

# Clawing Back Lost Powers? Parliamentary Scrutiny of the Transposition of EU Social Policy Directives in the Netherlands

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# Clawing Back Lost Powers? Parliamentary Scrutiny of the Transposition of EU Social Policy Directives in the Netherlands

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ESTHER VERSLUIS

*For quite some time parliaments were seen as the losers of European integration. As a reaction, several parliaments have sought to exert more control over the executive branch in EU decision-making. An alternative venue for ‘clawing back’ these lost powers is by influencing the domestic transposition of EU policies. Surprisingly, this opportunity for greater parliamentary involvement has not received much scholarly attention. Under what conditions do the parties in parliament engage in ex post scrutiny over transposition? To shed light on this question, this article provides a detailed study of scrutiny by the Dutch parliament over the transposition of two social policy directives, investigating four hypotheses regarding vote-seeking, policy-seeking and office-seeking incentives for parliamentary oversight. The analysis shows that the ex post scrutiny that takes place can mostly be summarised as low-profile scrutiny aimed at information-gathering and position-taking, especially by opposition parties.*

For quite some time parliaments were seen as the losers of European integration, given the twin dynamics of policy transfer to the European level combined with the strong position of national executives in European Union governance (Goetz and Meyer-Sahling 2008). However, in recent years, national parliaments have sought to ‘claw back’ their lost powers (Holzhacker 2007: 141) and strengthen their position vis-à-vis national executives in European Union policy-making (e.g. Auel 2007; De Ruiters 2013; Raunio 2009; Sprungk 2013; Winzen 2010). Having established European Affairs Committees, information rights and mandating procedures, national parliaments have set up firm prerequisites for controlling governments’ negotiation position in EU decision-making (Goetz and Meyer-Sahling 2008).

Even though the decision-making stage is one important avenue for national parliaments, it may not be the most effective one to achieve their policy preferences, as parliaments have limited influence over EU decision-making in a European Union with 28 member states. Moreover, from a policy perspective, it is not sufficient to engage in *ex ante* scrutiny, because national executives may also deviate from parliamentary preferences after EU legislation has been adopted, albeit within certain margins (Finke and Dannwolf 2013).<sup>1</sup> Thus, *ex post* parliamentary scrutiny, or scrutiny over the transposition of directives, is equally important. Yet it has received comparatively little attention in the EU parliamentary scrutiny literature (but see Franchino and Høyland 2009; Sprungk 2013).

Arguably, this lack of research on *ex post* parliamentary scrutiny is not surprising. Auel (2007) provides the compelling argument that parliaments are unlikely to use their *ex ante* scrutiny instruments to change the government's negotiation position, because it is costly for coalition parties and carries the risk of bringing down the coalition by exacerbating strong policy differences among the coalition partners. Nevertheless, in the field of *ex post* scrutiny, the findings of several studies go against Auel's (2007) expectation. Crucially, the EU implementation literature suggests that salient directives may trigger *ex post* parliamentary scrutiny (e.g. Bursens 2002; Falkner *et al.* 2004; Franchino and Høyland 2009; Martinsen 2007; Sprungk 2013). Similarly, there has been evidence of serious *ex ante* scrutiny occurring (De Ruiter 2013; Finke and Dannwolf 2013), even by coalition parties (Holzhacker 2002). Finally, the findings very much depend on one's understanding of scrutiny; even though strong control attempts may be rare (Auel 2007; Pollak and Slominski 2003), parliaments may use their scrutiny instruments to reduce their informational disadvantage (Auel 2007; Finke and Dannwolf 2013).

The disagreement in the literature about the extent of actual parliamentary scrutiny forms the core puzzle of this paper. We seek to contribute to this debate by analysing the conditions under which the political parties represented in parliament engage in *ex post* scrutiny over transposition.<sup>2</sup> To shed light on this question, we provide a detailed study of scrutiny by the Dutch Lower Chamber over the transposition of two social policy directives: the Temporary Agency Work Directive and the Parental Leave Directive. In order to fully capture the EU policy process, we investigate both *ex ante* and *ex post* scrutiny. We use four hypotheses regarding vote-seeking, policy-seeking and office-seeking incentives for greater oversight. We develop a novel conceptualisation of scrutiny, distinguishing between substantive and EU-related concerns, and capturing the varying strength of different types of scrutiny. In this way, we respond to the call made by various authors to research more carefully the actual incentives, behaviour and interactions of members of parliament (MPs) against the backdrop of institutional prerequisites for effective parliamentary oversight (Benz 2005; Holzhacker 2002; Winzen 2010).

### Explaining the Parliamentary Scrutiny of Transposition

Why would national parliaments engage in *ex post* scrutiny? In answering this question, we adopt the consensus position in the literature that EU *ex ante* scrutiny by national parliaments should be grounded in an understanding of ‘regular’ parliamentary oversight of the executive (Auel 2007; Franchino and Høyland 2009; Holzhaecker 2002; Pollak and Slominski 2003; Raunio 2009). We draw on the rationalist literature, focusing on the incentives of parliamentarians, operating in an institutional environment (De Ruyter 2013; Finke and Dannwolf 2013; Franchino and Høyland 2009; Moser *et al.* 2000; Winzen 2010). Particularly relevant is the literature on party politics, which has identified three types of compelling incentives influencing party positions and behaviour: vote-seeking, policy-seeking and office-seeking (Strøm 1990; Strøm and Müller 1999). We discuss the three types of incentives in turn, outlining their expected effect on *ex post* parliamentary scrutiny.

