

**THE EU'S CAPACITY
FOR FURTHER ENLARGEMENT**

No. 71, July 2010

ADVISORY COUNCIL ON INTERNATIONAL AFFAIRS
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Foreword

On 20 December 2009 the government and the House of Representatives asked the Advisory Council on International Affairs (AIV) to produce an advisory report on the European Union's capacity to absorb new members (see annexe I for the request). This was the first time a request for advice had been signed by both the government and the House of Representatives. The request was concerned principally with what precisely the concept of 'absorption capacity' should be taken to mean. The government and the House elaborated upon the request by formulating 11 questions referring to institutional and economic aspects, public support and the like. They looked forward to receiving the answers before the European Commission published its annual report on the status of enlargement in the autumn of 2010.

This advisory report was prepared by a joint committee of the AIV supplemented with external experts. Its members were Professor A. van Staden of the European Integration Committee (CEI, chair), Professor M.G.W. den Boer (CEI), Dr W.F. van Eekelen (CEI), T.P. Hofstee of the Human Rights Committee (CMR), E. Jansen (CEI), Professor P.J.G. Kapteyn (external specialist), Dr C.M. Megens of the Peace and Security Committee (CVV), Dr P.C. Plooij-van Gorsel (CEI, vice-chair), W.L.E. Quaadvlieg (CEI), Professor J.Q.T. Rood (CEI), C.G. Trojan (CEI), Dr E.P. Wellenstein (honorary member) and Professor J.W. de Zwaan (CEI). S. Fazili of the European Integration Department, External Affairs Division (DIE/EX) acted as civil service liaison officer. The secretariat was headed by Dr D.E. Comijs, who was assisted by D.A. Wegen and P. Koning (trainees).

This report consists of four chapters. The introductory chapter looks principally at the problematic nature of the term absorption capacity. A discussion then follows of the concept's five dimensions: the institutional and governance dimension, the economic dimension, the budgetary dimension, the public acceptance dimension and the geopolitical dimension. Separate attention is paid to police and justice matters. Chapter 3 considers the subject from a Dutch perspective. Why is the Netherlands one of the countries that insist on strict application of the accession criteria? The report also considers why a relatively large proportion of the Dutch public is opposed to the EU's further enlargement. In the conclusions in chapter 4, the AIV answers the main question on how the European Commission's conclusions and recommendations, as set out in the 2006-2007 enlargement strategy, should be followed up. The report closes with a summary.

The AIV adopted this report at its meeting on 2 July 2010.

I Introduction

In 1993 the European Council meeting in Copenhagen concluded with regard to the further enlargement of the European Union (EU) that ‘the Union’s capacity to absorb new members, while maintaining the momentum of European integration, is an important consideration in the general interest of both the Union and the candidate countries’.¹ Thirteen years later, the European Council, chiefly on the insistence of France, named the EU’s absorption capacity as a separate criterion for the accession of new member states. The European Commission has defined the concept in very general terms as ‘whether the EU can take in new members at a given moment or in a given period, without jeopardizing the political and policy objectives established by the Treaties’. The Commission believes the EU’s political strategy on enlargement should be based on three key elements:

1. maintaining the momentum of European integration;
2. the candidate countries’ fulfilment of rigorous conditions;
3. better communication to ensure the democratic legitimacy of the process and prepare citizens for future enlargements.²

In an annexe to the Communication setting out these elements,³ the Commission introduced the term ‘integration capacity’ as an alternative to ‘absorption capacity’. Where it refers to ‘absorption capacity, or rather integration capacity’, it seems to prefer the latter term. The Commission, however, does not explain this – assumed – preference or provide any reasons for it. The Commission is presumably sensitive to the response of member states that think ‘absorption’ implies the ‘swallowing up’ of other countries. This would be contrary to the principle that the member states will remain the inalienable building blocks of the European edifice.⁴ *Since the request for advice refers only to ‘absorption capacity’, the AIV will continue to use that term even though ‘integration capacity’ would better reflect the political objectives and dynamic character of European cooperation. The AIV suggests that the government consider using the term ‘integration capacity’ in future.*

