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European Union rules and national legislation: the need to review the role of Dutch state institutions

Pekka Hallberg is a many-talented man. He is the president of the korkein hallinto-oikeus, Finland's Supreme Administrative Court. He has written books and articles on the development of the rule of law against the backdrop of ongoing Europeanisation and globalisation. Furthermore, from 10 May 2000 to 21 May 2002 he was my predecessor as president of the Association of the Councils of State and Supreme Administrative Jurisdictions of the European Union. As the Association's first president, he got the organisation up and running and was responsible for an excellent and very fruitful symposium in Helsinki.

This paper focuses on the quality of legislation against the backdrop of rapidly progressing Europeanisation. It looks at whether that process should have consequences for Dutch state institutions, and if so, what consequences.

Legislation could rightly be called the fulcrum of a state under the rule of law, because it holds a central place within such a state, as it provides legal certainty to the citizenry and forms the basis for the work of the executive and the judiciary. When the law falls short, the citizens, the executive and the judiciary all pay the price. That is why the quality of legislation is of fundamental importance to the rule of law.

The Europeanisation of the law forms an additional complication when it comes to the quality of legislation, a complication that cannot but affect the role and activities of state institutions. Because the Netherlands was present at the creation of the international organisation that is now the European Union, the developmental course which that organisation has followed over the years has, as it were, been automatically internalised within the Dutch state system and Dutch political thought. We never experienced the same kind of shock that member states like Finland must have felt when, at a certain point, they made the political decision to accede to a European Union that was no longer in the making but, in many respects, full-grown. That fundamentally new situation required careful adjustment of their state systems. Here, as in other areas, we see the disadvantages of being an "early adopter". It is no coincidence that long-standing member states are generally the last to implement new directives, or that it is in the new member states that national parliaments are most involved in EU policymaking.

For those reasons, I advocate reviewing the role of Dutch state institutions, especially those

involved in the legislative process. Below, I devote particular attention to the role of the institution that I head in my day-to-day work: the Council of State, which in its role as an adviser to the government and parliament on legislative matters can and does contribute to the development of the rule of law against the background of Europeanisation and globalisation.[1]

Introduction

The Europeanisation of the law is the result of a more general tendency, namely, the growing interdependence of once sovereign states. The proper functioning of the national state has become more dependent on other entities, such as the European Union, as well as the market (whether national or international). No longer does any single state have the power to determine the general course of societal trends within its territory. Such trends manifest themselves on varying scales. More and more often, however, they transcend national borders and spill over into the remits of many different authorities. Merging those remits by expanding the scale of public administration is not a viable solution. That is one reason that the European Union will never be able to replace nation-states. Rather than posing a threat to the state, the European Union is in fact a means for states to survive in a world where borders mean less and less. The European Union and its member states depend on each other for their very existence.

This interdependence has an impact not only on national law but also on national state structures: the legislature, the executive and the judiciary. Their role is changing, as are the relations between them. To do their work effectively, the legislature, the executive and the judiciary will have to rely on each other, even more than in the past. If the Council of State does a good job of advising the government and parliament on legislation and public administration, all three branches of the state will reap the benefits. For then it will be possible to prevent that European rules pose obstacles to the application and interpretation of national legislation.

Likewise, the national legal order and national state institutions are no longer autonomous. Instead, they are part of the pan-European legal order and contribute to the proper functioning of the institutions of the European Union. The *loss of autonomy* of the national legislature, executive and judiciary is compensated by the new influence on the development of European law.

That point has become ever clearer to the *Dutch judiciary*, which is expressly charged with channelling European law into the national legal order and applying it in a uniform fashion. The room to manoeuvre of the national courts is bounded by the supranational character of Community law and the prerogative of the Court of Justice of the European Communities to

[1] Other Councils of State play a comparable advisory role with regard to the quality of legislation in France, Belgium, Luxembourg, Italy, Greece and Spain. Sweden's Lagrådet also performs a similar function.

interpret provisions of Community law.[2] This process revolves around the preliminary reference procedure (under article 234 of the EC Treaty).[3]

The *Dutch executive*, the various ministries, is called upon by Brussels to participate in policymaking and the legislative process in a variety of areas. However, its efforts sometimes lack sufficient coherence to be fully effective. Different policy areas and bodies of EU legislation have growing influence on one another. In the permanent negotiation process going on in Brussels, everything is connected to everything else. To participate, one needs a continuous overview of the entire field of play. In addition, because the relative clout of the Netherlands will diminish after the enlargement of the European Union, it is important to forge partnerships with other member states. Dutch decision-making procedures do not necessarily meet the appropriate standards of speed, effectiveness and democratic legitimacy. Comparison with other member states shows that there is room for improvement in each of these areas.

