government can protect this against the open market.<sup>1476</sup> It furthermore stresses the importance of a European level playing field in this regulation. At the moment there are many inequalities between European ports.<sup>1477</sup>

Schultz replies:

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<sup>1470</sup> TK, 21 501 33, nr.494, 4<sup>th</sup> July 2014.

<sup>1471</sup> TK, 21501-33, Nr 500, 18<sup>th</sup> September 2014.

<sup>1472</sup> Ibid.

<sup>1473</sup> TK, 21 501-33, nr. 512, 11<sup>th</sup> November 2014, p.4.

<sup>1474</sup> Ibid., 6.

<sup>1475</sup> Ibid.

<sup>1476</sup> Ibid.

<sup>1477</sup> Ibid.

‘During our meeting of September 2013, the SC showed me their concerns. All these concerns seem to have been solved by now. The Dutch arrangement of pilotage services is protected. Freedom of services in Dutch ports is a fact, with the exception of the pilotage service. The Dutch government does support the current version of the regulation and it happy that this remains a regulation and will not become a directive, as this allows us to have a separate arrangement for the pilot service. In the regulation the EC is asked to come up with some guidelines in the field of state aid. We are on top of that.’<sup>1478</sup>

### Extra ex post control phase

8<sup>th</sup> October 2014

Transport Council

3<sup>rd</sup> November 2014

Report from the government to the NP with an update on the Transport Council.<sup>1479</sup>

‘The Italian EU president stressed that a specific condition was added that public finance in all cases should be clearly traceable in bookkeeping. Finland and the Netherlands regretted the weakening of transparency rules, which increases the risk of abuse. In a written declaration together with Denmark and Estonia, they will confirm this in the hope that the EP will take this over.’<sup>1480</sup>

27<sup>th</sup> November 2014

Meeting takes between government and NP (I&E Committee)

During this meeting, the Transport Council of 8<sup>th</sup> October is also discussed,<sup>1481</sup> during which the focus is mainly on the attendance of the government at Council meetings.

Mr Bashir (SP, opposition) argues that there is no point in asking the government anything, as it hardly ever attends Council meetings.<sup>1482</sup>

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<sup>1478</sup> Ibid., 9

<sup>1479</sup> Ministerie van Infrastructuur en Milieu, 3<sup>rd</sup> November 2014.

<sup>1480</sup> Ibid.

<sup>1481</sup> TK, 21 501-33, nr. 523, 10<sup>th</sup> February 2015.

<sup>1482</sup> Ibid., 4.

Mr Van Helvert (CDA, opposition) reacts to this and asks the Secretary of State to inform the SC whether she will attend the next Transport Council. He refers thereby to news articles in the press, stating that the Dutch Minister and Secretary of State hardly ever attend Transport Council meetings.<sup>1483</sup>

Mrs Hachchi (D66, opposition) continues to stress further that *De Telegraaf*<sup>1484</sup> published an article discussing the absence of the government during Transport Councils.<sup>1485</sup> The press article mentioned that during the past two years, only once had a Minister or Secretary of State attended a meeting.<sup>1486</sup> Hachchi is worried about this situation:

‘If this is true, then I am worried. Even if civil servants are extremely good, it is a sign that the Netherlands does not consider these meetings to be important. This weakens our negotiation position. I would like to know whether this press article is true and if so, what the reasons have been for the Minister and the Secretary of State not attending more often?’<sup>1487</sup>

With regard to the attendance of the Secretary of State or Minister at the Transport Council, Schultz comments as follows:

‘It is true that we are not always present, but the numbers are not exactly right. The Transport Council takes place four times a year and two times there is an informal Council. The past two years, we have been present four times. Is this important? No, what is important, is the result ... However, I do always keep the time free in my agenda, so Brussels does get my attention. I did also attend one of the informal Councils this year ... As the Netherlands will take over the EU Presidency in 2016, attending the Council meetings will be increasingly important.’<sup>1488</sup>

#### Step 7: Adoption

The legislative file was informally adopted during the EU Presidency on 29<sup>th</sup> June 2016, whereby member states agreed on how to make ports more efficient and

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<sup>1483</sup> Ibid.

<sup>1484</sup> Dutch newspaper, 3<sup>rd</sup> December 2014.

<sup>1485</sup> TK, 21 501-33, nr. 523, 10<sup>th</sup> February 2015, p.6.

<sup>1486</sup> Willems, M. *De Telegraaf*, 3<sup>rd</sup> December 2015.

<sup>1487</sup> TK, 21 501-33, nr. 523, 10 February 2015, p.6.

<sup>1488</sup> Ibid., 14.

competition between them fairer.<sup>1489</sup> Outstanding issues were the social aspects as raised in the EP, but also in some of the NPs (such as the SC), which were discussed in triologue meetings between the Council, EP and EC and eventually included in the Regulation.<sup>1490</sup>

### Concluding remarks

The Ports Regulation was selected as a case to compare to another maritime case (C3a) whereby the NP scrutinised a coalition government which, for its majority, depended on the support of a Eurosceptic party. The Ports Regulation is scrutinised during the Rutte II coalition government (between Liberals and Social Democrats) and evidence was expected to be found of the NP using less formal powers to impact the government's position on this EU file. However, the expected causal process is not reflected in this case in which the NP uses many more formal powers than in the C3a, including more than standard formal powers<sup>1491</sup> such as the use of the parliamentary scrutiny reserve. During various stages of the OLP, the NP tries to impact the government's position and on one occasion it even does so *after* the Council meeting. The use of formal powers is higher than expected and although this case is considered to be non-salient to the electorate based upon the party manifestos of coalition parties in government and the Euro-barometer, the topic of ports is still of major concern for many MPs due to the large economic and employment contribution of different ports in the Netherlands (such as Rotterdam, Amsterdam and the Westerschelde).

Interviews confirmed indeed that MPs felt very strongly about this topic because of its relationship to the internal market, but also its potential impact on labour rights.<sup>1492</sup> De Vries MP (Social Democrat), for example, confirmed that he was lobbied by the trade unions on this file.<sup>1493</sup> In other words, even though the SC scrutinised a coalition

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<sup>1489</sup> <https://felixstowedocker.blogspot.co.uk/2016/06/eu-council-approves-new-port.html><http://english.eu2016.nl/eu-presidency/councils-and-themes/transport-telecommunications-and-energy>

<sup>1490</sup> TK, 21 501 33, nr. 611, 14 July 2016.

<sup>1491</sup> Such as the reception of information and asking question for clarification.

<sup>1492</sup> De Boer, 4<sup>th</sup> June 2015, Pol, 4<sup>th</sup> June 2015, De Vries, 8<sup>th</sup> June 2015.

<sup>1493</sup> 8<sup>th</sup> June 2015.

government in this case which did not depend on the support of a Eurosceptic part, it still increased the use of its formal powers.

Both pair-wise comparisons (C3 to C4 and C3a to C4a) show that the increased use of formal powers cannot necessarily be linked to the dependence of a Eurosceptic party by the government.

### *Measurable impact*

Interviews confirmed that no informal influence had taken place in this file and that the government had not yet taken into account the position of the NP when drafting the EM.<sup>1494</sup>

The NP tried to impact the government in the field of including labour law (not taken over) and the exemption of pilot services (which was also in the government EM), so the government has not included any new parliamentary position into its own position. There has been a weak measurable impact on the government's input into the Council in this case.

### **Salience pair-wise comparison**

This pair-wise comparison examines the salience variable. The partisan composition and Lisbon variables are constant, as C4a will be compared in a pair-wise comparison to another non-salient case which will also take place during the same coalition government after the Lisbon Treaty has come into force. In both cases, the HC decides not to make use of a RO and has no objections to the publication of the legislative proposal with regard to a possible breach of the principle of subsidiarity. The Eurosceptic condition is also absent, as the legislative proposal is published at the end of 2011. And, although the scrutiny of this file continues after David Cameron's Bloomberg speech<sup>1495</sup> (January 2013), the main meetings in the HC take place before the speech<sup>1496</sup> and the Eurosceptic direction of the Conservative party in government, therefore, does not seem to be a possible rival explanation for the outcome of this case.

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<sup>1494</sup> Pol, 4<sup>th</sup> June 2015.

<sup>1495</sup> This speech is considered to be the start of a more Eurosceptic tone within the Conservative party.

<sup>1496</sup> From January 2013, the HC no longer discusses the case during any scrutiny meetings.

C5a is selected on the salient condition (it deals with funding) which will be compared to a non-salient case (C6a<sup>1497</sup>) and is dealt with by the same government department (DEFRA). This again, decreases any chances of rival explanations, as the only condition that varies in the pair-wise comparison is the salience of the case.

The salient case (C5a) is considered to be of salience since although it concerns a file dealing with fisheries, which in previous cases has been a non-salient file with regard to the electorate, this file deals with funding for projects creating jobs and the development of economies in coastal areas. This aspect of the fisheries is considered to be of particular interest, especially for those MPs representing constituencies depending on fisheries, such as Scotland, Cornwall and Devon. Funding is part of the party manifestos of the Conservatives<sup>1498</sup> and Labour<sup>1499</sup> and, the manner in which the EU's money is spent is also part of the Liberal Democrat national party manifesto.<sup>1500</sup> The EMFF gives funding to economically support coastal communities<sup>1501</sup> and economic development is one the major concerns in the Euro-barometer of 2011.<sup>1502</sup>

### **Case 5A: The draft regulation regarding the European Maritime and Fisheries Fund (EMFF) 2014-2020 (COM(2011)804<sup>1503</sup>)**

#### Party Policy Positions

Although most political parties like the possibility of receiving funding for their regions, possible disagreements are expected to be found between the political parties in government and between the government and the NP. The case deals with an EC proposal to allocate funding for actions in the member states dealing with the support of the overall CFP and for the first time it would also include the EU integrated Maritime Policy. These include actions such as maritime spatial planning and integrated coastal zone management. Different EU political parties (SNP, the Conservatives and UKIP) argue that these are topics that should be dealt with at a national level, while other parties are of the opinion that the EU is the right level to deal with them.<sup>1504</sup> The Cameron coalition wanted to see a reduction in the EU budget, and this current Fund

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<sup>1497</sup> This is the same case as used in C1A, as all necessary conditions to be present and absent correspond to C1A.