- 1 This conclusion was initially based chiefly on concerns about whether the EU’s institutional structure could cope with enlargement. This was before the changes introduced by the Treaties of Amsterdam, Nice and Lisbon.
- 2 See Communication from the Commission to the European Parliament and the Council, ‘Enlargement Strategy and Main Challenges 2006-2007’, 8 November 2006.
- 3 European Commission, ‘Special report on the EU’s capacity to integrate new members’, p. 17.
- 4 See Fabian Amtenbrink, ‘On the European Union’s Institutional Capacity to Cope with Further Enlargement’, S. Blockmans and S. Prechal (eds.), *Reconciling the Deepening and Widening of the European Union*, The Hague, T.M.C. Asser Press, 2007, p. 113.

I.1 Problematic term

Despite the Commission's attempt to flesh out the term absorption capacity, it has to be concluded that it is problematic for more than one reason.⁵ Firstly, the more or less official definition suffers from a *lack of precision*. It is so vague that it can readily lead to subjective interpretations depending on the political needs of the day. A more precise definition is required.⁶ Secondly, there is a tendency to see absorption capacity as a static, unchanging phenomenon. However, it is a *dynamic* process. The EU's capacity to take in new member states changes over time. This insight is relevant because accession negotiations can take 10 to 15 years. The factors the EU must take into account will change significantly during such a lengthy process. In the current financial and economic crisis, for example, the EU member states have less scope than in times of robust economic growth to provide candidate countries with financial support, over and above the exceptional aid they are already providing to alleviate the debt positions chiefly of southern member states.⁷

Thirdly, it should not be forgotten that previous enlargements accelerated the integration process in several ways. The dynamic interplay of widening and deepening sometimes has unforeseen consequences.⁸ Integration capacity not only varies over time but is also determined by the EU's own policy decisions. A structural reform of the common agricultural policy (CAP), for example, can have consequences for the capacity to include new countries in the CAP.

Fourthly, it is wrongly assumed that the advantages of integration are enjoyed by a limited number of member states and the benefits are diluted if more countries want to share in them. Frank Vibert rightly notes that many of the benefits of EU membership flow from following common rules, whose value increases as more countries subscribe to them.⁹ This is particularly true in the context of the internal market, where economies of scale and the advantages of specialisation increase with the number of participants.

Fifthly, there is little point in talking about the EU's absorption capacity in abstract terms. The EU's capacity to take in new countries without jeopardising the integration process is strongly influenced by the size of the acceding countries and their specific circumstances and must therefore be judged on a case-by-case basis. The enlargement to include countries in Central and Eastern Europe was justified not merely as an act of historical justice and solidarity but chiefly by the political argument that such an enlargement would strengthen European stability as a whole. The EU can be regarded as a security

5 For a similar opinion, see Michael Emerson et al., '*Just what is this 'absorption capacity' of the European Union?*', Brussels, CEPS Policy Brief', September 2006.

6 Such a definition is required regardless of whether the term 'absorption capacity' or the term 'integration capacity' is used.

7 See AIV, 'The EU and the Crisis: lessons learned', advisory report number 68, The Hague, January 2010.

8 See also the contributions to Blockmans and Prechal referred to in note 4.

9 Frank Vibert, 'Absorption capacity: the wrong European debate', *openDemocracy*, London, online publication, 2006.

community,¹⁰ with the potential to export stability to regions and countries with manifest or latent conflicts (frozen conflicts). The other side of the argument, however, is that the EU itself can import security problems by accepting countries located in conflict zones. Of key importance is whether the European institutions can resolve such problems relatively quickly. The long-drawn-out question of Cyprus is an illustrative and negative example of this.