Firstly, according to the *vote-seeking* perspective, political parties strive to ‘maximise their electoral support for the purpose of controlling government’ (Strøm 1990: 566). Seemingly, EU directives are not crucially important for MPs, as it has been argued that EU transposition is generally frowned upon by MPs as a technical matter devoid of electoral benefits (Raunio 2009: 328). The situation may have changed, however, with the increasing politicisation of European integration (e.g. De Wilde and Zürn 2012). In the current period of ‘constraining dissensus’ (Hooghe and Marks 2008), political parties have actively sought to harness the rise in Euroscepticism and obtain more votes in parliamentary elections (see also Sprungk 2013). Accordingly, parliamentary scrutiny instruments may be used by political parties as signalling devices to highlight the negative effects of EU integration for national welfare states and mobilise voters’ Eurosceptic sentiments (Serricchio *et al.* 2013).

*Hypothesis 1:* The more Eurosceptic a political party, the more active it is in *ex post* parliamentary scrutiny.

The substantive salience of policy issues for mobilised constituencies is another pathway through which vote-seeking incentives may shape the pattern of *ex post* parliamentary scrutiny (Auel and Raunio 2012; De Ruijter 2013; Spendzharova and Versluis 2013; Sprungk 2013). When a policy issue is highly salient, mobilised electoral constituents and societal stakeholders will seek to exert pressure on political parties to change the course of transposition and align policy more closely with their preferences. As an alternative mechanism, political parties may strategically anticipate the reactions of important societal stakeholders and use scrutiny over transposition to signal that they are paying attention to the salient issue.

*Hypothesis 2: Ex post* parliamentary scrutiny will occur when a transposition bill deals with topics that are salient to electoral constituents or societal stakeholders.

Secondly, *policy-seeking* incentives emphasise that parties pursue policies compatible with their substantive preferences (Strøm and Müller 1999: 7). From this perspective, scrutiny over transposition is more likely to occur when a party's ideal position is located further away from the policy proposed by the cabinet (Finke and Dannwolf 2013; Martin and Vanberg 2004). This proposition is likely to hold for opposition parties which have incentives to openly disagree with the government (Auel 2007). For example, with regard to Open Method of Coordination instruments, De Ruiter (2011) observed that Dutch parliamentary debates are mainly initiated by opposition parties. They strategically use negative benchmark results to highlight the government's 'failure to deliver' on European best practices, especially in committee meetings.

Policy-seeking incentives are also relevant for coalition parties which have an incentive to control ministers affiliated with a coalition partner (Franchino and Høyland 2009). This tendency is more relevant for transposed EU legislation than for purely domestic legislation, because in the former case, information asymmetries between parliament and government are likely to be more pronounced, given the pivotal role of individual ministries in EU decision-making. Furthermore, ministers may be highly strategic in the way they interpret EU-derived obligations (Tholen and Mastenbroek 2014). EU directives are typically not covered by a coalition agreement (Auel 2007), which implies that there is more leeway for coalition parties to assert their preferences. As a result, a 'floating coalitions mode' may occur, i.e. coalition parties may engage in ad hoc coalitions based on their policy preferences (Holzhacker 2002).

*Hypothesis 3: Ex post* parliamentary scrutiny will occur when there is a large distance between the transposition bill and a political party's policy preferences.

Thirdly, *office-seeking* incentives highlight that political parties seek to maximise control over political office as a goal in its own right. The main mechanism is access to institutional, policy and material benefits, which a political party controlling the executive can distribute among party members (Strøm 1990: 567). At the same time, the relationship between policy-seeking and office-seeking incentives is somewhat ambiguous (Strøm and Müller 1999: 8). Policy-seeking incentives are typically considered supplementary to office-seeking, rather than as a substitute.

How do policy-seeking and office-seeking incentives interact? Franchino and Høyland (2009) argue that opposition parties and coalition partners will use legislative review as an oversight mechanism to control the minister in charge of transposition (see also Finke and Dannwolf 2013). By contrast,

according to Auel (2007: 491), the incentive to scrutinise the actions of a coalition partner is counterbalanced by an incentive to maintain internal discipline and coherence, in order to keep the coalition together. In line with the evidence on coalition parties' reluctance to use *ex ante* scrutiny rights in both Germany (Auel 2006) and Austria (Hegeland and Neuhold 2002; Pollak and Slominski 2003), we apply Auel's hypothesis to the Netherlands. More specifically:

*Hypothesis 4:* Opposition parties are more active in *ex post* parliamentary scrutiny than coalition parties.