<sup>1498</sup> The Conservative Manifesto 2010.

<sup>1499</sup> The Labour Party Manifesto 2010.

<sup>1500</sup> Liberal Democrat Manifesto 2010, p.67.

<sup>1501</sup> [http://ec.europa.eu/fisheries/cfp/emff/index\\_en.htm](http://ec.europa.eu/fisheries/cfp/emff/index_en.htm)

<sup>1502</sup> Standard Euro-barometer, 76, annex question 7.

<sup>1503</sup> [http://eur-lex.europa.eu/procedure/EN/2011\\_380](http://eur-lex.europa.eu/procedure/EN/2011_380)

<sup>1504</sup> HC ESC, 54th Report, 1<sup>st</sup> February 2012.



lead in these areas, which could lead to cutting across existing national policy and implementation.<sup>1508</sup>

DEFRA will consult industry and other stakeholders on this issue and will publish an IA on this.

1<sup>st</sup> February 2012

Meeting ESC: Discussion EMFF.

The Committee considers this topic to be important because it provides funding. The ESC.

‘... raises questions not only about the desirability of the Commission involving itself in certain areas of the Integrated Maritime Policy best left to Member States, but also about the extent to which the proposal lacks a certain focus and the priority to be given to the different activities covered by it, including in particular reform of the Common Fisheries Policy as opposed (say) to support for aquaculture ...’<sup>1509</sup>

#### Step 4: First ex post control phase

9<sup>th</sup> October 2012

Letter from government<sup>1510</sup> to NP.

In the letter, Minister Benyon indicates that the EU Presidency hopes to find a partial agreement on this proposal during the Council meeting of 22<sup>nd</sup> and 23<sup>rd</sup> October 2012. It therefore asks the ESC to lift the scrutiny reserve in advance of this meeting.

The ESC sends a reply to the government in which it indicates that until further information is received, for example, the reception of the IA, it cannot lift the scrutiny reserve (use of formal powers).<sup>1511</sup>

22<sup>nd</sup> October 2012

Letter from government to NP

In this letter, the Minister mentioned that indeed a partial agreement had been reached, covering all but the management aspects of the proposal.<sup>1512</sup> The Minister writes that

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<sup>1508</sup> Ibid.

<sup>1509</sup> HC ESC, 54th Report 1<sup>st</sup> February 2012.

<sup>1510</sup> HC ESC, 19th Report, 7<sup>th</sup> November 2012.

<sup>1511</sup> Ibid.

<sup>1512</sup> Ibid.

‘... [F]rom a UK perspective, the agreement was a positive one, and that, working with like-minded Member States and in close consultation with the Commission, it had seen possible to influence the text in line with the approach the Government had previously set out.’<sup>1513</sup>

The Minister says furthermore that he had to override the Parliamentary scrutiny reserve and support the general approach of the agreement. If he had not done so, it would have had no influence on the outcome. There were not enough member states to create a blocking minority.<sup>1514</sup> The UK played a decisive role in the negotiations and the best deal was reached during this meeting.<sup>1515</sup> This is a clear example of the government undermining the role of the HC and it allocates itself a role to act as a trustee in this occasion.

7<sup>th</sup> November 2012

Meeting ESC: discussion EMFF.

With regard to the Minister overriding the scrutiny reserve, the Committee is of the opinion that the actual agreement does not seem as good as the Minister indicated. The ESC argues in particular that

‘... [T]he overall budgetary provision for 2014-2020 remains to be decided; that no agreement was reached on the crucial question of how the funds would be allocated between Member States; that funds will still be available, albeit under strict conditions, for both the temporary and permanent cessation of fishing, and modernisation, to which the UK was previously opposed; and that it remains unclear how far the Government's concerns over the extent to which the Integrated Maritime Policy might impinge on areas which the UK believed were better carried out by Member States have been met.’<sup>1516</sup>

For that reason, the ESC decides to forward the document to the European Committee A.

#### Step 5: Second ex ante influence phase

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<sup>1513</sup> Ibid.

<sup>1514</sup> Only Belgium, Germany, Lithuania and Malta voted against the proposal.

<sup>1515</sup> HC ESC19th Report, 7<sup>th</sup> November 2012.

<sup>1516</sup> Ibid.

26<sup>th</sup> November 2012

Letter from government to HC, including the IA.<sup>1517</sup>

8<sup>th</sup> January 2013

Meeting of European Committee A<sup>1518</sup> with Minister Richard Benyon.<sup>1519</sup> During this meeting MPs express their views on the EMFF for the first time (first parliamentary position).

Mr Tom Harris MP (Labour, opposition party), asks the Minister if he agrees that the partial agreement reached during the October Council meeting is a weak one. Harris also queries plans for extra European funding for improving fishing boat engines. He argues:

‘... [W]hy has the partial general approach, for which he [the Minister] voted, failed to make fleet capacity assessments mandatory for all financial aid for fishing vessels? I do not want to be accused of being a luddite, but I do not believe that technological developments in fishing inevitably lead to an increase in the fishing power of the fleets—it is not a one-way street.’<sup>1520</sup>

Benyon responded that when working together with all those other EU member states, you cannot get everything you want. With regard to the Harris’ specific point about engine replacement, he says:

‘... [E]ngines can be replaced to assist efforts by the fishing industry to combat climate change. Support for new engines can be granted only in those sectors in balance with fishing opportunities available—that means fishing sustainably. Replacement engines will be subject to physical inspection and testing to ensure that they do not exceed the new threshold, and I hope that that addresses his point about under-declaration.’<sup>1521</sup>

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<sup>1517</sup> HC ESC, 22<sup>nd</sup> Report of Session 2010-2012, 5/12/2012.

<sup>1518</sup> For more information on the composition and structure of the European Committee A, see Appendix III.

<sup>1519</sup> European Committee A, 7.01.2013.

<sup>1520</sup> Ibid.

<sup>1521</sup> Ibid.

Eilidh Whiteford (SNP, opposition party) asks the Minister about the EMFF and the matter of ‘young entrants’.<sup>1522</sup>

Benyon assures Whiteford that several member states, including the UK, have raised the issue of including young fishermen in the fund.<sup>1523</sup>

Michael Connarty (Labour, opposition party) asks about the discarding of fish. Benyon shares his concern and argues that this issue is a priority to all parties.

‘... DEFRA has been working with colleagues around the UK to try and support small projects—and some quite large projects—that are seeing dramatic reductions in discards. There will be practically zero cod discards for vessels in the North Sea in the catch quota scheme ...’<sup>1524</sup>

Sheryll Murray MP (Conservative, coalition partner in government) congratulates the Minister on his achievements during the Council negotiations.

She asks about fleet measures and whether the Minister intends to detach the fixed quota allocations of any decommissioned vessels, perhaps utilising them for the under 10-meter fleet. She seeks to know if otherwise the fund will be used to introduce safety measures (for example, secure funding for fishermen in small fishing vessels).<sup>1525</sup>

Benyon replied that decommissioning was not always done in the best way, but under the current proposals, abuse is less likely to happen.

‘... I believe, and I know that my Hon. Friend agrees, that fishing opportunity quota is a national resource, and where it is not being used, it should be used. That is what has driven us to try to find extra support for the under 10-metre sector from the larger fleet’s unused quota ...’<sup>1526</sup>

He promises that he will intervene when it becomes about helping smaller fishing communities to keep them alive.

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<sup>1522</sup> Ibid.

<sup>1523</sup> Ibid.

<sup>1524</sup> European Committee A, 8<sup>th</sup> January 2013.

<sup>1525</sup> Ibid.

<sup>1526</sup> Ibid.

‘... This is not a free market; it is an allocation of a national resource and we have to be smart about how we use it, but if opportunities such as this arise where we can allocate opportunity for people who we believe are particularly hard-pressed, hanging on by their fingernails, I will not be afraid to do so.’<sup>1527</sup>

Michael Connarty MP (Labour, opposition party) takes the floor again and argues that in his letter of 26<sup>th</sup> November 2012, he asked:

‘... [W]ill the Government argue for funding to replace that lost profitability during the period in which discards are eradicated, because I think that is what the public really want? They want to see us doing something through the European Union to get rid of discards—we have little wriggle room because it has total competence in this field—without driving people out of the industry ...’<sup>1528</sup>

Benyon clarifies that DEFRA is working on creating new supply chains that will deal with the fish that will be landed. DEFRA is working with companies, such as Seafish, to ensure being ahead of the game, and understands the impact which are beginning to be imposed on these fishermen.<sup>1529</sup> Benyon states:

‘What we want to achieve is good fisheries management: killing fewer fish but landing more. I hope we are moving towards what the public wants, but in a practical and achievable way and working with the industry rather than imposing yet another top-down control, in addition to those to which it has been subjected for much too long.’<sup>1530</sup>

Benyon continues by defending his overruling of the scrutiny reserve during the October Council meeting and asks the MPs to back the motion overall.

‘I hope that knowing that 90% of the EMFF, the new fund, will go towards sustainability issues will encourage Opposition Members, as well as Members on the Government side of the Committee, to support the motion. A small—very small—amount of the remainder will go towards issues such

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<sup>1527</sup> Ibid.

<sup>1528</sup> Ibid.

<sup>1529</sup> European Committee A, 8<sup>th</sup> January 2013.