1.2 The many dimensions of absorption capacity

Finally, absorption capacity is a difficult term to use because it is defined by a series of very divergent factors. The indicators produced by these factors do not necessarily point in the same direction, i.e. for or against enlargement. This report recognises five dimensions of the EU's integration capacity:

1. the *institutional and governance* dimension: the impact on the EU's capacity to act, both internally and externally;
2. the *economic* dimension: the impact on the EU's general prosperity, which is associated principally with the operation of the internal market, partly in the light of exemptions and safeguard provisions;
3. the *budgetary* dimension: the impact on the size and composition of the EU's budget, partly in view of the debate on the CAP and future expenditure from the structural and regional funds;
4. the extremely political dimension of *public acceptance*: the impact of further enlargement on the public's identification with and support for the European integration project as such. In line with what has already been said about country-specific factors, the AIV notes that the strength of public acceptance differs from one country to another and is determined in part by the relationship with individual candidate countries and the sense of affinity with the country concerned;
5. the *geopolitical* dimension, the impact of further enlargement on the EU's relations with neighbouring non-EU states (in the case of Turkey's accession, for example, the relationship with the Middle East and the southern Caucasus and the wider external world).¹¹

These five dimensions are analysed and discussed in the chapters that follow. The questions posed in the request for advice will also be addressed. The penultimate question, on 'absorption capacity' versus 'integration capacity', has been considered above. The final, eleventh, question, on the EU's current policy on absorption capacity, is considered in chapter IV, where it is at the centre of the AIV's final opinion.

In so far as absorption capacity can be increased by policy, the AIV thinks policy should be focused on it. Where absorption capacity is used to highlight the potential 'cost' of further enlargement, the AIV would note that not enlarging also has its cost, i.e. the potential damage to relations with neighbouring countries/candidate countries and to internal developments within those countries and the potential cost to the EU if or as

10 This term is used here, as is customary in the academic literature, to mean a community that has successfully pacified the relations among its members to such an extent that the use of force is no longer considered an option to settle disputes.

11 The AIV has already published several reports on this theme. See, for example, AIV, 'Towards Calmer Waters: A report on relations between Turkey and the European Union', advisory report no. 9, The Hague, July 1999, and AIV, 'Turkey: Towards membership of the European Union', advisory report no. 37, The Hague, July 2004.

long as these countries cannot be offered a realistic prospect of accession. The EU must therefore address two questions: firstly, the relationship between the cost of enlargement and the cost of non-enlargement and, secondly, the EU's capacity to absorb the negative consequences of non-integration.

1.3 Current status of further enlargement

The current situation regarding the possible further enlargement of the EU can be summarised as follows. Nine countries are involved and three of them are recognised as candidate countries: Croatia, Turkey and Macedonia. Since it applied for membership in July 2009, Iceland can be considered a fourth candidate country as it has already adopted the classical EU *acquis* as a member of the European Economic Area. It is generally thought that Croatia will be the first of this group to accede. Macedonia is not expected to accede until the dispute with Greece about its name has been resolved. Accession negotiations have been taking place with Turkey since 2005. Progress has been slow and the final outcome is uncertain. Albania, Bosnia and Herzegovina, Kosovo, Montenegro and Serbia are potential candidate countries. Of these, Albania, Montenegro and Serbia have already applied to join the Union.

There are therefore no fewer than nine highly divergent cases, often with very sensitive relations with each other. This calls not only for the careful consideration of each case but also for the ongoing consideration of relations in the region. Rising to this many-sided, complicated challenge requires a well-thought-out strategy here and now.

It is still open to question whether all these countries will be able to accede in the foreseeable future. The European Council of December 2006 specifically stated in its conclusions that the future of the countries in the Western Balkans lay in the EU. The AIV does not express an opinion in this report on where the ultimate borders of the EU should be drawn. The term 'Europe' is clearly a political construct: opinions on which countries can be part of the EU change over time under the influence of new political developments, insights and experiences.

With regard to the EU's other neighbours, the European Neighbourhood Policy (ENP), presented in 2003, is a useful instrument that provides a framework for relations with the enlarging Union's new neighbours. It is based on shared values and seeks a long-term approach to reform, sustainable development and trade relations. Its goal is to create an enlarged area of political stability and functioning rule of law, and to foster the exchange of human capital, ideas, knowledge and culture.¹² The ENP makes no promises on membership but offers the countries concerned the prospect of a stake in the EU's internal market and further integration and liberalisation to promote the free movement of persons, goods, services and capital. As a result of the ENP, a Union for the Mediterranean¹³ was established on the initiative of President Sarkozy and an Eastern

12 Doc. (COM) 2003, 104 final, 'Wider Europe-Neighbourhood. A new framework for relations with our Eastern and Southern Neighbours'.