The *Dutch legislature*, unlike the other two branches of the state, has not yet been sufficiently capable of timely participation in the EU's legislative process. As European integration continues, a more assertive role for the Dutch parliament is unavoidable. The EU has in fact entered the domestic sphere but so far, at least in the mind of the legislature, it remains a foreign body. The more the national legislature learns to think European, as it participates in the EU's legislative process, the easier it will become to implement EU legislation in the national system. This is a lesson that the Council of State, in its role as an adviser on legislation, will also have to learn. If it continues to restrict itself to the mandatory task of advising on draft bills and proposed orders in council, more and more often it will find that it is too late, as the real decisions have already been made in Brussels. That is why, in its annual report for 1998, the Council of State argued that it should be involved in preparing the Dutch negotiating positions on at least the main draft directives of the Council of the European Union or of the Council and the European Parliament. The Council of State could then focus its attention on the effects of the directives on the Dutch legislative system. Potential problems with implementation could then be detected at an early stage and given due consideration during negotiations in Brussels.

Timely and correct implementation of EU legislation is of great importance, not only in connection with the possibility of infringement proceedings, but above all because of the liability of the state if private individuals are harmed by late implementation. In any case, there is seldom a good reason for delays in implementing directives, now that the deadlines for implementation are, as a rule, quite generous. In almost all cases, the Netherlands has been involved in the preparation of the directive, either in the European Council or through *comitology*. There is thus time to think about implementation and, if necessary, to make a case

[2] See e.g. Case 327/82 of the Court of Justice of the European Communities (ECJ), *Ekro v Produktschap voor Vee en Vlees*, [1984] European Court Reports (ECR) 107.
[3] ECJ Case 26/62, *Van Gend en Loos*, [1963] ECR 1.

for postponing the implementation deadline. The Council of State could also be involved in this process.

It is the task of the Council of State to serve as the final, independent adviser to the government on the quality of proposed legislation. It assesses that quality in three ways. First of all, it examines policy matters: the analysis of the problem (i.e., the work of identifying and defining the problem, placing it in context, demonstrating the need for a solution and discussing earlier experiences), the approach to the solution of the problem (the objective and the means to that end, costs and side effects, assumptions about causes and effects) and issues of implementation of the proposal (the feasibility of compliance, implementation and enforcement).[4] Second, the Council looks at legal matters: whether a proposed rule would conflict with rules of higher law or unwritten legal principles and whether it fits into the legal system.[5] Third, the Council examines technical matters.

The policy and legal and matters receive the most emphasis in the advisory report of the Council. These days, many of the bills on which the Council advises the government are designed to implement EU rules. Typically for legislation which is meant to implement EU rules, is that it should limit itself to implementation only and that there is no room for discussion on the contents of these rules. The EU's procedures separate the formulation of policy (in Brussels) from the transformation of that policy into (national) legislation (in the member states). As a result, when the Council of State advises the government on the implementation of EU rules in national legislation, the assessment of policy matters plays a less prominent role.

The problems that arise in the implementation of European rules into national legislation are strongly linked to the character of Community law. EU legislation does not necessarily perform the same functions as the national legislation of a unitary state. Whereas the primary aim of the national legislature is to solve generally acknowledged problems in a uniform way, the aim of the EU legislature is to indicate the parameters within which a variety of national solutions may be sought. Much EU legislation (especially regarding the internal market) does not so much aim to *regulate* a given policy area, as it does to smooth away discrepancies between national systems and remove obstacles. Often, national legislature stipulates what has to happen, while the European legislature stipulates what is no longer permitted to happen. Consequently, EU legislation does not stand alone but has to be viewed and applied in conjunction with applicable national legislation, which *is* regulatory in nature.