<sup>1530</sup> Ibid.

as engine replacement, but I have already described the caveats that I think move this in the right direction.’<sup>1531</sup>

Benyon shows hereby that he is aware of the concerns in the NP. Mr Harris MP asked Benyon whether he agrees that the partial agreement reached is a weak one. If he does, then Harris is not sure whether he can ask parliament to pass the motion before them today.<sup>1532</sup>

Benyon replies by asking:

‘Should we have been outside the room, not taking part in the discussions and voting against the proposals, which are a dramatic change from the old European fisheries fund to a new one, in which the kind of fears that he has about the old one simply cannot exist?’<sup>1533</sup>

Harris replies:

‘I am very happy to correct the record. If the Minister checks *Hansard*, he will see that I did not suggest that he got the best deal possible. I said that he went into the negotiations in good faith. I do not believe that the outcome of the negotiations is good enough for the Committee to support. It is as simple as that. We need to draw a line and say that the negotiations are not a good deal for the whole of the EU fishing industry. I do not think that the measure is worthy of the Committee’s support and I ask Members to vote against it.’<sup>1534</sup>

This is an interesting intervention by a member of the opposition who has been very explicit in criticising the deal reached in the Council and asks for other opposition members to not support the government’s motion. After all, the opposition fails (with 8 in favour and 5 against), but the committee is clearly divided. There are real attempts to impact the Minister’s position, as on various occasions the MPs show their own opinions, which are issues not covered by the governmental EM (fleet capacity and fixed quota allocations) and ask the Minister for his position and what he will do to ensure this.

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<sup>1531</sup> Ibid.

<sup>1532</sup> Ibid.

<sup>1533</sup> Ibid.

<sup>1534</sup> Ibid.

## Step 6: Second ex post control phase

28<sup>th</sup> January 2013

Council meeting (no feedback)

## Step 7: Adoption

6<sup>th</sup> May 2014

Adoption of the EMFF. After a initial disagreements about the budget, Member States have now agreed to strengthen the funding for aquaculture at sea and inland and the new EMFF will provide support for better selectivity, innovation, control and data collection.<sup>1535</sup> It also refers to measures to eliminate discarding of fish.<sup>1536</sup> Young fishermen are allowed to get extra financial support, as also asked by UK MPs.<sup>1537</sup>

## Concluding remarks

More evidence of increased parliamentary activity during the scrutiny of this case was expected to be found as a consequence of its high salience (like the involvement of the European Committee A and the use of the scrutiny reserve). Although not during every stage, there was indeed evidence found of MPs using more than their standard formal powers and trying to impact the government's position (part of the HC opposed supporting the government). Different interviewees indeed confirmed having picked this topic as one on which to increase scrutiny, as the topic was an important one.<sup>1538</sup> The intervention of Connarty MP, for example, during the European Committee A meeting shows that the public has an opinion about this issue. This corresponds to the theoretical argument of representing the wishes of the electorate which could get him re-elected and MPs normally select topics that are of high importance to their voters.<sup>1539</sup>

This corresponds to the theoretical argument suggesting a link between the importance of a topic and increased parliamentary activity and impact.

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<sup>1535</sup> Council Press Release, 3193rd Council meeting, Agriculture and Fisheries, Luxembourg, 22 and 23<sup>rd</sup> October, 2012.

<sup>1536</sup> European Commission Press Release, Brussels 23<sup>rd</sup> October 2013.

<sup>1537</sup> TK, 32 201, 4<sup>th</sup> April 2014.

<sup>1538</sup> Rees-Mogg MP, 15<sup>th</sup> June 2015, Smith MP, 3<sup>rd</sup> June 2015, Hopkins, 30<sup>th</sup> June 2015.

<sup>1539</sup> Auel & Raunio, 2012a:20.

### *Measurable impact*

Even if the government neglected some of these powers (such as the scrutiny reserve) and impact appears weak after all, it can be concluded that salience is indeed a condition, making NPs use more than their ordinary formal powers which were responded to by the government.

Interviewees confirmed that no informal influence had taken place and that the initial position of the government had been drafted solely based upon the views of the government coalition.<sup>1540</sup>

In other words, a NP, such as the HC, which forms part of a trusteeship can, when the topic is salient to the government or to the NP and its constituents, rise above itself and act as a delegatory NP. This implies increased governmental activities as well. In conclusion, even though the measurable impact is not visible, the increased governmental response to the HC shows that the use of formal powers by the NP certainly does make a difference.

### **Case 6A: The draft regulation establishing a long-term plan for cod stocks and the fisheries exploiting those stocks (COM(2012)21<sup>1541</sup>)**

#### Background of the proposal

Since the introduction of the conservation policy into the CFP in 1983, in particular the stocks of cod in EU waters have led to levels of concern. As a consequence, the EC published a new regulation in order to ensure that cod stocks are exploited on the basis of the maximum sustainable yield and, in order to reach these levels, the EC suggests the introduction of rules for establishing the total allowable catch (TAC) and maximum fishing effort.<sup>1542</sup> This proposal replaces the previous regulation of 2008 regarding cod stocks.

#### Step 1: Publication

31<sup>st</sup> January 2012

Publication of EU legislative file.

#### Step 2: Subsidiarity deadline: 27<sup>th</sup> March 2012

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<sup>1540</sup> Sowrey, 6<sup>th</sup> July 2015, Benyon, 25<sup>th</sup> June 2015.

<sup>1541</sup> <http://eur-lex.europa.eu/legal-content/EN/HIS/?uri=celex:52012AE0835>

<sup>1542</sup> HC ESC 64<sup>th</sup> Report, 25<sup>th</sup> April 2012.

Just like all other EU NPs, the HC has no objections against the publication of this EU legislative proposal.

Step 3: First ex ante influence phase.

20<sup>th</sup> February 2012                      Publication of the governmental EM (initial position).<sup>1543</sup>

In the EM, Richard Benyon describes that his officials are examining the individual elements of the EC proposal to make sure that the topic can be described as ‘non-essential’, as it is similar to the recent Multi-annual Framework for West of Scotland herring.<sup>1544</sup>

However, according to DEFRA, the UK was anxious, following the problems relating to days at sea which had arisen in the Fisheries Council in December 2011, to see key changes made in the cod recovery plan, and was continuing to press the Commission to bring these forward. DEFRA shows in its EM that it agrees with the proposal that it is appropriate to adjust the biological reference levels, fishing mortality rates and spawning stocks biomass in accordance with scientific advice to be dealt with in a delegated act. However, according to the government, giving the EU the power to adjust fishing effort in certain circumstances would be an essential element of a recovery plan, and therefore not eligible for a delegated act.<sup>1545</sup>

25<sup>th</sup> April 2012                      ESC meeting: discussion Cod Stocks

The ESC sees a parallel with the recently discussed recovery plan for the West of Scotland herring, on which it reported. For that reason it draws the current draft regulation to the attention of the HC, but based upon what the Minister has said it clears the scrutiny for this document.<sup>1546</sup> The ESC does not want to impact the government’s position.

11<sup>th</sup> June 2013                      Adoption of regulation in the first reading.  
Member States agree to set up multi-annual

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<sup>1543</sup> DEFRA Explanatory Memorandum, 20<sup>th</sup> February 2012, 13745/12.

<sup>1544</sup> HC ESC, 64<sup>th</sup> Report, 25<sup>th</sup> April 2012.

<sup>1545</sup> Ibid.

<sup>1546</sup> Ibid.

management plans to check the stocks in the future.

### Concluding remarks

There is a clear difference in the amount of powers used in C5a (European Fisheries and Maritime Fund) compared to those used in C6a (Cod recovery).

In the non-salient case, the NP does not attempt at all to impact the government and hardly uses any formal powers (it limits itself to receiving information on this file). In the salient case, C5a, the ESC has several meetings and decides to include the European Committee A which has a meeting with Minister Benyon in which it clearly tries to impact the position of the government (by expressing its own opinion). In both cases the government consists of a coalition between Conservatives and Liberal Democrats, so this condition is considered a non-intervening variable. It is an obvious example wherein salience is the one varying condition in this case, determining a different use of formal powers by the HC.

### *Measurable impact*

Both C5a and C6a are in line with the theoretical argument linking the use of formal powers to increased parliamentary activities and their potential impact.

The only varying condition is the salience one and therefore based upon this evidence my hypothesis can be confirmed after the process-tracing analysis of this case. The HC does not intend to have an impact and there is no form of impact visible in this case. Interviews have confirmed that no use of informal influence has taken place in this case and that the government followed its position when writing its EM without anticipating the views of the NP.<sup>1547</sup>

### **The Lisbon provisions pair-wise comparison**

This last shadow pair-wise comparison deals with the presence and absence of the condition of the use of a RO to the EC as introduced by the Lisbon Treaty to be applied by a NP when it objects to the publication of an EU proposal when it considers that it

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<sup>1547</sup> Benyon, 25<sup>th</sup> June 2015.

conflicts with the principle of subsidiarity. The multi-party and salience variables are constant for this case and the Eurosceptic variable is absent.

The multi-party variable is constant, as in the pair wise comparison C7a is compared to a case where the NP does not make use of a RO (C8a) during the scrutiny of the same coalition cabinet of Liberals and Social Democrats. The Eurosceptic variable is absent, as the scrutiny of the case takes place during the Rutte II cabinet which consists of the Liberals and Social Democrats, both pro-European parties, and the cabinet no longer depends upon the Eurosceptic PVV<sup>1548</sup> as it did during the Rutte I cabinet.

The salience variable is constant, as both the legislative file in C7a and C8a are considered to be of the same policy area (European Railways) and of similar importance to the public. European Railways can be considered to be non-salient to the electorate but salient to legislators, as the topic of the Railways is not one that appears in any of the party manifestos of the Rutte II cabinet<sup>1549</sup>, nor is it a concern of the citizens as shown in the Euro-barometer of 2012.<sup>1550</sup> However, it is a topic dealing with issues, such as public procurement and liberalisation, which are close to the heart of both coalition and opposition parties. It is therefore expected that although this is not potentially a topic on which many votes can be won, it is expected that the NP will increase the use of its formal powers in this case. In addition, it is a case on which the Dutch parliament decides to send a RO to the EC.

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<sup>1548</sup> Party for Freedom.

<sup>1549</sup> Social Democrats Party manifesto: *PvdA, Nederland: Sterker en Socialer*, 2012 and the Liberal Party Manifesto: *VVD, Niet doorschuiven, maar aanpakken*, 2012.