13 This name was chosen on the insistence of Germany after France had originally proposed a 'Mediterranean Union' that would not involve all EU countries. The Union was established at a summit in Paris attended at the highest level by all countries with the exception of President Gaddafi. The Turkish prime minister, Recep Tayyip Erdogan, attended despite concerns that this Union could lead to the 'privileged partnership' he had already rejected. To date, this Union has produced little more than a ponderous institutional structure with a Secretary-General and six deputies.

Partnership on the initiative of Poland and Sweden.¹⁴ The Balkan countries that cannot yet accede are certainly entitled to facilities similar to those enjoyed by the Eastern partners.

To return to the question of the EU's absorption capacity, the AIV closes this chapter by concluding that the term is politically charged. Its careless use could easily lead to a spurious argument in the enlargement debate.

¹⁴ See AIV, 'The Eastern Partnership', advisory letter no. 15, The Hague, February 2009.

II The different dimensions of absorption capacity

II.1 Introduction: general comments on enlargement

The AIV would note at the outset that it believes the enlargement process, as it has unfurled since the end of the Cold War, has on the whole been successful. By offering the prospect of membership, the Union has helped stabilise countries in Central Europe that had major political, economic, social and moral problems. It has contributed, for example, to the security of the continent and facilitated the prosperous development of the countries concerned. By setting conditions, the EU encouraged them to introduce reforms in relation to democracy, the rule of law and the economy, and to tackle shared problems regarding minorities. The enlargement process has therefore had very important results and the EU would have missed a historic opportunity if it had neglected this responsibility. It cannot be denied, though, that mistakes were made in the enlargement process. The rapid accession of Romania and Bulgaria may be given as possible examples.¹⁵ It will therefore be some years before a final opinion can be given on this historically unprecedented undertaking.

That opinion will be based in part on how and how quickly the Union overcomes the current serious financial and economic crisis. It can be assumed that the extent to which the member states successfully recover from the crisis will have a strong bearing on the EU's willingness and ability to take in new members. It will also influence the speed at which recovery takes place. A second important benchmark will be whether the EU can develop sufficient coherence to play a significant political and economic role on the international stage alongside the United States and the BRIC countries.¹⁶ The AIV believes the importance of this in the current world with its rapid power shifts is still often underestimated.

Provided the EU itself is sufficiently capable of handling the accession of new member states, and the accession conditions, as formulated in Copenhagen and subsequently tightened up, are strictly applied,¹⁷ the AIV is in principle in favour of further EU enlargement. The AIV is not closing its eyes to certain drawbacks in the enlargement process. The make-up of the EU, for example, has become more heterogeneous both economically and as regards political culture and its internal coherence and solidarity have weakened accordingly. There is also, at least in the public's perception, a link between enlargement and organised crime stemming from new member states. Whatever the truth, that perception is a political reality that has to be taken into account. There is also a fear of an influx of cheap labour from Eastern Europe. Furthermore, the AIV is aware that the admission of new member states has less priority in the current debt crisis. The crisis in the

15 The AIV bases this criticism of the two countries' hasty accession in part on the European Commission's biannual progress reports under the Cooperation and Verification Mechanism. The reports show that both Romania and Bulgaria must still take important steps to reform their legal systems and public administration and to combat corruption. In the case of Bulgaria, moreover, the fight against organised crime still leaves a lot to be desired.

16 Brazil, Russia, India and China.

17 Annexe II summarises the Copenhagen criteria and subsequent conditions.

eurozone has been made all the more urgent by the potential bankruptcy of Greece and greater priority has understandably been given to the need for consolidation in the Union and the development of mechanisms and instruments to strengthen budgetary discipline in the member states. New applications for membership will inevitably be treated with extra caution.