### Case Selection

As indicated in the introduction, we restrict our analysis to the Netherlands. Concerning institutional prerequisites and incentive structures, the Netherlands represents a most likely case for *ex post* parliamentary scrutiny to occur, because it meets several important institutional and incentive-related requirements discussed in greater detail below.

Concerning *institutions*, we expect scrutiny to occur in a parliament with generally strong legislative powers. Raunio (2005: 335) finds that the Netherlands has one of the most powerful parliaments. According to Sieberer (2011: 747), the Netherlands scores high when it comes to its direct control over policy-making. In addition, chances of the cross-party mode occurring are highest in the Netherlands and Germany (Andeweg and Nijzink 1995). Also, coalition parties in the Netherlands are more likely to engage in scrutiny than those in Austria and Germany, two cases on which the limited influence claim is based (Auel 2006; Pollak and Slominski 2003). When it comes to coalition discipline in legislative voting, the Netherlands scores at the other end of the spectrum compared to the parliaments of Germany and Austria (Strøm and Müller 1999).

Concerning *incentives*, several necessary conditions are met in the Netherlands. First, electoral volatility in the Netherlands is pronounced, which provides an incentive for opposition parties to politicise the government's policy shortcomings (Ersson 2012; Mair 2008). Second, with the advent of a 'constraining dissensus' (Hooghe and Marks 2008), European integration has become increasingly politicised amongst the population and more Eurosceptic political parties. In particular, Dutch political parties such as the League Pim Fortuyn (LPF), the Socialist Party (SP) and the Party for Freedom (PVV) have expressed vocal criticism against the growing impact of the EU in the national legal and regulatory process. Third, Falkner *et al.* (2004) argued that the transposition of social policy directives is highly politicised in the Netherlands. This argument is supported by a project carried out amongst Dutch legislative

drafters, which showed that ministers tend to be very strategic, interpreting EU directives to their advantage (Tholen and Mastenbroek 2014).

Furthermore, we have selected the field of social policy as a very likely case of parliamentary scrutiny. As highlighted in Vollaard and Martinsen (2014), ‘social Europe’ has become increasingly contested. Redistributive policies and policies enhancing employees’ social protection rights are constrained by budget cuts (Laulom *et al.* 2012). At the same time, member states have to implement newly adopted EU hard law such as the patients’ rights directive (Vollaard and Martinsen 2014; Vasev and Vrangbæk 2014) and the EMU induced measures (de la Porte and Natali 2014).

Within the field of social policy, we selected two directives that were likely to be highly salient for the Dutch parliament and could be framed in left–right terms, which is an important prerequisite for scrutiny to occur (Raunio 2009).<sup>3</sup> We charted all directives adopted between 2008 and 2010, classified under the heading of Employment and Social Policy.<sup>4</sup> We excluded delegated acts, which generally deal with implementation details and hence are less likely to become politicised during transposition, and codifications, as these do not introduce new substantive elements. In addition, we excluded directives for which transposition had not started, and directives transposed at the level of administrative orders or ministerial decrees.

This led to the selection of the following two cases dealing with employees’ rights: Directive 2008/104 on Temporary Agency Work (TAW) and Directive 2010/18 implementing the Revised Framework Agreement on Parental Leave (PL). We also checked both directives for salience by studying the *ex ante* scrutiny stage. Both directives received parliamentary attention in the decision-making stage – for substantive reasons in the case of the TAW directive, and for subsidiarity concerns in the PL case. Our choice of cases was bolstered by the outcomes of an interview with a support staff member of the Standing Committee for Social Affairs and Employment (CSAE) in the Dutch parliament who clarified that employees’ rights are amongst the salient EU-related topics in the field of social affairs.

### **Data and Methods: Conceptualisation and Operationalisation of Parliamentary Scrutiny**

A key aspect of this paper is the conceptualisation of scrutiny. This is important, as scrutiny is a broad concept, with various different understandings attached to it, which may also lead to the disparate findings in the literature. Whereas some researchers in the field focus on parliamentary control, or ‘the ability of a parliament to make government act according to its preferences’ (Winzen 2012: 659), others view scrutiny as a more encompassing concept, referring to ‘the exercise of power by the legislative branch to control, influence, or monitor government decision-making’ (Holzhacker 2002: 462). Furthermore, scrutiny may also have a purely informational aspect, aimed at reducing information asymmetries (Auel 2007; Finke and Dannwolf 2013;

Pollak and Slominski 2003). Finally, in line with vote-seeking incentives, scrutiny may also be restricted to signalling policy preferences rather than actively seeking to shape policy development.

To analyse scrutiny comprehensively, we propose a conceptualisation that is more encompassing than typically used in the literature. We propose a ‘ladder of scrutiny’ comprising five goals of scrutiny by MPs – directed at either the Commission proposal or the national transposition bill – increasing in strength: (1) expressing support; (2) gathering information; (3) signalling their position; (4) expressing disagreement; and (5) exerting influence. In addition, EU-related scrutiny may be of a substantive or procedural nature. That is, typically in legislative-executive relations, parties interact on the basis of their policy positions (Holzhacker 2002; Winzen 2010). Yet, according to Winzen (2010: 5), government–opposition conflict on substantive issues is typically cross-cut by a second conflict, namely that between Europhiles and Eurosceptics. Accordingly, scrutiny may also take the form of interventions relating to the operations of EU, such as subsidiarity concerns. Taking this together, we derive 10 different types of scrutiny, depicted in Table 1.