<sup>1550</sup> Standard Euro-barometer 77, July 2012 and Standard Euro-barometer 78, December 2012, questions 7 (annex).

## Case 7a: The EU Draft Regulation regarding the opening of the market for domestic passenger transport services by rail (COM(2013)0028)<sup>1551</sup>

### Policy positions

The issue regarding the extent to which the procurement of railways should be either publicly or privately dealt with has been one that received a lot of coverage during the Nineties when the Dutch Railways were privatised.<sup>1552</sup> This led to a sizeable division between the right wing parties (Liberals, Christian Democrats and Christian Union) in favour of the liberalisation and the left wing parties (Social Democrats, Socialist Party and Green Left) against privatisation. This division continues during the debate of this EU package. Left wing parties warn against the ‘destruction’ of the Dutch Railway after privatisation, whereas the right wing parties welcome the new EU proposals.<sup>1553</sup> Interviews confirm that the different political parties had different opinions about the extent to which the railways should be liberalised at EU level.<sup>1554</sup>

When speaking to the government representative working on this file, she confirmed the disparities in views on the Fourth Railway Package between the coalition partners (the Liberals and the Social Democrats).

‘The VVD was happy with opening the market, while the PvdA wanted the railways to remain a public service and argued that the EU legislative proposal was opposing the principle for subsidiarity.’<sup>1555</sup>

She also confirmed that a divided government is more dependent upon the support of the NP as it needs to come up with a compromise and requires the support of the NP in order to gain backing for the compromise.<sup>1556</sup> Despite the different views by coalition partners on the extent to which the railways should open up to the market, the Transport representative of the Dutch Permanent Representation in Brussels argued:

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<sup>1551</sup> See Eur-lex: <http://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1436782729554&uri=CELEX:52013PC0028>

<sup>1552</sup> WRR, *Dertig jaar privatisering, verzelfstandiging en marktwerking*, Amsterdam University Press, Amsterdam, 2012.

<sup>1553</sup> Spoorpro.nl, ‘Mansveld: liberalisering spoor niet van tafel’, 7<sup>th</sup> March 2013.

<sup>1554</sup> Van Dongen, 3<sup>rd</sup> June 2015, De Boer MP, 4<sup>th</sup> June 2015, Hoogland MP, 4<sup>th</sup> June 2015, Hartkamp, 7<sup>th</sup> July 2015, Kisters, 19<sup>th</sup> May 2015.

<sup>1555</sup> Van Dongen, 3<sup>rd</sup> June, 2015.

<sup>1556</sup> Ibid.

‘The coalition-partners have different views on liberalisation of the Railways, but they do respect each other’s views. They will find a compromise and will speak publicly with one voice. We are used to having coalitions and looking for compromises is part of the Dutch genes.’<sup>1557</sup>

For more information on the views of political parties in the Netherlands on the European railways, see Chapter 6 (table 12).

#### Background of the proposal:

The Fourth Railway Package suggests proposals to further open up the market for the railways, including arranging the governance of the European railways and their technical operation. The Fourth Railway Package consists of various individual proposals dealing with governance, the opening up of domestic passenger markets, and interoperability and safety.<sup>1558</sup> This case only looks at the scrutiny of the draft regulation dealing with the market for railway passengers.

#### Step 1:

Publication 30<sup>th</sup> January 2013

#### Step 2:

The NPs have eight weeks to respond to the EC with a RO in that case that they feel the EU proposal is conflicting with the principle of subsidiarity. The chair of the EAC sends a letter to the SC<sup>1559</sup> on 14<sup>th</sup> February 2013<sup>1560</sup> in which it seeks parliamentary support to send an objection to the EC. It argues that this topic should be dealt with by the national member states. The majority of the NP supports the request from the EAC and a RO is sent to the EC (both the SC and the Dutch Senat<sup>1561</sup> sent a RO to the EC).<sup>1562</sup>

#### Step 3: Ex ante influence phase

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<sup>1557</sup> Kisters, 19<sup>th</sup> May 2015.

<sup>1558</sup> TK, 33 546, Nr. 3, 1<sup>st</sup> March 2013, par. 2.

<sup>1559</sup> TK, 33 546, Nr. 1, 14<sup>th</sup> February 2013.

<sup>1560</sup> The ESC requests the SC adopt a motion, proposed by MP Hoogland (Social Democrat), to send a RO to the EC regarding a negative subsidiarity opinion.

<sup>1561</sup> The First Chamber.

<sup>1562</sup> Letter SC to the European Commission, 26<sup>th</sup> March 2013 (courtesy translation); next to the Dutch Parliament, the Lithuanian, Austrian, Luxembourgian and Swedish parliament sent ROs to the EC which were not enough to raise a yellow card.

19<sup>th</sup> February 2013

The Secretary of State of the Department for I&E sends a letter to the chair of the SC to inform parliament on topics that will be discussed during the Transport Council of 11<sup>th</sup> March 2013.<sup>1563</sup> This includes the Fourth Railway Package. The position of the Dutch government still needs to be determined<sup>1564</sup> (in other words, there should be scope to impact the government's input into the Council meeting when using parliamentary influence mechanisms before the Council meeting).

The Secretary of State explained furthermore, that the Dutch government in principle supports the idea of increasing the efficacy of European train passengers, but it is unsure as to what extent the EC needs to take control over this dossier. The government thereby seems to carefully support the decision of the parliament to have sent a RO.<sup>1565</sup>

*Explanatory memorandum*

1<sup>st</sup> March 2013

The Minister for Foreign Affairs sends a letter to the SC (plenary) including the EM about the Fourth Railway Package.<sup>1566</sup>

In the EM (the first governmental position), the Dutch government has an interim negative subsidiarity position in the field of the internal market for the railways.<sup>1567</sup> The Dutch government argues that at the moment it does not see any added value in opening up the railway to the European market.<sup>1568</sup> However, its final judgement will depend upon the publication of the IA.<sup>1569</sup> The government furthermore has a negative opinion about the proportionality of the section on the public procurement of public services

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<sup>1563</sup> TK, 21 501-33, nr. 407, 19<sup>th</sup> February 2013.

<sup>1564</sup> Ibid, par. 'spoorvervoer'.

<sup>1565</sup> Ibid, par. 'spoorvervoer'.

<sup>1566</sup> TK, 33 546, nr. 3, 1<sup>st</sup> March 2013.

<sup>1567</sup> Ibid., 5.

<sup>1568</sup> Ibid.

<sup>1569</sup> Ibid., 4.

contracts. The proportionality judgement on all other draft regulations is positive.<sup>1570</sup> However, again, a final judgement will be made after the IA.<sup>1571</sup>

The Railway Package suggests that all contracts will be publicly procured from 2023.<sup>1572</sup> The government will withhold its opinion during the negotiations in the Council until the IA has come out (in other words, it is not waiting for the parliamentary position to form its opinions).<sup>1573</sup>

At this stage, however, the Dutch government can already foresee some issues which it is not happy about, particularly in the field of public service contracts.<sup>1574</sup> The new proposal does not take into account the current public service contracts. Besides, with regard to opening the market to passenger transport, the Dutch government is not sure whether 2023 is an appropriate date.<sup>1575</sup> It has from the start indicated how important it is to retain the freedom of national choice in case of the public procurement of national railway issues. This is in line with the adopted motion from the SC (regarding the negative subsidiarity opinion).<sup>1576</sup>

#### *Letter Prorail*

5<sup>th</sup> March 2013

ProRail<sup>1577</sup> responds to a request from the SC to judge the European Fourth Railway Package and the implications for railways in the Netherlands.<sup>1578</sup> ProRail writes in its letter that the EC proposals in principle match well with the Dutch railway network and for that reason seem feasible. However, it is important to keep checking whether the developments of these proposals are in line with the possibilities of cooperation between

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<sup>1570</sup> The Fourth Railway Package consists of different pieces of legislative proposal (Railway Agency, Passenger Transport, a single European Railway area, Interoperability and Safety).

<sup>1571</sup> TK, 33 546, nr.3, 1<sup>st</sup> March 2013, p.4.

<sup>1572</sup> *Ibid.*, 9.

<sup>1573</sup> *Ibid.*

<sup>1574</sup> *Ibid.*

<sup>1575</sup> *Ibid.*

<sup>1576</sup> *Ibid.* 9.

<sup>1577</sup> Organisation responsible for the railway network in the Netherlands.

<sup>1578</sup> ProRail, letter to member of the committee for I&E, 5<sup>th</sup> March 2013.

different parties and between different countries.<sup>1579</sup>

*The SC expresses its opinion*

7<sup>th</sup> March 2013

Meeting I&E Committee<sup>1580</sup> and the EAC with the I&E Minister, Mrs Mansveld (social democrat).<sup>1581</sup>  
First expressions of parliamentary views.

The PvdA<sup>1582</sup> fraction (coalition partner) shows concerns about the Fourth Railway Package, but indicates that it will wait for the IA before it makes further judgement.<sup>1583</sup> However, with regard to the draft regulation on free passenger transport, it is sceptical. This regulation will have a direct impact on Dutch railway traffic and will have a negative impact on the passengers. Besides, it should be up to the member state to decide on these issues, as it is a public service. That is why it put forward a motion to the plenary in order to submit a RO to the EC.<sup>1584</sup>

The PVV<sup>1585</sup> (opposition) supports the PvdA and argues indeed that the Dutch government should focus on the country's sovereignty.<sup>1586</sup>

The reasons for making a case for the protection of this public service in the opinion of Social Democrats has a political dimension (it is not so much because of anti-EU ideology that it wants to keep this topic in national hands, but it wants to protect the public service). For the Party for Freedom, on the contrary, the motive is Europeanised. It does not mind the opening of the public service to the market, but does not approve if it this is done by the EC. This is an interesting mishmash of political and European arguments, which causes the opposition and coalition party to stand together on this issue.

However, the variation in opinions continues to vary across both coalition parties and opposition parties.

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<sup>1579</sup> Ibid.

<sup>1580</sup> See appendix III for more information about this committee.