An objection sometimes raised to further enlargement is that an even larger number of member states will reduce the chances of fundamental democratisation of the EU since the Union will increasingly fall short of the ideal of a political community. It is thought that the formation of a political community and in particular the growth of a European *demos* are necessary conditions for a democratic system.¹⁸ The AIV would simply note that every previous enlargement round increased diversity among the member states. It could even be argued that back in 1973 the United Kingdom's accession to the European Community blocked the integration project's move towards federalism. It is difficult to accept that further enlargement will bring about a fundamental change in whether or not the EU will be able to become a political community comparable with the traditional nation state.

Absorption capacity also raises the more fundamental matter of the political leaders' understanding of their responsibilities: should they largely follow public opinion or should they try to create a majority in support of positions they believe are in the country's best interests?¹⁹ The two options need not exclude each other but the current debate is undeniably being fed by prejudices and emotions regarding foreigners and foreign influences. Responsible political leaders should win voters over to a rational position that highlights the economic and political advantages of enlargement while recognising any disadvantages or objections and so enable voters to make objective choices. It is uncertain, however, whether they will always succeed in doing so. This might be because the enlargement dossier is closely related to the more general problems of open borders and attitudes to foreigners from different cultural backgrounds. Forcing through EU enlargement before it has sufficient support could lead to citizens turning even further against the EU as such. Conversely, strengthening absorption capacity through targeted policy and taking the public concerns seriously will strengthen support.

Fostering public support should therefore be an essential element of EU enlargement policy, which – as will be argued in more detail elsewhere in this report – is related to the general problem of integrating minorities in the countries of Western Europe. To increase public support, the AIV recommends that all those engaged in the public debate give more consideration to the cost of non-enlargement (as mentioned above) and the importance of solidarity with European citizens who are far worse off than the Dutch. It should be made clear to the public, for example, that freezing the number of EU member states is not in the interests of peace and prosperity in the Balkans and will not encourage the political forces in Turkey who are attracted to the western model of democracy and the rule of law. *In anticipation of the final chapter, the AIV recommends*

18 See, for example, Fritz Scharpf, *Governing in Europe: Effective and Democratic?*, Oxford, Oxford University Press, 1999, and Larry Siedentop, *Democracy in Europe*, New York, Columbia University Press, 2001. Compare also the Advisory Council on Government Policy (WRR) report, *Rediscovering Europe in the Netherlands*, The Hague, Amsterdam University Press, 2007, particularly chapter 2 on the legitimisation of European decision-making.

19 The latter does not alter the fact that both supporters and opponents of enlargement can think their positions are in the country's best interests.

that an active pre-accession policy create the best possible assurances to put candidate countries on the road to the rule of law and democratic standards. But there must in turn be a realistic prospect of membership.

II.2 Discussion of the dimensions

The AIV would note at the outset that the dimensions or aspects of absorption capacity identified in chapter 1 are very diverse in nature. Some, such as economic and budgetary impact, lend themselves to objective quantification. To a certain extent, the impact of decision-making can also be objectively quantified. Opinions on the geopolitical importance of enlargement, by contrast, are highly subjective, though they can lay claim to different degrees of plausibility. An impression of the development of public support can be gained by analysing debates in the European Parliament and national parliaments and national opinion polls. It should be borne in mind that the answers given in opinion polls are strongly influenced by the context in which the questions are asked. The relatively high support that seems to exist among European citizens in general for cooperation in the EU often stands in stark contrast to their critical opinions on *specific* issues such as enlargement. Moreover, the more difficult or specific a question is, the more random the answers become and the less likely it is that real opinions are being polled. It is in this light that we consider the various aspects below.

Impact on the EU's capacity to act

It is uncertain how an increase in membership would affect the Union's ability to resolve problems and, in particular, to make decisions and take action more effectively. It had been somberly predicted in the past that EU decision-making would stagnate unless existing structures and rules were amended.²⁰ Retaining the EU's capacity to act by streamlining its procedures was a key motive for the treaty amendments of Amsterdam and Nice and for the process that initially led to the Treaty Establishing a Constitution for Europe and ultimately to the Treaty of Lisbon. This process prepared the EU and 'made it ready' for the enlargement with countries from Central and Eastern Europe, with clearer rules on competences and decision-making as a result. This is a clear example of how absorption capacity has been strengthened by targeted policy.

