



# Tweede Kamer

DER STATEN-GENERAAL

## COURTESY TRANSLATION (ENG)

Dear Mr. Buquicchio,

Today, May 28, 2019, in accordance with Article 30 of the Rules of Procedure of the House of Representatives of the States-General, the House of Representatives has decided to seek the opinion of the Council of Europe's Venice Commission on possible shortcomings in and improvements to the Dutch Parliament's democratic control in the European Union and the Eurozone.

European law has direct effect. This is why it should be possible for Dutch parliamentarians to oversee European decision-making. After all, it is our own, national members of government who negotiate in Brussels on European law that has direct effect in their own country.

This control is currently very difficult for national parliamentarians; they are unable to gain access to documents in good time. Documents are often confidential and therefore cannot be put to third parties for advice. Finally, there is a lack of clarity in the way in which the position of the different member states is reported, which prevents parliamentarians from knowing the details of majorities or blocking minorities in informal votes. It is also not clear which member states are participating alongside the EU Presidency in trilogue negotiations. This lack of transparency prevents national MPs from influencing decision-making where there may be opportunities to do so.

For the Dutch Parliament, this raises the question of how this European working procedure involving the limited and often confidential sharing of information relates to the legislative and scrutinising role performed by Parliament in accordance with national constitutional law. For example, Article 81 of the Dutch Constitution states that government and Parliament are on an equal footing as co-legislators. This also raises questions with regard to Article 68 of the Dutch Constitution that gives individual MPs the right to information from the government. According to national constitutional law, the government is obliged to provide Parliament with all requested information apart from in exceptional situations. It is also accepted that the government has an active duty to inform Parliament. The basic principle here, arising from Article 66 of the Constitution, is that information is provided in public in order to enable Parliament to fulfil its democratic duty to the best of its ability.

The democratic control of the Eurogroup and Eurozone institutions is a separate issue, mainly because these institutions are partly outside the framework of the European Union treaties. There is hardly any democratic control of the Eurogroup, which does not even have internal rules of procedure or feature in the treaties. The same applies to the Euro summits. Despite this, this body makes important decisions in emergency situations and on the structure of the currency union.



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Moreover, there is currently no scrutiny on the limits to the mandate that the European Central Bank (ECB) has under the EU Treaty, except under the auspices of the European Court of Justice, which in any case refers back to the ECB itself. The European Court of Auditors has pointed out that it has no access to documents for banking supervision at the ECB and that there are considerable risks for taxpayers. This directly encroaches on national control and the right to approve and amend budgetary policy.<sup>1</sup> Transparency International has clearly highlighted these problems in the Eurozone.<sup>2</sup>

In view of the rapid developments in the banking union, including the backstop and the European deposit guarantee scheme, discussions about the Eurozone budget and the lack of democratic control over it, we urge your Commission to issue an opinion to the Dutch parliament concerning possible shortcomings in and improvements to democratic control in the European Union and the Eurozone in order to enable us to exercise greater democratic control based on national and constitutional law. By doing so, you will be assisting us as national parliamentarians in more effectively scrutinising members of our own government in their European decision-making and exercising our right to approve and amend budgetary policy pursuant to Article 105 of the Dutch Constitution.

You are probably already aware that the House of Representatives previously sought a legal opinion<sup>3</sup> from the Parliamentary Counsel, which revealed many of the shortcomings cited. In response, the House of Representatives published a paper<sup>4</sup> that has been signed by more than 20 European parliaments and submitted as a request to various EU institutions. There has so far been only a very limited response and no improvements have been forthcoming. The European Ombudsman independently reached similar conclusions<sup>5</sup>, but her report also failed to bring about any real changes.

Currently, the Dutch parliament can see no clear possibilities for bringing about transparency and scrutiny in the EU by itself and is therefore turning to you for an opinion, specifically concerning influence on Dutch legislation, rule of law and budgeting.

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<sup>1</sup> European Court of Auditors' report, published on 14 January, <https://www.eca.europa.eu/en/Pages/NewsItem.aspx?nid=11574>

<sup>2</sup> Transparency International, report *'Vanishing Act: The Eurogroup's Accountability'*, published on 5 February 2019, <https://transparency.eu/eurogroup/>

<sup>3</sup> Letter from the Parliamentary Counsel of the Dutch House of Representatives, 6 March 2017, [https://www.houseofrepresentatives.nl/sites/default/files/atoms/files/advice\\_parliamentary\\_council.pdf](https://www.houseofrepresentatives.nl/sites/default/files/atoms/files/advice_parliamentary_council.pdf)

<sup>4</sup> Opening up closed doors: making the EU more transparent for its citizens, 26–28 November 2017, <https://www.tweedekamer.nl/kamerstukken/detail?id=2017D32584&did=2017D32584>

<sup>5</sup> Special report by European Ombudsman, OI/2/2017/TE, 15 May 2018, <https://www.ombudsman.europa.eu/nl/special-report/en/94921>



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The request is based on the motion tabled by MP Pieter Omtzigt and others which was passed unanimously. ([Parliamentary Document 22 112 no. 2774](#)) passed by the House of Representatives on 21 February 2019. Enclosed, you will find a copy of this motion including a specification of the request for an opinion. If you wish, we will be glad to explain the request for an opinion to you at the meeting of the Venice Commission.

Yours sincerely,

Pieter Omtzigt (CDA)  
Rapporteur Transparency of EU decision-making

Renske Leijten (SP)  
Rapporteur Transparency of EU decision-making