<sup>1581</sup> TK, 33 546, nr. 9, determined on 11<sup>th</sup> April 2013.

<sup>1582</sup> Social Democrats

<sup>1583</sup> TK, 33 546, nr. 9, determined on 11<sup>th</sup> April 2013, p.2.

<sup>1584</sup> Ibid. 2.

<sup>1585</sup> Party for Freedom (Euro sceptic and anti-Islam party)

<sup>1586</sup> Ibid., 3

GL ('Groen links')<sup>1587</sup> and the SP<sup>1588</sup>, two other opposition parties, also oppose the EU proposals in their current form and support the need for a RO.<sup>1589</sup> GL, a pro-European party but sceptical about liberalisation, does this most likely for political reasons whereas the SP is as such both anti-liberalisation and very sceptical about the EU<sup>1590</sup>.

However, the D66<sup>1591</sup> party (opposition) argues that although this is an important package and it is crucial that member states adapt their systems to those of surrounding countries, it wants to hold off on its final position on this file until it has seen the IA.<sup>1592</sup>

D66 has no objections either against opening up the market or against the Europeanisation of the railways<sup>1593</sup>, matching its policy position in this field (see table 12).

D66 furthermore asked the Minister that it be kept informed on what other member states do. It wants to know what their positions are in this field and whether they will publish IAs as well.<sup>1594</sup> D66 would appreciate being kept informed well on time on all developments including discussions in Council meetings.<sup>1595</sup> Again, rather than trying to impact the political (to what extent does the internal market reach) or European (has the EU got anything to say about this) contents of the proposal, D66 is holding the government to account *ex ante* by giving it instructions on what it is expected to do after the Council meeting. The opposition thereby consolidates the delegatory relationship between the government and the parliament. The government is given clear instructions and cannot just follow its own judgement in this field. However, as D66 has not opposed the EU as such to deal with this legislative proposal, but a majority in the NP has, it is likely that D66 uses its formal powers as a consequence of the *salience* of the topic and Lisbon provisions in that case would not play a role for this party. Interviewees, who argued that the RO was just a tool to check the subsidiarity principle, confirm this. The NP has got many other tools that it uses for a salient topic.<sup>1596</sup>

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<sup>1587</sup> The Greens.

<sup>1588</sup> Socialist Party.

<sup>1589</sup> TK, 33 546, nr.9, 11<sup>th</sup> April 2013, p.6-8.

<sup>1590</sup> Website of *Parlement en Politiek*:

[http://www.parlement.com/id/vh8lnhrouwy6/socialistische\\_partij\\_sp](http://www.parlement.com/id/vh8lnhrouwy6/socialistische_partij_sp)

<sup>1591</sup> Democratic Party 1966.

<sup>1592</sup> TK, 33 546, nr. 9, 11<sup>th</sup> April 2013, p.4.

<sup>1593</sup> *Ibid.*, 5.

<sup>1594</sup> *Ibid.*

<sup>1595</sup> *Ibid.*

<sup>1596</sup> Van Dongen, 3<sup>rd</sup> June 2015, Koolmees, 6<sup>th</sup> July 2015.

The VVD<sup>1597</sup> (part of the coalition) MP also speaks out in favour of an internal market for railways, as it will improve the situation of passengers.<sup>1598</sup> This is in line with the party's position on liberalisation (see table 12, Chapter 6). However, according to the VVD, there should be a strict separation between those who manage the railways and those who transport passengers.<sup>1599</sup> This separation is absent in the current proposal but should be there, as otherwise it will not lead to a proper internal railway market. The VVD would like the Minister to promote this in Brussels.<sup>1600</sup> It also argues that the parliament needs to be fully informed on this dossier (this is part of the scrutiny reserve).<sup>1601</sup>

Minister Mansveld (PvdA) responds by explaining the different parts of the Railway Package and argues that all the questions raised by MPs will be included in the IA. The government will keep the SC informed and will discuss all relevant issues before all next Council meeting.<sup>1602</sup> The Minister does ask for the parliamentary position before she enters into negotiations. However, she also asks to give her the freedom to discuss and participate in the debates in the Council.<sup>1603</sup>

The Minister basically asks for the trust of the NP to have freedom during the negotiations, but with parliament's input in mind. In other words, the Minister asks for the relationship with the parliament to be a delegatory one, but when necessary it might have to be a trustee one.

The PvdA (coalition partner) reminds the Minister of the RO sent by the SC to the EC. The Finnish NP agrees with the Dutch parliament.<sup>1604</sup>

The D66 (opposition) argues that it will introduce a motion to receive regular information updates from the Minister in a certain order and discuss particular types of issues in a certain order. The VVD (coalition partner) agrees with D66.<sup>1605</sup>

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<sup>1597</sup> Liberal Party.

<sup>1598</sup> TK, 33 546, nr.9, 11<sup>th</sup> April 2013, p.5.

<sup>1599</sup> Ibid.

<sup>1600</sup> Ibid.

<sup>1601</sup> Ibid., 6.

<sup>1602</sup> Ibid., 13-14.

<sup>1603</sup> Ibid.

<sup>1604</sup> Ibid., 15.

<sup>1605</sup> Ibid.

GL<sup>1606</sup> (opposition) is of the opinion that the Dutch government must continue opposing the proposals for an internal railway market in Brussels. CDA (opposition) opposes a yellow card, suggesting that there will not be enough support for this in other NPs.<sup>1607</sup>

The parliament continues to be divided on this issue and gives different types of instructions to the government. When looking back at the original policy positions of the governmental parties (see table 12, Chapter 6), it is likely that an equal division of opinions exists within government.

The parliament does not respond to the Minister's request to obtain more freedom during its negotiations, but de facto emphasises the need to be informed by the government during this process.

During this phase, evidence was expected to be found of the NP making use of extra formal powers as a consequence of sending a RO. There are indeed several indications showing increased use of formal powers, such as the insistence on being informed. There is furthermore the use of the RO, the formal power via the EC as laid down in the Lisbon Treaty. There is even a sign of impact in this case, as the Minister shows that the government's position corresponds to that of the NP when it comes to procurement of passengers transport. Although this is a sign that the causal mechanism during this phase has been confirmed (increased salience and increased use of formal powers which are linked to measurable impact), it is not yet clear whether the increased salience is a consequence of the fact that the NP sent a RO. Within parliament both parties that have supported the 'yellow card option' (PvdA, SP, GL) and those that have opposed sending the RO to the EC (CDA, D66) intend to impact the government's position. In other words, even if the majority of the NP had voted against the RO, it is likely that parties would still have tried to impact the government's position in this file. This would explain that the NP intends to impact the position of the government because of its salience. According to Keulemans, EU advisor to the SC, the NP had an obvious influence here. The government position, as exposed in the EM, was temporarily negative. The SC was directly negative by a majority. This convinced the government.<sup>1608</sup>

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<sup>1606</sup> Green Left.

<sup>1607</sup> TK, 33 546, nr.9, 11<sup>th</sup> April 2013, p.16.

<sup>1608</sup> Keulemans, 15<sup>th</sup> June 2015.

‘The NP had influence in this file. After the input of the NP regarding the negative position towards the subsidiarity principle, the government adapted their position to ‘negative’ as well. The coalition deals with a political reality here; a majority in the Chamber considers this file to be a breach of subsidiarity.’<sup>1609</sup>

#### Step 4: Ex post control phase

11<sup>th</sup> March 2013

Transport Council<sup>1610</sup>

22<sup>nd</sup> March 2013

The Secretary of State I&E, Mrs Schulz, sent a letter to the Chair of the SC to give feedback about discussions had during the Council meeting.<sup>1611</sup> During the negotiations, the Dutch government showed its reservations regarding the Fourth Railway Package.<sup>1612</sup> This is in line with part of the opposition in parliament.

The government’s letter also informed the NP that it had informed the Council to continue including it in this dossier<sup>1613</sup> (reminding the Council of the delegatory relationship with the NP in this file, implying that it is bound by the NP’s formal powers of being supervised (right of information) and of giving input (right of questions and a meeting with a government representative before the Council meeting). This can be considered a warning to the Council that the Dutch government has little freedom to act according to its own judgement on this occasion. If the NP is of the opinion that this topic should be dealt with at national level, it is indirectly a file of which the NP would have wanted to use more powers (domestically, it can directly hold the government to account rather than indirectly after a Council meeting). It is likely that the NP has requested increased levels of information feedback by the government because it feels that this topic should have been one for the national member states to decide upon. The use of the Lisbon provisions and the salience of the topic are thereby pretty inextricably

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<sup>1609</sup> Ibid.

<sup>1610</sup> Press Release, 3229<sup>th</sup> Council meeting Transport, Telecommunications and Energy, Brussels, 11<sup>th</sup> March 2013.

<sup>1611</sup> TK, 501-33, nr. 412, 22<sup>nd</sup> March 2013.

<sup>1612</sup> Ibid.

<sup>1613</sup> Ibid.

bound up with each other. In other words, if the topic were not salient, the NP would not want to deal with it at national level and keep a close eye on it.

The Secretary of State reports that she has informed the Council that the Dutch opinion with regard to the internal market proposal of the Railway Package has so far been negative and that at the moment an IA is being prepared to consider the consequences for the Netherlands. There should be enough space left for Dutch providers in its own market.<sup>1614</sup>

By making clear to the Council to what extent the government is bound to the NP in this case, it could be a way of trying to increase its position in the Council. By showing it has little freedom from its NP in this case, it could try to force the Council to take into account the Dutch wishes. In other words, the Dutch government seems to make use of its parliament's RO to improve its bargaining position in the Council. This corresponds to Kiiver's predictions in his handbook regarding a possible future use of the EWM.<sup>1615</sup> A RO could thereby not only increase the parliamentary impact on the government's EU policy position, but increase the government's impact on Council altogether as well.