Now that the Treaty of Lisbon has come into force, at first sight there seems little reason to fear that the running of the EU might be disrupted. In the Community sphere of the internal market and associated policy fields, there has been a significant increase in the number of areas in which decisions are taken by a qualified majority. Furthermore, the difficult problem of weighting the member states' votes has been resolved by the introduction of double majority voting, with decisions being taken by a majority of at least 55% of the member states (currently set at 15) representing at least 65% of the EU's population. If it acceded, Turkey would formally have about the same say in decision-making as Germany given its comparable population,²¹ although the total number of votes would be higher. As an emerging economic power (its gross domestic product per capita, for example, is considerably higher than that of Bulgaria or Romania), Turkey would also carry a great deal of economic weight. Given its strategic location and traditional

20 Inge Depoorter's study provides counter-indications. See her article 'Absorptiecapaciteit van de Europese instellingen. Daalt de besluitvaardigheid na de EU-uitbreiding van 2004?', *Internationale Spectator*, February 2008, pp. 83-88.

21 SER (2004), 'Sociaal-economische gevolgen van een toetreding van Turkije', p. 49.

ambitions, Turkey would in any event probably want to exert its influence in the field of the Common Foreign and Security Policy (CFSP).

Further enlargement of the EU will make it more difficult to reach a consensus on the CFSP, especially if countries accede that have different geopolitical interests and insights. Unanimity is still required for all substantial issues in this field. Member states do not seem willing to relinquish their national sovereignty over international peace and security issues. This increases the likelihood of 'coalitions of the willing' emerging on specific issues so that the EU can take the action it considers necessary. If the EU wants to implement a common policy, however, change will also be necessary in this area. Further enlargement will therefore force the Union to revise its decision-making rules.²² The AIV is very much in favour of, for example, extending the opportunities for constructive abstention.²³ To avoid misunderstanding, the AIV favours a revision of decision-making rules regardless of Turkish membership. In this respect, it is not encouraging that many member states currently seem to be more, rather than less, attached to their sovereignty than in the past, including in areas other than foreign policy.

A further problem is the size of the European Commission, which the AIV thinks is too large. Since the drastic reduction in the number of Commission members provided for by the Treaty of Lisbon has been shelved as a concession to Ireland, every member state retains the right to nominate one of its nationals for this body. Some see this as an important means to ensure the legitimacy of the Commission: citizens are more likely to accept its decisions if they recognise themselves in its composition owing to the presence of someone from their own country. Others, however, fear for a reduction in the quality of the Commission's work. Decision-making in a body that may soon have more than 30 members will require a great deal of effort, with more coordination problems arising among the various portfolio holders. Furthermore, individual commissioners will be more inclined to make proposals for their publicity value in order to stand out in such a large Commission. Many of these proposals will have little if any true worth. Another disadvantage will be the expansion of the Commission's civil service. The number of directorates-general, Commissioner's Cabinets and bureaucrats will grow with the number of member states. In 2000 there were 25,000 civil servants; ten years later their number had increased to 38,000.

The question is how the Netherlands would be able to deal, directly or indirectly, with this new situation, especially since the Commission's President has tended to listen to the large member states in recent years. The AIV continues to recognise the Commission's importance as the driver of EU decision-making. *Partly to prevent the Commission increasingly being seen as a representative of the member states instead of as an independent authority that embodies and articulates the general European interest, the AIV recommends that the Dutch government keep the question of a smaller Commission on the agenda.* In the final analysis, the Treaty of Lisbon provides for a reduction in its size. The AIV further thinks that the government must take a stand against the bureaucratic

22 See, for example, AIV, 'Bridging the Gap between Citizens and Brussels: Towards greater legitimacy and effectiveness for the European Union', advisory report no. 27, The Hague, May 2002, and the follow-up report, no. 32, of April 2003. See also AIV, 'Europe: A Priority!', advisory report no. 52, The Hague, November 2006.