EU rules are hence subject to different standards of quality than national legislation. Inevitably, EU legislation cannot be tailored to every specific national situation, given the great variety of national legal systems. This is the case even though national legislative regimes are often used as a model or source of inspiration when EU legislation is being prepared. By

[4] Council of State annual report, 2002, pp. 27 and 41.
[5] Council of State annual report, 2002, p. 50.

necessity, EU legislation has its own distinct structure and terminology. There is no way it can be introduced into national legal systems without hiccups.[6]

It falls to the national legislatures to merge EU and national legislation into a coherent whole. Different member states have different legislative cultures. However, those cultures will all have to adapt to a European legislative culture which is becoming more distinctive all the time. The mechanisms of adaptation will thus vary.

In a EU that will soon have twenty-five member states, the question will always remain how to handle EU legislation in the national legislative process.

Towards a Dutch system of implementation

A number of specific features of EU legislation complicate the interpretation and application of that legislation, and therefore its implementation as well. The preparation of EU legislation is not yet a wholly public process (consider decision-making within the Council).[7] All language versions of EU legislation are equally authentic. The sources and methods of interpretation in European law also differ from the usual ones in Dutch law. For instance, teleological interpretation, that is, interpretation in the light of the objectives of the legislation in question and the objectives of the EC Treaty, plays a much more prominent role in Community law than it does, as a rule, in Dutch legal practice. The role of the preamble in the interpretation of European law is also unusual from the Dutch perspective.

Another source of difficulty is the inevitable differences in terminology and structure between EU legislation and pre-existing national legislation in the many different member states. They will never be entirely compatible. There will always be a degree of tension between national and EU legislation in this respect. This is certainly the case if a directive covers only a minor part of a given policy area, for then it is not appropriate to adapt the terminology and structure of the entire relevant national legislative regime completely. The EU legislation is in such cases generally introduced only on a limited scale into the pre-existing national regime. In contrast, when legislation on a given policy area originates predominantly or exclusively in Brussels, it is appropriate to incorporate the terminology and structure of that legislation without restrictions into the national regime.

As the legislative process of the European Union takes place progressively over many years, the Europeanisation of a body of national legislation is likewise generally a gradual process. The difficulty from a point of view of the quality of national legislation is to figure out just when the shift from one structure to another can, or must, be made. There may be a long

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[6] See also M. van Damme, *Naar een Europese Raad van State?* (Towards a European Council of State?), 2001/8 *Tijdschrift voor Bestuurswetenschappen en Publiekrecht* 519; J.P.H. Donner, *De kwaliteit van de Europese regels* (The quality of the EU's rules), 2001/6 *RegelMaat* 216.

[7] The draft European Constitution would make decision-making a public process in the future. It remains to be seen what effect this will have on the interpretation of provisions of European legislation by the ECJ.

period of uncertainty. For example, EU environmental legislation long seemed quite piecemeal, a situation that has only begun changing in recent years.

In the coming period, we can expect many uncertainties of this kind in the area of criminal law. The harmonisation of criminal law is now proceeding at a rapid pace. In the end, there will be no way to avoid a degree of harmonisation of basic principles, or coordination on the basis of common basic principles, such as minimum sentences and the discretionary principle. Even though harmonisation is now taking place only in certain isolated target areas (financial/economic criminal law and terrorism), it seems more than likely that its scope will expand. It is advisable to be prepared. Before it is too late, the Netherlands will have to ask itself what elements of its own tradition it wants to keep and bring to the European Union and what it is prepared to give up for the sake of harmonisation.

Time and again, we see that the ministries have underestimated the consequences of EU legislation and the dynamics of developments within European law. Attachment to one's own familiar systems is often a powerful factor, which at first has the effect of keeping changes to a minimum. However as a result, eventually an enormous shift may be necessary, with profound consequences for national legal practice.

Hence, when the Council of State reviews proposals for implementing EU legislation, it considers not only the parameters established by the Court of Justice of the European Communities (the ECJ) for timely, correct and complete implementation, but also the need for timely adoption of the structure and terminology of the European legislation to be implemented into the national legislation.

Especially in recent years in Dutch legislation extensive use is made of methods for expedited implementation, such as reference and delegation. By "reference" I mean referring to EU rules in national legislation, rather than literally incorporating those rules into the legislation. Reference can take a static form (referring only to specified, existing EU rules) or a dynamic one (referring to EU rules including future amendments). The great advantage of reference, especially the dynamic form, is that it saves time. However, it also has disadvantages. For instance, parliament is hardly or not at all engaged in the process. The cohesion of national legislation can as a consequence be disrupted and as a result contradictions may occur that are not immediately identifiable. The system as such becomes less transparent, especially when there is a "chain" of references, that is, when the directive that is referred to, refers in turn to other legislation. Problems can also arise when EU legislation presents the member states with choices to be made, or allows them some leeway to make policies of their own. Confusion can also arise about entry into force and publication.