The different types of scrutiny may be used by either opposition or coalition parties, in either the *ex ante* or *ex post* stage. In order to measure scrutiny we first identified all relevant steps of the legislative cycle, comprising decision-making and transposition.<sup>5</sup> Concerning the *ex ante* stage, we gathered the European Commission proposal, the directive text and any academic literature available about the directive. We then reconstructed the steps in the Dutch contribution to the decision-making process: the government’s explanatory memo following the European Commission proposal (BNC-fiche),<sup>6</sup> any general consultation between the CSAE and the social affairs minister,<sup>7</sup> and any written question, debate or motion in which the draft directive was mentioned.

To assess *ex post* scrutiny, we gathered all relevant documents on the transposition process, namely the bill and its explanatory memorandum, the CSAE’s Report on the draft, the Cabinet’s response, any amendments or motions, as well the plenary debate minutes and voting records, in case a debate was held. We also gathered position papers by societal stakeholders and relevant

TABLE 1  
SCRUTINY LADDER: TYPES OF EU-RELATED PARLIAMENTARY SCRUTINY INTERVENTIONS

Goal of scrutiny	Focus of scrutiny Substantive	EU-related
Expressing support	A1. Expressing substantive support	B1. Expressing EU-related support
Information-gathering	A2. Gathering substantive information	B2. Gathering EU-related support
Signalling position	A3. Signalling substantive position	B3. Signalling EU-related position
Expressing disagreement	A4. Expressing substantive disagreement	B4. Expressing EU-related disagreement
Influencing the cabinet	A5. Exerting substantive influence	B5. Exerting EU-related influence

academic studies. For each parliamentary instrument, we assessed the extent and type of parliamentary scrutiny by identifying the interventions made by the various parties, as well as the relevant goal of scrutiny.<sup>8</sup> We defined an intervention as a statement or question made by an MP – a method similar to that followed by De Ruiter (2013: 1203). We also measured the weight of each statement by counting the number of sub-interventions relating to one theme. For instance, if an MP asks questions on subsidiarity, this constitutes one intervention, with a particular weight capturing the number of relevant sub-interventions related to subsidiarity, summed on the basis of one particular document, such as a committee report or parliamentary proceedings (see De Ruiter 2013: 1203). Neutral statements, such as statements describing the state of affairs, are not included. In addition, we used the reports to obtain an understanding of the substantive preferences and disagreement of the parties, as well as saliency. Finally, related to hypothesis 4, we have compiled a list of governing coalitions, shown in Table 2.

In order to enhance external validity of the findings, we triangulated the data by conducting interviews with a staff member of the Dutch European Affairs Committee and two former CSAE staff members (3 September 2013). We also used the results of a focus group with the European Affairs Committee support staff (21 March 2013), observations of a plenary EU subsidiarity debate (19 September 2013), a CSAE meeting (19 September 2013) and a plenary debate on the transposition of the Directive of Consumer Rights (2011/83/EC; 19 September 2013).

TABLE 2  
OVERVIEW OF DUTCH GOVERNING COALITIONS

Cabinet/Year	Coalition government
Balkenende I (July 2002–May 2003)	CDA, LPF, VVD
Balkenende II (May 2003–July 2006)	CDA, VVD, D66
Balkenende III (July 2006–Feb. 2007)	CDA, VVD
Balkenende IV (Feb. 2007–Oct. 2010)	CDA, PvdA, CU
Rutte I (Oct. 2010–Nov.2012)	CDA, VVD Minority government supported by PVV
Rutte II (Nov. 2012–Present)	VVD, PvdA
<b>List of political parties</b>	
CDA ( <i>Christen-Democratisch Appèl</i> ; Christian Democratic Alliance)	
CU ( <i>Christen Unie</i> ; Christian Union)	
D66 ( <i>Democraten '66</i> ; Democrats '66)	
LPF ( <i>Lijst Pim Fortuyn</i> ; List Pim Fortuyn)	
PvdA ( <i>Partij van de Arbeid</i> ; Labour Party)	
PVV ( <i>Partij voor de Vrijheid</i> ; Freedom Party)	
VVD ( <i>Volkspartij voor Vrijheid en Democratie</i> ; People's Party for Freedom and Democracy)	

## **Scrutiny of Transposition in Action: The Cases of the Temporary Agency Work and Parental Leave Directives**

### *Temporary Agency Work Directive*

*Background.* The Temporary Agency Work Directive 2008/104 aims to establish a level playing field in terms of working conditions for temporary workers across the EU. The core principle of the directive is that workers employed by a temporary work agency should receive treatment equal to that of workers recruited directly by the enterprise in terms of working time, pay, protection against discrimination, as well as protection of the rights of pregnant and nursing women and the elderly. Also, they should gain access to employment information, training and services.