16<sup>th</sup> April 2013

NP formally closes the parliamentary scrutiny reserve on the Fourth Railway Package<sup>1616</sup> (with only the PVV<sup>1617</sup> opposing).<sup>1618</sup>

At this stage, it was expected to find that the NP had used extra formal powers to hold its government to account as a consequence of the RO to the EC. In its feedback, the government does show that it is obeying the NP's request to be 'fully informed'. It also shows that in the Council it raises the question of whether public procurement is a national issue. Although this has become the government's main position, its representative and VVD MP in this file do recognise impact by the NP in this field.

'The government did not change its original position, but the liberals agreed to ask to keep public procurement out of the Railway Package and that this should happen at national level. Although the liberals are the bigger party in the coalition, a majority in

<sup>1614</sup> Ibid.

<sup>1615</sup> Kiiver, 2012:144-145.

<sup>1616</sup> TK, 33545, nr. 8, 16<sup>th</sup> April 2013.

<sup>1617</sup> The Eurosceptic Party for Freedom.

<sup>1618</sup> Since the Lisbon Treaty came into force in 2009, the SC obtained a new influence mechanism in the field of EU legislation. It gives the SC a chance to indicate to government that a topic is important to it and that it cannot agree with a proposal before the topic has been discussed in parliament.

the SC was in favour of keeping public procurement in national hands and the coalition needed a majority on this.<sup>1619</sup>

‘The coalition partners did not agree about a free market for passengers in the railways. The Liberals just did not have enough support in the Chamber to get a majority for a free market in this field. The VVD in the coalition was aware of this, which is why it supported PvdA in this field to keep procurement in national hands.’<sup>1620</sup>

Interviews confirm too that because the topic should have been dealt with at national level, in the opinion of the NP, it tightens its scrutiny and reminds the government of its delegatory position whereby it must discuss any developments in this field with the NP.<sup>1621</sup>

#### Step 5: Ex ante influence Phase

22<sup>nd</sup> May 2013

The I&E Minister sent a letter to the Committee I&E (with a reference to the motion) with an agenda of the next Transport Council of 10<sup>th</sup> June 2013).<sup>1622</sup>

5<sup>th</sup> June 2013

Meeting between the I&E Committee, the EAC and the Secretary of State of I&E, Mrs Schulz (VVD).<sup>1623</sup>

During this meeting, the D66 (opposition) requests more information regarding the state of affairs of the Fourth Railway Package.<sup>1624</sup>

The SP (opposition) wants to know if the government has already found other supporters in the EU to stop the proposals.<sup>1625</sup>

The Secretary of State, Mrs Schulz, responds about the Fourth Railway Package that at this stage, there will not yet be a debate about compulsory procurement.<sup>1626</sup> She

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<sup>1619</sup> Van Dongen, 3<sup>rd</sup> June 2015.

<sup>1620</sup> De Boer MP, 4<sup>th</sup> June 2015.

<sup>1621</sup> Van Dongen, 3<sup>rd</sup> June 2015, Hoogland MP, 4<sup>th</sup> June 2015.

<sup>1622</sup> TK, 21-501-33, Nr. 412, 22<sup>nd</sup> May 2013.

<sup>1623</sup> TK, 21 501-33, nr. 430, 17<sup>th</sup> July 2013.

<sup>1624</sup> Ibid., 4.

<sup>1625</sup> Ibid.

<sup>1626</sup> Ibid., 17.



The CDA (opposition) asks to be informed on new developments regarding the Fourth Railway Package, even if the topic is not on the agenda of the next Transport Council.<sup>1634</sup>

The VVD (coalition partner) asks whether the government is prepared to have a discussion with the neighbouring member states about language issues at the railway stations in frontier areas.<sup>1635</sup>

The SP (opposition) also asks for an update regarding the Railway Package, particularly in the field of the single market.<sup>1636</sup>

Just like the previous ex ante influence phase, the opposition parties (of which one, the SP, supported the RO) ask for more information while only one of the coalition partners, the VVD, gives its own opinion with the idea of impacting on the government's position.

Mrs Mansveld responds:

‘So far, we have only talked about the technical part of the Directive. In June 2014 the Council reached an agreement on the interoperability directive. In the next Transport Council, the recast of the security directive will be discussed ... To decide the Dutch position an impact study will take place to decide the consequences for the Dutch market ...

With regard to the language problems in frontier areas, I am obviously willing to speak to our neighbours and with Prorail<sup>1637</sup>. I will inform the SC on any progress in this field.’<sup>1638</sup>

#### Extra ex post control phase

10<sup>th</sup> October 2013

Transport Council takes place.<sup>1639</sup>

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<sup>1634</sup> Ibid. p.5.

<sup>1635</sup> Ibid. p.4.

<sup>1636</sup> Ibid. p.7.

<sup>1637</sup> Authority responsible for the Dutch Railway Network.

<sup>1638</sup> TK, 21 501-33, nr. 441, determined on 29<sup>th</sup> October 2013, p.15.

<sup>1639</sup> Press Release, 3261<sup>st</sup> Council meeting, Transport, Telecommunications and Energy, Transport Items, Brussels, 10<sup>th</sup> October 2013

11<sup>th</sup> November 2013

Letter from government to NP regarding the Fourth Railway Package, including the long-awaited IA.<sup>1640</sup> The NP had agreed to receive the IA before the summer recess on 21<sup>st</sup> June 2013.

From the letter it appears that after the publication of the IA, the Dutch government has a permanent negative view with regard to the proposals relating to the opening up of the market.

‘... We remain of the opinion that the Dutch government should remain in power when it comes to making decisions in the field of procurement of the main Railway Network. A compulsory opening of the market will not automatically improve the quality of the railways ...

The Dutch input is focused on creating a blocking minority in the Council with regard to this specific proposal. If this will not be found, the Dutch government will have an active approach in the discussions to adapt the proposals to the Dutch interests.’<sup>1641</sup>

From the IA it appears that the government supports the opinion of (part of) the NP. According to Keulemans, the EU advisor to the SC, this definite<sup>1642</sup> negative attitude towards opening up the market to railway passengers has been partly influenced by the NP.<sup>1643</sup> This is confirmed by MPs<sup>1644</sup> and government: ‘The SC obviously played a role in this’.<sup>1645</sup>

#### Extra ex ante influence phase

27<sup>th</sup> November 2013

Meeting between the I&E Committee and Minister Mansveld.<sup>1646</sup>

The PvdA (coalition partner) reiterates during this meeting that public transport should remain a public service. It refers hereby to negative experiences in England. Research

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<sup>1640</sup> TK, 33 546, nr. 12, 11<sup>th</sup> November 2013.

<sup>1641</sup> Ibid.

<sup>1642</sup> In its initial position, it showed doubt about this, see the EM: TK, 33 546, *EU Voorstel, het Vierde Spoorpakket (2013)28*, 1<sup>st</sup> March 2013.

<sup>1643</sup> Keulemans, 15<sup>th</sup> June 2015.

<sup>1644</sup> Hoogland MP, 4<sup>th</sup> June 2015, De Boer, 15<sup>th</sup> June 2015.

<sup>1645</sup> Van Dongen, 3<sup>rd</sup> June 2015.

<sup>1646</sup> TK, 33 546, nr. 14, determined on 30 January 2014.

has shown that Dutch railway passengers are not asking for any competition in the railways.<sup>1647</sup>

The VVD (coalition partner) representative does not agree with his Social Democrat colleague. According to him, the EU proposal suggests opening up the market for passenger transport inside the member states. The VVD supports this. Competition in this field could save a lot of money. However, opening up the market should happen gradually and not via a big bang.<sup>1648</sup>

Both coalition partners obviously offer opposing messages to government, which shows that the NP is different from the government in the sense that the coalition parties of the NP do not just blindly support the government's position, but both parties in this instance try to impact the administration with their own principles.

The CDA (opposition) and D66 (opposition) support the VVD in the defence of a free market for the railways.<sup>1649</sup> The SP (opposition) and GL (opposition) argue that it is up to the Netherlands to decide whether it wants a free market for railways or not.<sup>1650</sup> The EU should not decide about the Dutch Railways. The Dutch Railways (NS) are doing well compared to other member states. The Minister should show this in the Council and take a more active approach in this field.<sup>1651</sup>

The Minister replies that the main question in getting a level playing field is whether or not there is a need for an open market.<sup>1652</sup> In general, she feels from MPs' comments that passengers have to be central in this debate. Tomorrow the Council will further debate the technical part of the Package. A decision about this is expected in March 2014.<sup>1653</sup> Decision-making about the market proposals has been delayed. Mrs Mansveld is of the opinion that it is important that the Netherlands can make its own choices with regard to the procurement of its railways.<sup>1654</sup> There have not been enough yellow cards from EU NPs to make the EC reconsider the proposals.<sup>1655</sup>

#### Extra ex post control phase

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<sup>1647</sup> Ibid., 3-4.

<sup>1648</sup> Ibid., 3.

<sup>1649</sup> Ibid., 3-4.

<sup>1650</sup> Ibid., 15.

<sup>1651</sup> Ibid.

<sup>1652</sup> Ibid., 19-20.

<sup>1653</sup> Ibid.

<sup>1654</sup> Ibid.

<sup>1655</sup> Ibid.

28<sup>th</sup> November 2013

Transport Council

Extra ex ante influence phase

12<sup>th</sup> March 2014

Meeting between the I&E Committee, the EAC, the Secretary of State, Mrs Schulz, and the Minister, Mrs Mansveld to discuss the next Transport Council.<sup>1656</sup>

The VVD (coalition partner) asked for an update on the Fourth Railway Package.<sup>1657</sup>  
The SP (opposition) wanted to know what the consequences are of the late submission of the objection of the Dutch government against the internal railway market.<sup>1658</sup>

The PvdA asks what the Minister will do to stop these plans. It is important that the Dutch can decide themselves about this topic.<sup>1659</sup>

Minister Mansveld replied that now that the EP has decided upon its amendments, the coming Transport Council will decide upon the proposals in the field of the technical pillar.<sup>1660</sup> The discussions for the remaining proposals (opening up the market) have yet to be discussed by the Council. Mrs Mansveld does not expect this to happen during the next half year.<sup>1661</sup>

The Minister responds to the PVDA that the NP knows the position of the government and the Dutch input into this dossier. Two yellow cards have been handed out. The Dutch government is still trying to get a blocking minority in the Council.<sup>1662</sup> This week the Minister will have discussions with other Ministers about this to set up a strategy with other member states. If the blocking minority is not reached, the government will have to sit around the table to participate in the negotiations.<sup>1663</sup>

As previously promised, the Minister will remain active in this dossier and will keep the SC informed on new steps taken or discussed.<sup>1664</sup>

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<sup>1656</sup> TK, 21 501-33, nr. 478, determined on 19<sup>th</sup> May 2014.

