

Why the Dutch version of the balance of competence review will not please the Brits.

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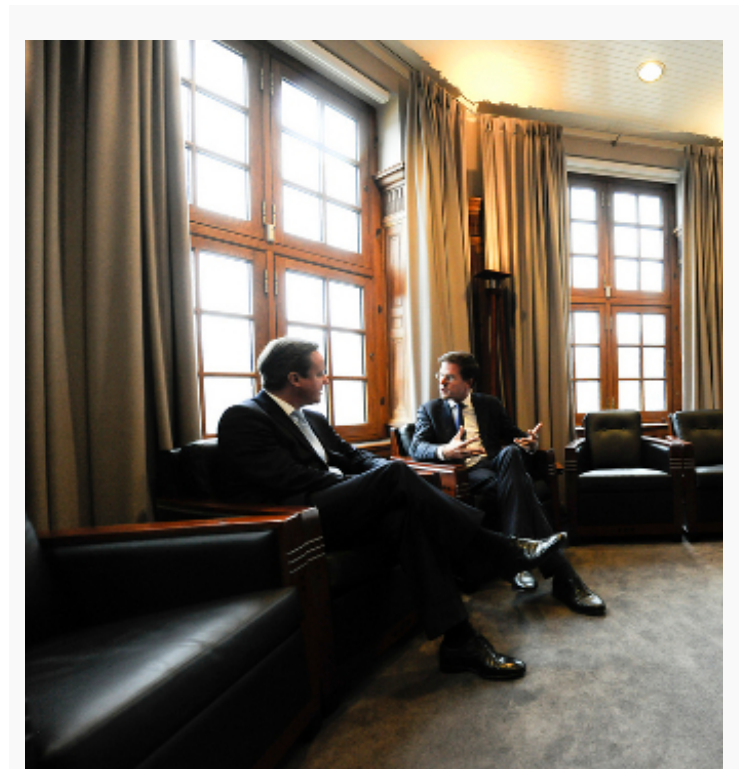
*The Netherlands has been viewed as a natural ally for the UK in efforts to reform the European Union. **Andrew Duff MEP** looks at the Dutch government's policies on European integration and the outcome of the country's recent 'subsidiarity review', published in June. He argues that despite containing some useful advice, the review does not rise to the occasion. Moreover the government's refusal to advocate a new treaty is not only misguided, but also puts it at odds with the UK's Conservative Party.*



One of the stranger scenes in recent Dutch politics was the sight of David Cameron greeting the congress of Mark Rutte's Dutch Liberals (VVD), albeit by video link. In terms of European party politics this made no sense. The VVD is a founding member of the broadly pro-federalist Alliance of Liberals and Democrats for Europe (ALDE) while the British Tories form the kernel of the avowedly anti-federalist European Conservative Reform Group (ECR). The two groups glare and snipe at each other across the hemicycle of the European Parliament. Strictly speaking, it should have been the (half-Dutch) Deputy Prime Minister Nick Clegg feted by the VVD. But it is Cameron and Rutte who fondly believe themselves to be like minded.

So how close, really, is the EU policy of the British and Dutch governments? At a superficial level, there are strong similarities. Public opinion has driven almost the entire political class in both countries to adopt a Eurosceptical posture. The Dutch referendum campaign of 2005, which so decisively killed off the constitutional treaty, saw the mainstream pro-European parties firmly on the defensive. Even the most federalist of political parties, D66, was moved to argue that Holland would be not much less Dutch with the new treaty than without it.

Come the financial crisis, almost scuppering the euro, the Netherlands adopted an even more Eurosceptic position. The prospect of having to bail out impoverished, lazy and faintly corrupt Mediterranean Europe appals Dutch taxpayers. Although the PVV of Geert Wilders and the left-wing Socialist Party have been effectively excluded from government after the [2012 elections](#), they both continue to march to the beat of the nationalist drum. The VVD-PvDA coalition lives in fear that whatever happens next in Europe will amplify that beat. In order to show off their new Eurosceptic credentials, Rutte and Labour party Foreign Minister Frans Timmermans announced a major 'subsidiarity review' of Dutch EU policy – begging comparisons with the UK's home-grown 'competence review'.



Mark Rutte and David Cameron, Credit: Mark Rutte (CC-BY-SA-3.0)

Dutch subsidiarity review

The result of the review, announced in June, is instructive. Many were consulted – but not apparently Dutch MEPs.

Nor is the European Parliament referred to even once in the final report, despite the fact that nothing that the government wants can be achieved without the agreement of the European Parliament. Funny that – especially as Timmermans was an engaged member of the Convention which drew up the constitutional treaty, happily extending Parliament's powers in almost every direction.

The review adopts an overwhelmingly negative tone about the EU as a whole and especially about the European Commission of José Manuel Barroso. The Dutch government 'is convinced that the time of an "ever closer union" in every possible policy area is behind us – as the result of the 2005 referendum on the Constitutional Treaty made clear, the Dutch people were, and still are, discontented with a Union that is continually expanding its scope, as if this were a goal in itself'. The government therefore threatens to take a strictly limited view of the competences conferred on the EU under the treaty. The European Commission will be granted no latitude of interpretation of legal bases and will be discouraged from exercising its own political judgement.