*The Dutch position.* From the Dutch point of view, the directive would improve the access of Dutch businesses to the labour market in other EU member states (Parliamentary Papers II 2007/08, 21,501–31, No. 136, p. 30). According to the Dutch Minister of Social Affairs, the directive was a test case for the new equilibrium between flexibility and security (Parliamentary Papers II 2002/03, 21,501–31, No. 12, p. 5). At the same time, the minister argued that the existing equilibrium between flexibility and security in the Netherlands was optimal and ‘we should prevent alleged securities that hurt flexibility, or more flexibility obstructing security’ (Parliamentary Papers II 2004/05, 21,501–31, No. 58, p. 5). A potential loophole in the directive, however, allowed member states to authorise the national social partners to define specific working and employment conditions for temporary workers (Directive 2008/104/EC).

*Ex ante scrutiny.* As negotiations on the directive took over six years, various coalitions dealt with it. Over time, it surfaced in 10 General Consultations between the CSAE and the minister. It was brought up in omnibus General Consultations dealing with several EU topics and national Consultations focusing on general labour market issues, during which an MP made the link to the directive. Scrutiny typically took the shape of parties asking about the status of the negotiations, expressing their substantive preferences and, in the case of the PvdA, urging the minister to actively pursue the directive. Several political parties expressed support for the directive, albeit for different substantive reasons. For example, the CDA wanted to prevent the introduction of limits to accessing the Dutch temporary agency market (Parliamentary Papers II 2002/03, 21,501–31, No. 12). The PvdA was supportive of the directive and pointed out that vulnerable seasonal workers would gain working conditions similar to those of their Dutch counterparts (Parliamentary Papers II 2008/09, 21,501–31, No. 158, p. 7). An exception was the Eurosceptic SP, which invoked subsidiarity concerns detached from the substance of the directive (Parliamentary Papers II 2007/08, 21,501–31, No. 150, p. 2). The government’s position during

the decision-making stage was generally positive toward adopting this legal instrument at the EU level and enhancing the European level playing field for Dutch businesses (Parliamentary Papers II 2001/02, 22,112, No. 238, p. 5; Parliamentary Papers II 2005/06, 21,501–31, No. 105, p. 5). Finally, a notable difference can be seen in the interventions: opposition parties SP and PvdA were more critical in their statements than coalition parties such as the CDA and D66.

*Ex post* scrutiny. The directive, which was adopted November 2009, did not have many serious legal implications for the Netherlands (Grapperhaus 2010: 407). The Netherlands had to review any prohibitions or restrictions on the use of temporary agency work (Article 4) and report these to the European Commission. Article 5 of the directive set out the principle of equal treatment of temporary agency workers, which was transposed through the national law ‘Waadi’. Several smaller changes were required concerning Article 6 on access to employment, collective facilities and vocational training.

During transposition, the governing minority coalition was composed of the VVD and CDA, supported by the PVV. Despite the general parliamentary support for the directive expressed during decision-making, various political factions played a role in *ex post* scrutiny of the minister. Basically, this scrutiny occurred in two different contexts: the legislative Report of the CSAE and the plenary debate. However, no amendments or motions were put forward.

Parliamentary activity suggests broad support for the directive, as it would enhance the EU level playing field for Dutch businesses, in line with the preferences of the VVD and CDA. At the same time, it provided more social rights for temporary workers, in line with the preferences of left-wing political parties. Still, several concerns, statements and questions were put forward, adding up to a total of 37 interventions. About one-third of those were made by parties in the governing coalition, the VVD being more active than CDA. Besides raising various substantive points, the VVD repeatedly expressed its fear of gold-plating by the cabinet. Both parties asked the government to explain the status of existing prohibitions and restrictions in collective bargaining agreements (Parliamentary Papers II 2011/12, 32,895, No. 4, p. 3). Crucially, both parties had an incentive to scrutinise the bill, because it was drafted when the ministerial portfolio shifted from the CDA to the VVD.

The other interventions were made by opposition parties PVV (6), PvdA (3), SP (5), GL (1) (GroenLinks; Green Left) and D66 (9). However, the interventions differed in weight. The most extensive interventions were made by opposition parties. Most notable were the interventions made by the PvdA during the report and debate, calling upon the minister to achieve a greater equality in treatment and act against the Collective Labour Agreement exemptions (Parliamentary Proceedings II, 1 March 2012, 85-6-30). This is

striking, given the earlier support by the PvdA for the government's position in 2008, when it was part of the coalition government. Generally, interventions expressed during the debate were higher on the scrutiny ladder presented in Table 1. The PvdA, GL and D66 expressed clear criticism, as opposed to coalition parties whose statements were much milder. The GL stressed that the directive focused too much on the 'flex' aspect and paid too little attention to issues of social rights (Parliamentary Proceedings II, 1 March 2012, 58-6-29). PvdA MPs were particularly vocal about the paradox of upholding unequal treatment by allowing exemptions (Parliamentary Papers II 2011/12, 32,895, No. 4, p. 4). They also noted that the directive had a minimum harmonisation scope and further provisions should be added regarding pensions or compensation in case of illness (Parliamentary Proceedings II, 1 March 2012, 58-6-30). Furthermore, the PVV also asked why pension rights were not covered in the directive (Parliamentary Papers II 2011/12, 32,895, No. 4, p. 2; Parliamentary Proceedings II, 1 March 2012, 58-6-31). Strikingly, the SP did not repeat its earlier subsidiarity concerns, instead directing attention to the low likelihood of curbing inequality.