<sup>1657</sup> Ibid., 2.

<sup>1658</sup> Ibid., 4.

<sup>1659</sup> Ibid., 5.

<sup>1660</sup> Ibid., 9-10.

<sup>1661</sup> Ibid.

<sup>1662</sup> Ibid., 11.

<sup>1663</sup> Ibid.

<sup>1664</sup> Ibid., 12.

### Extra ex post control phase

14<sup>th</sup> March 2013                      Transport Council takes place.<sup>1665</sup> No feedback offered.

### Extra ex ante influence phase

28<sup>th</sup> of May 2014                      Meeting takes place between the I&E Committee, the EAC and the Minister.<sup>1666</sup>

The CDA (opposition) seeks to know how realistic it is for the Dutch government to get a blocking minority in this field.<sup>1667</sup>

The SP (opposition) argued that it has seen the joint approach of the Netherlands, Luxembourg and Belgium in this field, but would like to go further and try to get the bigger member states on board regarding the blocking minority, like Germany and France.<sup>1668</sup>

The PvdA (coalition partner) shows support for the technical pillar of the fourth Railway Package.<sup>1669</sup> The Social Democrats appreciate the critical position of the Minister with regard to opening the market in this field.<sup>1670</sup>

The VVD (coalition partner) argues that it had hoped that opening up the market would have proceeded a lot faster. It argued that the internal market could not go fast enough. The VVD has reservations with regard to the yellow card procedure, but this has been a democratic decision.<sup>1671</sup>

Minister Mansveld reacted by stating that she has referred to the yellow card, which was shown by the First Chamber and the SC.<sup>1672</sup> However, the government does need to stay around the table if it does not reach a blocking minority. Government members are now actively lobbying, together with other member states in this field, and have set up a

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<sup>1665</sup> European Commission, press release, Transport Council 14<sup>th</sup> March 2014.

<sup>1666</sup> TK, 21 501 33, nr. 495, determined on 31<sup>st</sup> July 2014.

<sup>1667</sup> Ibid., 4.

<sup>1668</sup> Ibid., 5-6.

<sup>1669</sup> Ibid., 9.

<sup>1670</sup> Ibid.

<sup>1671</sup> Ibid., 9.

<sup>1672</sup> Ibid., 14

Benelux-declaration. Other member states do similar actions, but not entirely along the Dutch lines. However, movement on this dossier is still possible.<sup>1673</sup>

Whenever procurement comes onto the agenda, the Minister promises to discuss this with the Chamber beforehand.<sup>1674</sup>

#### Extra ex post control phase

8<sup>th</sup> October 2014                      Transport Council meeting takes place<sup>1675</sup>

No evidence is found of any attempts by the NP to either impact the government ex ante or ex post, even though during this Council meeting the open market for railway passengers got discussed:

‘Ministers held a policy debate on two proposals to improve rail services in the EU by opening the market for domestic passenger services and stronger governance (Fourth Railway package). The discussion will guide future work on the proposals.’<sup>1676</sup>

#### Step 7: Adoption of the proposal

20<sup>th</sup> April 2016                      An agreement between the Council and EP was reached on the Fourth Railway Package and the opening of the market for domestic passengers by rail during the Dutch EU Presidency. The agreement reached is very much in line with the position of the Dutch government, supported by the SC.<sup>1677</sup> Member States will still be able to directly award public service rail contracts<sup>1678</sup> and Railway Network and the actual Rail transport organisation in one holding,

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<sup>1673</sup> Ibid.

<sup>1674</sup> Ibid., 15.

<sup>1675</sup> Press Release, 3335<sup>th</sup> Council meeting. Transport, Telecommunications and Energy, Luxembourg, 8<sup>th</sup> October 2014

<sup>1676</sup> Ibid.

<sup>1677</sup> Ministerie van Buitenlandse Zaken, 7<sup>th</sup> July 2016.

<sup>1678</sup> Press Release, European Commission, 20<sup>th</sup> April 2016

## Concluding remarks

Although the scrutiny of this EU legislative proposal has not yet come to an end, most of the discussions around the opening of the market to railway passengers has already taken place at national level. It is obvious that the NP gets many chances to have an impact on the government's position and on several occasions the NP uses more than its standard formal powers (next to it using a RO). For example, the use of the scrutiny reserve. Besides, it reiterates on several occasions what its opinion is and its expectations from the government during the Council negotiations. It was clear that the NP during several stages tried to tighten the delegatory relationship with its government. In other words, it gave the government clear instructions before Council meetings on what it expected the government to do and what it expected from the administration after the Council meeting (being informed). When comparing these activities to parliamentary ones during the scrutiny of a file in which the NP did *not* send a RO to the EC (see also C8 and C8a), it is clear that the NP in a case whereby it makes use of this Lisbon provision tightens its scrutiny. This is in line with the theoretical argument, expecting that the NP will increase the use of its domestic tools to influence the government's EU policy position after having sent a RO to the NP.

The reason why the Dutch NP sent an RO to the EC was that it was of the opinion that the responsibility for organising domestic passenger transport services by rail must remain at the national government level. According to the Dutch parliament, member states should be free to decide how and to whom they award passenger transport services contracts on their railway infrastructures.

In other words, the NP is worried that the procurement of passenger transport will become private and thus out of the control of the national member state. If the EU has the power to decide about passenger transport and its procurement, it implies that the NP will have less formal powers to scrutinise since this will happen by the EP instead. The NP, during the scrutiny of this file, only raised the use of its formal powers if there was a chance that the Transport Council would discuss the procurement of this railway package (rather than, for example, the technical side, see also C8a). This is namely the topic about which the majority in the SC wanted to keep decisions at national level. More specifically, the RO as such can be considered another tool the NP can use to show its opinion on an EU legislative file. Yet, the underlying reason for sending a RO, namely the possible violation of the subsidiarity principle could be explained for an

increased use of MPs' formal powers. This is confirmed in the interview with Hoogland MP:

‘The SC not only sent a reasoned opinion to the European Commission, it also adopted a motion in this field, stating that the EU should not decide about our railways. This put pressure on the government to follow us’.<sup>1679</sup>

Hoogland explained here that it was the subsidiarity matter that made the file so important for the MPs. Using the RO combined with a motion did have an effect on the actions of the government, as it felt pressurised. This is confirmed by the government representative in this file.<sup>1680</sup>

However, MPs who also opposed the use of a RO (VVD, CDA, D66) used (more than) their formal powers during these meetings, which might mean that salience is another present condition here explaining why the SC increased the use of its formal powers. In other words, the salience and use of RO are rather intertwined in this case. The issue is both Europeanised (the level to which the EU is allowed to have a say about national railways) and politicised (liberalisation), which explains the increased use of formal powers. The Europeanised part of the debate (should the EU have or not have anything to say about national railways) is reflected in the use of the RO (a majority of the NP thinks that the EC should not be involved in this topic) and therefore there is indeed a link between the use of the RO and the parliamentary activity.

### *Measurable impact*

The main coalition partner in government, the Liberals, supported opening the market further for rail passengers, but their smaller Social Democrat coalition partner was against this. The majority in the NP was also against opening up the market in this respect, which is why the government coalition agreed to plead against the opening of the market. It might have been harder for the NP to convince the coalition of this view if the Social Democrats had not been part of the coalition (in other words another coalition government could have lead to a different outcome), but it can be argued that thanks to the NP majority, the government came around in the end in favour of the views of its smaller coalition partner. One can therefore conclude that the impact in this case is

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<sup>1679</sup> Hoogland, 4<sup>th</sup> June 2015.

<sup>1680</sup> Van Dongen, 3<sup>rd</sup> June 2015.

intermediate. Although this is the only substantial point the NP sought to impact<sup>1681</sup>, and it has been successful, because the coalition partners were divided on this file and the government had started off with an interim negative subsidiarity judgement, the NP cannot be considered to be fully responsible for the government's position on the matter of retaining passenger railways at national level.

Different interviewees confirm that the NP has had some impact in this dossier and without the NP, the government might not have decided to keep pushing for a national sovereignty in the area of rail passengers.<sup>1682</sup>

### **Case 8a: The Fourth Railway Package: Directive for Interoperability (COM(2013)30<sup>1683</sup>)**

#### Background EU proposal

As part of the Fourth Railway Package, the EC has published a proposal with regard to the Directive about the interoperability of the railway system in the EU. The purpose of this proposal is the decrease of administrative and technical obstructions by developing an EU approach with regard to security and interoperability procedures. In this particular proposal the EC proposes conditions which need to be followed by an interoperable railway system in the EU. It furthermore suggests ways to make the submission of permissions more efficient via a larger role for the European Railway Agency (ERA). Technical norms and the conformity judgement rules need to be clearer and updated.<sup>1684</sup>

#### Step 1: Publication

30<sup>th</sup> January 2013

Publication of EU legislative proposal.

#### Step 2: NPs given eight week to oppose the EU legislative proposal

Whereas the Dutch SC sent a RO to the EC on 28<sup>th</sup> March 2013 regarding the proposal concerning the opening of the market for domestic passenger transport services by rail,

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<sup>1681</sup> Next to some minor issues, such as discussing language problems with neighbouring countries.

<sup>1682</sup> Kisters, 19<sup>th</sup> May 2015, Keulemans, 15<sup>th</sup> June 2015, Hartkamp, 7<sup>th</sup> July 2015.