There is much useful advice: better *ex-ante* impact assessments and more *ex-post* review of EU law. The Commission should be more sensitive to how its proposals will work on the ground in each and every corner of the Union. A more proactive attitude should be adopted to adapt legislation to take into account judgments of the Court of Justice. The appointment of the new Commission in 2014 should be used to re-assess priorities. What the Netherlands wants is: 'a more modest, more sober but more effective EU, starting from the principle: "at European level only when necessary, at national level whenever possible"'.

The Dutch paper is not without its own inconsistencies, however. For example, looser directives are preferred to tighter regulation, despite the fact that this can let member states less scrupulous than the Netherlands off the hook when it comes to the thorough implementation of EU law. Some 54 specific points are listed 'for action'. Many of these refer to draft measures currently subject to the ordinary legislative procedure (and therefore to be co-decided with the invisible European Parliament). None are revolutionary. Some are depressing for those who wish to see the EU reach its full potential at home and abroad. The review paints a picture of a functionalist EU, largely devoid of political ambition. No effort is made to discover economies of scale or cost efficient European added value: only the national and not the European side of the subsidiarity principle is observed. The main gripe is that EU law is disproportionate to the matter in hand.

Lessons from the financial crash appear not to have emerged in Dutch thinking. 'The EU budget should not grow faster than national budgets'. The government opposes the idea of a new fiscal capacity for the Eurozone with countercyclical purposes: 'Economic stabilisation can best take place at national level'. Direct taxation remains 'a national prerogative'. The [Common Consolidated Corporate Tax Base](#) is a bad idea. As far as indirect taxation is concerned, the Netherlands 'seeks to preserve national freedom'. The Commission is blamed at the same time both for seeking to iron out differences in taxation by way of infringement proceedings and for not taking simultaneous action against all errant member states.

In some areas, such as family law or the telecoms package, previous Dutch governments are blamed for having agreed to things which this one regrets. In any case, the potential of the Lisbon treaty in the harmonisation of criminal law should not now be realised; nor should consular services be transferred to the EU level. The EU programme for school milk and fruit should be scrapped. The EU noise directive should not apply to Schiphol because the airport is too far away from other member states for its roar to have cross-border effects. EU environmental legislation in general has put 'too much of an emphasis on means (rather than ends)'. Bilateral agreements between states are a better instrument than EU law, for example, on tax approximation, flood risk management and tunnel safety. In other areas, such as CO2 emissions, worldwide legislation would be better than EU law. In the field of social policy, the Open Method of Coordination – now discarded by most – is preferred to EU legislation: 'no attempts should be made to bring about further harmonisation of social security systems'.

It is clear on reading the 54 sections they have only been agreed after a laborious drafting process between different ministries and the two coalition partners. In more than one case the seams show. What is equally revealing is what was struck off the grumble list. Nothing is said about common foreign, security and defence policy, trade policy, the

Common Agricultural Policy, Common Fisheries Policy, or overseas development. There is no systematic, comprehensive reaction to the plans for banking union, economic governance and fiscal union, which forms the big agenda in Brussels. And, oddly, there is no word either on improving the Union's democratic accountability or on strengthening its global competitiveness.

So what?

So what should we draw from this rather strange exercise in the Low Countries? Both those who have come to hate the EU, as well as those of us who wish the EU well, will be disappointed.

The British Tories, slaving over their own unilateral [review of EU competences](#) and powers, are sad to see no specific attack on their hated Working Time Directive. Above all, the Tory Brits deplore the conclusion drawn by the Dutch that there is no case for treaty change: 'The Netherlands is not aiming at treaty change or opt-outs, but at an inclusive process to revise existing legislation and reach political agreement on future priorities for legislation'. In his [press release](#), Timmermans said: 'The government emphasises that it is not aiming at treaty change. The Netherlands fully accepts the existing distribution of competences. It is the division of tasks that it is aiming to discuss: is everything that the EU currently does really necessary?'

The firm rejection of opt-outs pitches the Dutch against the Tory plan for British disengagement from the EU. Here they will have the support of the Germans. But the Dutch refusal to contemplate treaty change puts them in an awkward position vis-à-vis all their partners. The British government badly needs treaty change in order to justify its renegotiation of the terms of UK membership. Other governments and their constitutional courts have come to accept the need for treaty change which will codify and consolidate the deeper integration implied by the moves to banking union, fiscal union and political union. The fiscal compact treaty (signed by the Dutch but not the Brits) already foresees its own full incorporation into the EU framework. The European Commission and European Parliament, rightly concerned to enhance the democratic legitimacy of the governance of the Union, will push for a general revision of the Treaty of Lisbon by way of a Convention opening in spring 2015.

The treaty change process is triggered by a simple majority vote of the European Council, as Margaret Thatcher once discovered to her fury. The European Parliament has the right to insist on the holding of a Convention, and will do so in these circumstances. So the Netherlands has no chance of stopping the opening up of a major treaty negotiation, a process which, if successful, will certainly conclude by ratification in 2017 through referendums in several member states, including the UK and the Netherlands.

So far neither London nor The Hague have offered their voters a worthy prospectus for the future of Europe.

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Note: This article gives the views of the author, and not the position of EUROPP – European Politics and Policy, nor of the London School of Economics.

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