Overall, parliamentary scrutiny did not lead to significant legislative changes. Minister Kamp's (VVD) main argument during the parliamentary proceedings was that deviations from the principle of equal treatment for temporary workers should be allowed. He stressed that 'It is appropriate in our system that deviations through collective bargaining agreements are allowed. [...] These are rules that now should not be debated again' (Parliamentary Proceedings II, 1 March 2012, 58-6-32). The minister also highlighted the importance of involving the social partners in developing the Dutch collective bargaining agreements in different sectors (Parliamentary Proceedings II, 1 March 2012, 58-6-32).

### *Parental Leave*

*Background.* The Parental Leave Directive 2010/18 constituted a milestone in the European Social Dialogue, as it was negotiated by the European social partners. It aimed to contribute to better reconciliation of professional, private and family life. To this end, it introduced various measures, such as four months of parental leave, individual nature of the entitlement, rights of atypical workers, protection against unfavourable treatment, flexible working arrangements, and special measures for parents of children with disabilities or long-term illnesses (Clauwaert 2010: 432). The directive was based on minimum harmonisation, allowing the member states to set higher standards, for instance by providing paid leave.

*The Dutch position.* The Dutch cabinet supported the directive's main goal of greater labour market participation across the EU (Parliamentary Papers II

2008/09, 22,112, No. 914, p. 4). It also assessed the proposal positively on subsidiarity and proportionality aspects (Parliamentary Papers II 2008/09, 22,112, No. 914, p. 7). It further stated in the fiche that the proposal did not have financial implications for the Dutch government, businesses or citizens. Nor did it impose a significant administrative burden (Parliamentary Papers II 2008/09, 22,112, No. 914, p. 4). Concerning the legal consequences, the proposal and ensuing directive required passing an additional legal provision against unfavourable treatment, as Dutch law only contained a prohibition against dismissing people taking parental leave. In addition, employees should obtain the right to modify their work schedule after taking parental leave (Parliamentary Papers II 2008/09, 22,112, No. 914, p. 8).

*Ex ante scrutiny.* The governing coalition in the Netherlands during decision-making was composed of the CDA, PvdA and CU. Despite the positive tone of the cabinet's fiche, serious parliamentary debate ensued. The Commission proposal was one of five proposals selected for a subsidiarity test by the Dutch Lower and Upper Chambers in conjunction. After studying the proposal, and soliciting advice from the committees on Social Affairs in the Lower and Upper Chamber, the Subsidiarity Committee concluded that there were no reasons to advise negatively on the subsidiarity or proportionality of the directive (Parliamentary Papers II 2009/10, 32,024, No. 4).

However, this conclusion was strongly challenged in a subsidiarity debate, especially by opposition parties VVD, PVV, SP and SGP (Staatkundig Gereformeerde Partij; Reformed Political Party). The VVD was particularly vocal in its criticisms, arguing in the plenary debate that 'Brussels should stay out of this issue [parental leave]' (Parliamentary Proceedings II, 13 October 2009, 13–954). The PVV was also rather outspoken, stating that the EU should 'bother about the size of bananas', and that parental leave should remain in 'Dutch hands' (Parliamentary Proceedings II, 13 October 2009, 13–954).

In order to underscore its Eurosceptic position, the VVD proposed a motion calling upon the rest of the Lower Chamber to declare that the proposal was not in line with the principles of subsidiarity and proportionality (Parliamentary Papers II 2009/10, 32,024, No. 5). Given the general support for this directive in the sectoral parliamentary committees, it was unlikely that the VVD motion would succeed – the responsible MP Meeuwis actually realised this, as evidenced by a post on his blog.<sup>9</sup> By contrast, the SP expressed very little criticism of the Parental Leave Directive, even though it is among the most Eurosceptic parties in the Dutch Parliament. While the SP acknowledged that it is generally opposed to EU policies, it also expressed support for the directive, arguing that this was a special case reflecting the will of the social partners. The CDA, one of the coalition partners which is generally known for supporting more flexible parental leave, voiced its explicit support for the directive. The PvdA was strikingly absent from the discussions.

In addition to the subsidiarity debate, the directive was discussed in three General Consultations dealing with labour market flexibility. On those occasions, the VVD complained that the directive was not mentioned by the cabinet earlier in the context of general policy developments and proposed a motion to ensure that implementation of the directive would not increase the administrative burden for companies (Parliamentary Papers 2009–10, 26,447, No. 51). In addition, the CDA proposed a motion holding that the directive should be evaluated, and that compliance by social partners with the directive's provisions should be monitored and ensured (Parliamentary Papers 2009–10, 26,447, No. 50). Both motions received broad parliamentary support, in contrast to the VVD's subsidiarity motion, which was only supported by a minority of MPs.