Consequently, though the Council of State does not reject reference as a method of implementation as such, in the opinion of the Council there are however a number of conditions that must be satisfied. For example:

- provision must be made for entry into force;
- the directives in question must not give member states any policymaking freedom or present them with any choices;

– the provisions referring to EU legislation should be worded in specific terms; and
– publication should take place in the Government Gazette.

Delegation to subsidiary legislation is another method of implementation used with some regularity. As long as the matters delegated are purely technical in nature and related to implementation, the Council of State has no objections to this method, any more than it does in the case of ordinary national legislation. Delegation of more substantial matters to subsidiary legislation, however, poses a threat to the primacy of the legislative branch and has the potential to undermine the role of Parliament. The Council of State is as a consequence opposed to introducing the option of deviating from an Act of Parliament, temporarily or otherwise, through subsidiary legislation.

These views of the Council of State are matters of controversy in the Netherlands. The government strongly prefers to use the terminology and structure of existing national legislation whenever possible in the implementation process and prefers to apply methods for expedited implementation. The government also considers it acceptable, in a variety of cases, to achieve implementation through subsidiary legislation that deviates from the relevant Act of Parliament. These views have led to debates between the government and the Council of State, but also between the government and the House of Representatives[8] and the Senate.[9] In the light of this situation, the proposal to develop a "non-voluntary" Dutch system of implementation, which was put forward a few years ago by T. Koopmans, is worthy of serious study.[10] Such an implementation system would form a framework within which analogous problems in diverse areas could be solved in the same way. The process of designing that system would generate new insights into the various methods for incorporating EU legislation into national law. Those insights could be kept in mind when the Netherlands participates in preparing EU legislation. They could also play a part in the further development of the task of monitoring subsidiarity, which will in the future be the responsibility of national parliaments.

Dutch legislation from a European perspective

The interconnectedness of national policy and legislation with EU policy and legislation also figures ever larger in the Council of State's advisory reports on proposed national legislation to implement national policy.

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[8] See e.g. the bill to amend the Equal Treatment Act and a few other acts in implementation of directive no. 2000/43/EC and directive no. 2000/78/EC, Parliamentary Papers, House of Representatives, 2002/03, 28 770.

[9] See the motion by Senator Jurgens (Parliamentary Papers, Senate, 2000/01, 26 200 VI, no. 37, later replaced with no. 37b); Besselink et al., De *Nederlandse Grondwet en de Europese Unie* (The Dutch Constitution and the European Union), Europa Law Publishing, Groningen 2002, in response to this motion; see also the policy document responding to the report on amending the Media Act with a view to making necessary improvements to that Act and its implementation (Parliamentary Papers, Senate, 2002/03, 28 476, no. 189b).

[10] T. Koopmans, address at a symposium entitled *De kwaliteit van Europese regels* (The quality of EU rules), Dutch Council of State publication, 2001, p. 78.

First, national policy proposals have to be reviewed for compatibility with rules of European law. For example, the EU rules on free movement and competition limit the freedom of national authorities to give state aid to businesses and other organisations. Despite the almost total absence of harmonisation in the area of direct taxation, these state aid rules place ever greater restrictions on the autonomy of member states in the area of fiscal policy. One recent illustration is the Bosal judgment,[11] in which the ECJ held that it was in conflict with freedom of establishment to make the deductibility of costs that are associated with a holding in the capital of a subsidiary contingent on those costs being instrumental in making taxable profits in the Netherlands. That judgment has had a major budgetary impact. Deductibility of costs associated with a holding in the capital of a subsidiary is an essential pillar of the Dutch tax system. The Court's judgment compels integration of the basic principles of Community law (more specifically, free movement) with the fundamentally different principles of the Dutch tax system (fiscal sovereignty and legitimate budgetary interests). Similar problems have arisen in the area of health care.