<sup>1683</sup> <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A52013AE1024>

<sup>1684</sup> TK, 33.546, nr, 3, 1<sup>st</sup> March 2013.

which is also part of the Fourth Railway Package<sup>1685</sup>, it does not have any problems with the proposal regarding interoperability (it is only the Swedish and Lithuanian parliaments that sent ROs to the EC with regard to this proposal).

### Step 3: First ex ante influence phase

14<sup>th</sup> February 2013

Letter government to NP.<sup>1686</sup>

The main points focus on applying a scrutiny reserve in the field of the opening of passenger railway transport and the subsidiarity objection against this proposal. It would furthermore like to receive a technical briefing from the EC and will ask interest groups to send their views on the Package. No specific references to the draft regulation regarding interoperability are included in this letter.<sup>1687</sup> The correspondence shows clearly the difference in the use of formal powers regarding the freedom to provide domestic passenger services by rail (C7a) and the technical file (C8a).

19<sup>th</sup> February

Letter government to NP regarding Transport Council of 11<sup>th</sup> March.<sup>1688</sup>

The Dutch government informs the SC that at the point of writing it is still studying the proposals to get a better understanding of the consequences for the Netherlands. The EM is being prepared.<sup>1689</sup>

25<sup>th</sup> February 2013

The I&E Minister sends a letter to the NP to inform it that the governmental memorandum will not be ready before 1<sup>st</sup> March 2013.<sup>1690</sup>

1<sup>st</sup> March 2013

The government publishes its EM (first governmental position).

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<sup>1685</sup> The Fourth Railway Package consists of different EU legislative proposals: one on opening up the market towards passenger rail transport, one on safety, one on an EU Agency for Railways, one on a Single European Railway Area and one on interoperability.

<sup>1686</sup> TK, 33.546, nr. 1 14<sup>th</sup> February 2013.

<sup>1687</sup> List with decisions of the procedure meeting of the Committee I&E of 13<sup>th</sup> February 2013 and TK, 33.546, TK, 1, letter 26<sup>th</sup> February 2013.

<sup>1688</sup> TK, 21.501-33, nr. 407, 19<sup>th</sup> February 2013.

<sup>1689</sup> Ibid.

<sup>1690</sup> TK, 33.546; 22.112, 25<sup>th</sup> February 2013.

The government indicates that it will further elaborate upon the national consequences of the proposals in an IA. This will be sent to the SC in due course. The Dutch government is of the opinion that any changes to the main railway line should not begin until 2025 and not 2022, as sought by the EC, since contracts will still be running then.<sup>1691</sup>

7<sup>th</sup> March 2013

Meeting between the I&E Committee, the EAC and the I&E Minister dealing with the scrutiny reserve of the Fourth Railway Package. The Minister agrees to inform the SC on every agenda of the Transport Council, on every draft position of the Council including government opinions and any changes in its, or in the EU proposals.

Besides this, it is agreed that a plenary session will take place on 21<sup>st</sup> March. During this meeting, MPs have a chance to submit motions (on the whole Fourth Railway Package, not solely the Interoperability file).<sup>1692</sup>

#### Step 4: First ex post control phase

11<sup>th</sup> March 2013

Transport Council takes place.<sup>1693</sup>

21<sup>st</sup> March 2013

Plenary meeting of NP to discuss the Fourth Railway Package. During this meeting, four motions are submitted<sup>1694</sup>, although none apply to the Interoperability Directive.

This, again, is a clear example of the different use of formal powers in the case regarding the freedom to provide domestic passenger services by rail and the interoperability case.

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<sup>1691</sup> TK, 33.546, nr. 3, 1<sup>st</sup> March 2013.

<sup>1692</sup> TK, 33 546, Nr. 9, 7<sup>th</sup> March 2013.

<sup>1693</sup> European Commission, press release, 11<sup>th</sup> March 2013.

<sup>1694</sup> One by Hoogland (Social Democrat), two by Bashir (Socialist Party) and one by Van Tongeren (Groen Links).

22<sup>nd</sup> March 2013

Letter from government to NP regarding the Transport Council 11<sup>th</sup> March 2013.

Most references that are made to the Fourth Railway Package are related to the free market of railway passengers and none in the field of the interoperability regulation.

Step 5: Second ex ante influence phase

22<sup>nd</sup> May 2013

The Dutch government sends the Transport Council agenda to the I&E Committee. It informs the committee that the draft regulation regarding interoperability will probably be adopted during this meeting of 10<sup>th</sup> June 2013.<sup>1695</sup>

5<sup>th</sup> June 2013

Meeting between the I&E Committee, EAC and the Secretary of State for I&E, Mrs Schulz (Liberal). This is the first and only time the NP shows its own opinion on the interoperability regulation.

The VVD MP (coalition partner) argues that with regard to the interoperability regulation that it should not lead to a greater administrative burden, and there should be a clear division between those who look after the railways and those responsible for railway transport.<sup>1696</sup>

Mrs Schulz replies that the concern about administrative burden is shared by several member states. She also agrees with the separation of transport and the management of the railways, and states that the government will raise this during the Council meeting.<sup>1697</sup>

Step 6: Second ex post control phase

10<sup>th</sup> June 2013

Transport Council

During this meeting, an agreement is reached on the Interoperability part of the Fourth Railway Package. The final agreement has decreased the number of issues that would

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<sup>1695</sup> TK, 21.501-33, nr 423, 22<sup>nd</sup> May 2013.

<sup>1696</sup> TK, 21 501-33, nr. 430, 17<sup>th</sup> July 2013.

<sup>1697</sup> Ibid.

be dealt with at EU level, such as a centralised procedure to allocate permissions. Member States agree to keep this at the national level, as they are worried that it being at EU level would lead to an increase in financial and administrative burdens. There will be a transition period of five instead of two years (as proposed by the EC).<sup>1698</sup> The SC receives a letter from its government regarding the outcome of the Council meeting.<sup>1699</sup> The government also gives an overview of the discussion regarding the agreement reached on the Interoperability file:

‘The Council finished a general orientation about this proposal regarding a directive for interoperability of the railways, which is part of the technical pillar of the Fourth Railway Package ... The Netherlands was already in favour of the original technical pillars about interoperability, but had initially some minor concerns about the practical workability of this proposal. This has been taken into account in the compromise proposal ...

During the Council meeting the Netherlands has emphasised the importance of the technical pillar, and according to the views of the SC, the Dutch government has suggested to not make an agreement on the technical pillar dependent on the other proposals of the Railway Package.<sup>1700</sup>

#### Step 7: Adoption

Although the Fourth Railway Package has not yet been finally adopted as such by the Council, during the Council meeting of 5<sup>th</sup> June 2014, a political agreement is reached about the three proposals regarding the Package’s technical pillar (interoperability, railway safety and the Railway Agency).

The Dutch government feeds this back to the SC to inform it on the agreement. The agreement is in line with the wishes of the Dutch government, supported by the SC.<sup>1701</sup>

#### Concluding remarks

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<sup>1698</sup> Press Release, Council for Transport, Telecommunications and Energy, 6-10<sup>th</sup> June 2013, 10457/13.

<sup>1699</sup> TK, 21 501 33, nr. 429, 24<sup>th</sup> June 2013.

<sup>1700</sup> Ibid.

<sup>1701</sup> TK, 21 501 33, nr.495, 31<sup>st</sup> July 2014.

The scrutiny of this file seems to be a pretty standard one during which the NP reacts to the letters of the government and during meetings asks for clarifications. On no occasion during the OLP does the NP use more than its formal powers, and only once does the government show that it has taken the NP's position on board (step 6). However, according to the government representative on this file, Van Dongen, this was in line with government views, so cannot be considered impact.<sup>1702</sup> The MPs did not try to change the government's position on this file. According to various interviewees, the limited amount of use of formal powers by the NP is as a result of the topic's contents. The topic of interoperability is quite technical and less controversial and political than other topics (such as the freedom to provide domestic passenger services by rail, see C7).<sup>1703</sup> The causal process is therefore confirmed but is closely related to that of (the absence of) salience (see Chapter 7). In other words, even though the NP did increase the use of formal powers in the case where it made use of the RO, when it does not make use of this it can still choose to increase the use of formal powers (port services) or it might not (interoperability of the railways). Salience in these cases motivate this judgement.

During the process of the OLP there has not been any moment in which the government shows it needs to adapt its position as a consequence of the NP's use of formal powers. Data extracted from interviews confirm this.<sup>1704</sup>

#### *Measurable impact*

None of the NP's position has been included in the government's viewpoint and the impact here can therefore be classified as weak. This corresponds to the theoretical argument expecting less parliamentary activity when no RO is sent.

Data from interviews<sup>1705</sup> also confirm that no use of informal influence has taken place.<sup>1706</sup> The government also verifies that it has stuck to its own position (as explained in the EM) and has not drafted its opinion with the views of the NP already taken on board. It has on a few occasions included the NP's position into the Transport Council meeting, but as this was a position that was shared by the government (separation of

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<sup>1702</sup> Van Dongen, 3<sup>rd</sup> June 2015.

<sup>1703</sup> Van Dongen, 3<sup>rd</sup> June 2015, Den Boer MP and Hoogland MP, 4<sup>th</sup> June 2015, Hartkamp, 7<sup>th</sup> July 2015.

<sup>1704</sup> Van Dongen, 3<sup>rd</sup> June 2015, Den Boer MP and Hoogland MP, 4<sup>th</sup> June 2015.

<sup>1705</sup> Kisters, 19<sup>th</sup> May 2015, Van Dongen, 3<sup>rd</sup> June 2015, Den Boer, 4<sup>th</sup> June 2015.

<sup>1706</sup> In the Netherlands, there is a rule that makes informal contact between the government and NP illegal during the scrutiny process. This was introduced during the Kok government in 1998, better known as the 'Oekaze' rule.

transport and management of the railways, and not to make an agreement on the technical pillar dependent on the other proposals of the Railway Package) this cannot be considered as impact. It can therefore be concluded that during the scrutiny of this file, the impact was weak. This is as expected. Again a note of caution is needed here, as the NP did not change the government's position in this field, nor was that its intention.

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