*Ex post scrutiny.* The transposition of the directive started in 2010, under a new coalition government composed of the VVD and PvdA. The bill and explanatory memo were sent to the Lower Chamber in late November 2011. The CSAE wrote up its report concluding the preparatory stage rather quickly. The Committee report contains comments and questions by five parties: VVD, PVV, CDA, SP and D66. The Social Democrats (PvdA), for whom parental leave is generally an important topic, notably did not contribute to this discussion. Equally striking was the fact that the VVD supported the main principles of the directive to improve the balance between work and private life, and enhance labour participation (Parliamentary Papers II 2011/12, 33,107, No. 4, p. 1). This is a marked difference from its anti-EU position during the subsidiarity debate. The PVV's position was consistently Eurosceptic. The party used the committee report to signal its discontent with the fact that the European Union was meddling with Dutch social policy (Parliamentary Papers II 2011/12, 33,107, No. 4, p. 2).

Coalition and opposition parties were not equally active during transposition. The VVD, a member of the governing coalition, made five different scrutiny interventions and the PvdA made one. The other 16 interventions were made by opposition parties: PVV (4), CDA (8), SP (3) and D66 (1). The most extensive interventions were made by the CDA. The PVV enquired about the meaning of the term 'less favourable treatment'. Strikingly, the SP made a relatively extensive intervention about the financial aspects of paid parental leave, even though the directive only covered unpaid leave. Most interventions were aimed at asking questions or position-taking, with the SP unsuccessfully pushing for the introduction of paid parental leave. The committee was satisfied with the answers provided by the government and a debate was not tabled. The bill was adopted as a matter of formality on 1 March 2012, a week before the official deadline.

*Analysis.* How do we evaluate the four hypotheses presented above, considering the evidence in the case studies? Regarding hypothesis 1 about the role of Eurosceptic parties, the findings are mixed. In the TAW case, Eurosceptic

political parties such as the PVV and SP were not more active in scrutinising the directive than more moderate parties such as the PvdA and D66. Whereas the SP mentioned subsidiarity concerns *ex ante*, it did not pursue this during transposition, arguably because it supported the key goal of the directive. In addition, various parties expressed their support for supranational regulation of this issue area as a way to enhance the rights of temporary agency employees. In the PL case, in line with the hypothesis, the Eurosceptic opposition parties SP and PVV were more active in scrutiny than more pro-European Dutch parties such as D66.

With respect to hypothesis 2 about the impact of issue salience on scrutiny patterns, our case studies reveal that activities seem to be rather limited. Close analysis of both cases shows that even though the general salience of the topic of employees' rights was high, the transposition process was not very salient. There was hardly any media attention, which is an important indicator of salience to begin with. Moreover, the social partners did not politicise transposition in either of the cases. In the TAW case, the only group expressing discontent with the exemptions in collective labour agreements was the association of temporary work agencies (Flexnieuws.nl 2013). Yet its opposition never reached the national press. In the PL case, salience seemed to be low because the main stakeholders were supportive of more flexible parental leave arrangements (2009–10, 26,447, No. 45, p. 1). The social partners, moreover, supported the directive, to the point of requesting implementation through a law instead of labour agreements, even though the latter would have been a legally acceptable option.

The evidence thus supports the hypothesis; given the low salience of the directive, there was not much activity. The interviewed staff members of the EU and Social Affairs Committees of the Dutch Lower Chamber outline that attention for the transposition of EU policy is most likely to occur when 'the relevant field', such as party members, activists, and stakeholders, is mobilised around an issue.<sup>10</sup> This simply did not happen in either case. At the same time, even in cases scoring relatively low on external attention, MPs used transposition to signal their policy preferences.

In line with hypothesis 3, the TAW case study showed heightened parliamentary scrutiny activity during both decision-making and transposition. The Dutch government signalled that it considered the national status quo regarding the balance between flexibility and security to be optimal and was reluctant to seek recalibration. At the same time, several political parties such as the PvdA, SP, GL and PVV were actively involved in the *ex ante* phase of scrutiny and emphasised a preference for enhanced temporary worker rights and job security. Yet, they did not file amendments or motions during the transposition stage to pursue their preferences. It is also striking that they did not attempt to change the course of transposition and prevent the possibility to circumvent the equal treatment principle through the national collective bargaining agreements.

Overall, the greater distance between the proposed policy and the preferences of political parties on the left as well as the PVV may explain why these political parties scrutinised the directive more actively. At the same time, this case highlights that a political party's general position on EU integration may interact with its substantive policy preferences. For example, during the subsidiarity debate, the SP made a general statement that the party is against EU policies, but party members also stated that they favoured this directive because it dealt with social affairs.