Second, there is a decreasing number of policy instruments that national authorities can use effectively. Free movement and technological advances make factors of production increasingly mobile and make it ever more difficult for government to exercise control over them. For instance, as a result of the very high mobility of capital, taxation of capital has been drastically reduced in many member states to prevent capital flight. It is difficult to enforce stringent environmental policies because of the principle of mutual recognition, which is a corollary of free movement. This principle states that goods lawfully placed on the market in one member state may not be barred from the market of another. If a member state sets strict standards for national producers, it thus places its own business sector at a disadvantage with respect to competitors based in other member states with more permissive policies. Similar developments can be discerned in aliens and asylum law. That heightens the danger of a race to the bottom. Recent instances of this problem have arisen in company law and health care.

The *Centros*[12] and *Inspire Art*[13] judgments make it clear that an entrepreneur must be given the freedom to form a company in accordance with the laws of another member state, even if the sole purpose of doing so is to avoid the more stringent conditions of his or her own member state's company law, such as conditions in respect of minimum capital. This case law makes it more difficult, if not impossible, for national company law to accomplish its aims effectively. With regard to health care systems (and in particular, the condition of prior authorisation for treatment in other member states),[14] developments in ECJ case law have created a situation in which "the increasing cross-border movement of patients and

[11] ECJ judgment of 18 September 2003 in case C-168/01, *Bosal*, not yet published.
[12] ECJ, case C-212/97, *Centros*, [1999] ECR I-1459.
[13] ECJ judgment of 30 September 2001 in case C-167/01, *Inspire Art*, not yet published.
[14] ECJ cases C-158/96, Kohll, [1998] ECR I-1931; C-157/99, *Smits en Peerbooms*, [2001] ECR I-5473; C-385/99, *Müller-Fauré en Van Riet*, judgment of 13 May 2003, not yet published.

practitioners within the EU necessitates ever more concerted attention to the quality of health care".[15]

These examples show that taking a European perspective is the only effective way to promote the national public interest, create a level playing field and prevent a race to the bottom. In cases where there is as yet no EU policy, it is crucial to be aware of and keep up with developments in other member states, for the purpose of evaluating the effects of our own national policy plans. Just as much as the Netherlands is part of the EU, the EU has entered the Dutch domestic arena.

The Dutch legislature as a European legislature

In more and more areas, the focal point of decision-making is shifting from The Hague to Brussels. The Netherlands has given up its power to take independent decisions about its own affairs, but in return it has gained the right to take part in decision-making about the EU in its entirety. This greatly alters the role of the Netherlands' state institutions. Because this change has taken place over the course of many years, limited thought has been given to the consequences that the EU has or should have for the role, structure and operations of those institutions. "More and more, however, a vision for the EU and a vision for one's own state are becoming two sides of the same coin. A vision for the EU presupposes a vision of the powers of one's own state within it. Maybe that is why public and political debate about the EU is so underdeveloped in the Netherlands – because public and political debate about the state is so meagre."[16] This debate is more lively elsewhere in Europe, as is reflected by the proposal in the draft European Constitution to give national parliaments the power to monitor subsidiarity. This would compel national parliaments to engage actively with proposed EU legislation. Then they too would play a dual role in the EU's legislative process, being both indirectly involved through their powers of control over the national governments that negotiate on the proposal and directly involved when they review the proposed legislation for consistency with the principle of subsidiarity.

What consequences will this have for the working methods of the two houses of the Dutch parliament? What will be done to promote parliamentary debate at the earliest possible stage after the Commission submits a proposal? In the debate with the competent minister, will the subsidiarity principle be applied? What kind of relationship will there be with the official Council working groups in Brussels that lay the groundwork for Council meetings?

Other member states (in particular, the Scandinavian countries and the United Kingdom) have shown that national parliaments can be very actively involved in the preparation of EU legislation. Let me give a few examples.

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[15] See G.J.A. Hamilton in 6/2003 *Tijdschrift voor Gezondheidsrecht* 419 et seq., at 15.
[16] Council of State annual report, 2001, p. 15.

– In *Finland*, parliament has a major role during the preparation of EC legislation. The government is obliged to communicate to Parliament without delay all the Commission proposals that touch issues belonging to the competence of Parliament. The government also regularly informs Parliament of other proposals and pre-legislative documents such as Green and White papers. The EU proposal or document is annexed to a government memorandum wherein *inter alia* the legislative effects of the proposal at the national level are described and analysed. In Parliament these proposals are examined by the competent specialised committee's in the same way as other proposals. This means that *inter alia* government representatives, NGO's and independent academic experts are heard. The committee prepares a written opinion on the proposal for the Grand Committee, that acts as the European Affairs Committee of Parliament. The Grand Committee assesses whether the negotiation aims of the Government in the matter politically represent the majority view of Parliament or whether they should be amended. According to the principle of parliamentary accountability it is understood that the Government follows the opinion of the Grand Committee so far as questions within the constitutional competence of parliament are concerned. The official in Brussels responsible for the dossier negotiates on that basis.
– In *Denmark*, the government and parliament work to reach consensus on what instructions to give their negotiators in Brussels. In this process, a proposal from the European Commission has to pass through four levels: a special committee of officials, the official EU coordinating committee, the ministerial committee for foreign affairs and the Danish parliament's European affairs committee. The Danish government is also required by law to inform the parliament about developments in the EU. Once the Commission has submitted a proposal, the government has up to eight weeks to submit a proposed negotiating position to the parliament, which generally approves such positions (possibly with a few minor changes). In Denmark it is considered very important to involve the public in the EU decision-making in a timely fashion. Proposals from the European Commission are thus sent to a variety of organisations in order to obtain input from civil society even before they are discussed in any of the four above-mentioned committees.
– In *Sweden*, when a Commission proposal is submitted to the Council, a copy is sent to the parliamentary EU committee. The competent line ministry provides a short summary of the proposal, a forecast of its implications for Swedish law and the implementing legislation that the government plans to introduce if the proposal is adopted. The Swedish parliament is responsible for providing information to the public about EU affairs. For that reason, it is considered crucial that the parliament be kept informed about what is going on in the European Union and what the government's position is. Accordingly, the government has a duty to inform parliament as promptly as possible about the issues discussed in Brussels and the positions that the Swedish government plans to take on those issues. This information is provided in part to the parliament as a whole, in part to the permanent parliamentary committees dealing with the relevant subject matter and in part to the permanent parliamentary committee for EU affairs. This last committee, specially charged with communication between the government and parliament on EU matters, receives copies of Commission proposals from the permanent representation in Brussels at the same time as the ministries.
– Parliament of the *United Kingdom* is also becoming actively engaged in the preparation of EU legislation. Due to the principle of parliamentary supremacy, the British do not support proposed EC legislation until the national parliament has had an opportunity to comment on it. To that end, the British government presents any such proposal,

> along with an explanatory memorandum, to the select committees for European affairs of both the House of Commons and the House of Lords. These committees debate the proposal and then either vote in favour or press for certain amendments. British negotiators in Brussels are expected to work within this parliamentary mandate.

Alongside these examples, the role of the Dutch parliament looks quite feeble. There is a procedure for informing parliament, but in practice parliament is not actively involved in determining the Netherlands' negotiating positions. The argument for the status quo in the Netherlands has always been that active participation by the two houses of parliament and other state institutions, including the Council of State, can lead to delays in determining the Netherlands' position in Brussels, or even to inflexibility as the result of a very limited mandate. On the other hand, parliament would be explicitly involved in the preparation of EU legislation and national officials taking part in EU negotiations would no longer work in as much of a political vacuum.

Considering that the process ultimately leading to national legislation more and more often begins in Brussels, the Council of State has come to the conclusion that it should be involved from an earlier stage. It now gives advice on proposals for EU legislation only in isolated instances. In 2001, a pilot project began in which the Council of State gave advice on a number of EU legislative proposals with a view both to the Netherlands' negotiating position during the drafting process and to later implementation.[17] In June 2003, the Minister for European Affairs stated that this form of early involvement would be continued.[18] The procedure is a logical response to the shift in the policymaking process from The Hague to Brussels. Above and beyond this procedure, the Council of State advises the government on EU matters upon request. In 2003, it gave advice on aspects of the Convention that prepared the draft European Constitution.[19]

The foregoing makes it clear that discussion does take place of isolated aspects of the EU's impact on Dutch state bodies. However, there has been no fundamental review of the matter such as has happened in Finland and the other Scandinavian countries. Especially for smaller countries it is important to have aspects as these well regulated, against the backdrop of the declined influence each of them will have in the enlarged Union. The European Constitution, which is intended to codify the gradual process of Europeanisation, provides occasion to start rethinking the role of the Netherlands' state institutions.

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[17] For an overview, see the Council of State's 2001 annual report, pp. 108–109.
[18] Letter dated 19 June 2003 from the Minister for Foreign Affairs to the President of the House of Representatives (eu03000126).
[19] Parliamentary Papers, House of Representatives, 2003/04, 28 473, no. 35.