Finally, in support of hypothesis 4, the PL case study confirmed that coalition partners were less active in scrutiny than opposition parties. Opposition parties' scrutiny interventions were more numerous, more extensive and more demanding than those of coalition parties. For example, the VVD as opposition party raised a series of questions during the decision-making stage which may be attributed to vote-seeking incentives. At the same time, these were not followed up by filing any motions or amendments during the transposition stage when it joined the governing coalition.

In contrast to the PL case, where opposition parties responded to vote-seeking incentives and signalled that the EU should not be regulating this issue area, the transposition of the TAW directive showed very little EU-related scrutiny. We interpret this as evidence that when political parties agree with the substantive goals of an EU directive, policy-seeking incentives trump vote-seeking ones. The political groups in parliament focused on further information-gathering about the directive and making substantive statements about their policy preferences. For example, the evidence suggests that even one of the most Eurosceptic parties in the Dutch political system, the PVV, did not make general points about the EU interfering in national policy-making. Instead, a PVV parliamentarian asked why pension rights were not included in the transposing bill, which would have augmented the scope of the equal rights principle introduced by the European directive (Parliamentary Proceedings II, 1 March 2012, 58-6-32).

## Conclusion

In this article we have argued that *ex post* scrutiny may be an important venue for parliaments to strengthen their position vis-à-vis the executive. Focusing on the transposition of two EU social policy directives, we have analysed the conditions under which MPs in the Dutch Lower Chamber engage in parliamentary scrutiny. Drawing on vote-seeking, policy-seeking and office-seeking incentives, we formulated four hypotheses on when we expect more intensive *ex post* scrutiny of EU social policy directives.

Our findings provide support for the argument by Auel (2007) that coalition parties are less active than opposition parties when it comes to scrutiny. Across the board, their interventions were less extensive and extreme. Also, changes in the government's composition affected parties' stance during transposition. At the same time, we found evidence of various scrutiny interven-

tions, by opposition and coalition parties alike, aimed at information-gathering and party position-taking.

Considering *ex post* scrutiny, we should distinguish between the fairly common low-profile scrutiny aimed at information-gathering and position-taking, and high-profile scrutiny aimed at shaping the course of transposition. Whereas we found little evidence of the second type, we did observe more politicised *ex ante* scrutiny of the first type. Based on our initial case selection analysis, both directives seemed to be salient. However, the subsequent analysis of *ex post* scrutiny revealed that high-profile *ex post* scrutiny is more likely to occur in times of great turmoil and media attention, which was not present in either case. Subsequent analyses should consider even more salient transposition cases in terms of outside pressure and media attention.

Furthermore, we found that for Eurosceptic political parties such as PVV and SP, the vote-seeking incentives to criticise EU directives are reduced significantly when the party substantively agrees with the content of the legislation. The case studies also showed that heightened *ex ante* scrutiny does not translate directly into careful *ex post* oversight. This may be partly explained by the change of the Dutch governing coalition during the transposition process.

In sum, our analysis supports the view that parliamentary scrutiny should be understood in the context of 'regular' parliamentary–executive relations. During the transposition of EU legislation, MPs engage in a cost–benefit analysis whether to use the available scrutiny instruments. *Ex post* parliamentary oversight may be used to signal policy positions to the electorate, a strategy which so far has received little attention in the EU scrutiny literature, or pursue substantive policy goals, often driven by the desire to remain in office. Our two case studies of *ex post* scrutiny over transposition of EU social directives in the Netherlands illustrate that it is worthwhile to further compare similar cases across countries, and apply the operationalisation of *ex post* scrutiny more systematically.

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## Notes

1. This is particularly the case for directives, which must be transposed, or converted into national legislation, by the national authorities. For this reason, directives are central to this paper.
2. Similarly, De Ruiter (2013) recently asked the question under what conditions EU directives end up 'on the national parliamentary radar'.
3. We would like to thank the reviewer for making this point.

4. See [http://europa.eu/legislation\\_summaries/employment\\_and\\_social\\_policy/index\\_en.htm](http://europa.eu/legislation_summaries/employment_and_social_policy/index_en.htm).
5. We discuss both *ex ante* and *ex post* parliamentary scrutiny, because the *ex ante* stage allows us to glean political parties' positions and saliency more accurately than just in the transposition stage, because strategic adjustment may have taken place during *ex post* scrutiny.
6. This document summarises the EU proposal and indicates the position/strategy of the government. These 'fiches' are sent to parliament.
7. Each parliamentary committee has the possibility to organise a General Consultation with the respective minister. Traditionally, this takes place before the meeting of the relevant Council of Ministers in Brussels. Officially, General Consultations do not have a mandating character, but this meeting can be followed up by a plenary meeting of the parliament during which motions can be presented, asking the minister to change his/her position (Dutch Lower Chamber 2011).
8. In case a particular contribution was hard to label in terms of scrutiny goals, we opted for the lower category, in order not to inflate our results.
9. See <http://vvd-nederland.blogspot.nl/2009/10/europa-moet-afblijven-van-onze.html>.
10. Interview EU advisor Social Affairs Committee, Dutch Parliament, The Hague, 3 September 2013.

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