23 Member states that are unwilling or unable to agree with certain decisions will be allowed to abstain from voting and will not be obliged to cooperate in the implementation of those decisions.

expansionism caused by enlargement, not least because of its harmful impact on public perception. In the future, the Netherlands must do its utmost to retain its influence on thinking and decision-making in Brussels. This will require the commitment of all involved, both government and private parties, and, in particular, close cooperation between the two.

Special consideration should be given to the position of the European Parliament, which is becoming increasingly critical of further enlargement. Its position is important because the European Parliament has the final word on every accession application. Every treaty amendment to date has increased the European Parliament's powers and the Treaty of Lisbon is no exception. The European Parliament's budgetary and legislative powers are now on a par with the Council's. The European Parliament can be considered the most democratic body in the Union because its members are elected directly by European citizens. Nevertheless, its image in the member states is not universally positive. There is the spectre of an absurdly bloated parliament that has difficulty coming to decisions. But, contrary to popular belief, the current size of the European Parliament (736 members) need not be an obstacle to democratic processes and effective procedures. It is comparable with national parliaments, although there are obviously significant differences regarding historical background, nationality and language. The US Congress (535 members), the German *Bundestag* (about 600 members)²⁴ and the UK House of Commons (650 members), for example, are also large institutions but no one questions their effectiveness as legislative bodies. The two-stage treatment of legislative proposals also seems to work well in the European Parliament. All proposals on the Parliament's agenda are first debated in smaller specialised committees before the political parties take stances and vote on them in plenary sessions of the European Parliament. This method means the content and political dimensions of the proposals are considered in depth and it can be continued in its current form even after enlargement.

In addition to the problems associated with the size of the European Parliament, the allocation of seats to small and large member states following a substantial enlargement of the EU deserves critical consideration. Ever since the Treaties of Rome, the allocation of seats has deliberately not been proportionate to the size of the member states' populations in order not to marginalise or even exclude the smallest member states. This 'degressive' proportionality system is also laid down in the Treaty of Lisbon. The smallest member states are currently allocated at least six seats so that different party political configurations are possible for those countries too. The disadvantages to the large member states of successive enlargements were offset by an increase in the number of MEPs. There is currently a maximum of 750.²⁵ The AIV believes this limit should not be exceeded if the number of MEPs is to remain manageable. Under the current rules, however, the disadvantages to all large member states of the accession of the Balkan countries and Turkey would be unreasonable and undesirable. The AIV therefore calls for a reduction in the minimum allocation of six seats and a general reform that reflects the degressive proportionality that the European Parliament currently believes is reasonable.

24 The precise number of members of the *Bundestag* depends on the number of *Überhangmandate*.

These are seats that the parties gain if the total percentage of votes is greater than the number of representatives that are elected directly in the constituencies.

25 The number will be increased slightly to 754 to meet Germany's wish to maintain the number of its MEPs at the current level of 99 until the end of Parliament's current session (June 2014).

The AIV would note that the EU system has certain similarities with the US system, in which the Constitution guarantees the smallest states, regardless of their populations, at least one seat in the House of Representatives and at least three electors in the Electoral College that elects the president. All federations compensate for the dominance of large member states in the federal assembly, usually by granting co-legislative powers to their Senates (or *Bundesrat* in Germany), which are often based on the principle of equal representation.

It has not escaped the AIV's notice, of course, chiefly because of the German constitutional court's ruling on the compatibility of the Treaty of Lisbon with the German Constitution, that a debate has arisen on the disproportionate composition of the European Parliament relative to the member states' populations. The ruling – which was also controversial in Germany – referred to it as a democratic deficit of the EU '*gemessen an staatlichen Demokratieanforderungen*', but on no account saw it as an obstacle to the ratification of the Treaty of Lisbon and the Union's operation in accordance with the Treaty. There is therefore no need for this advisory report to consider the judgment further.²⁶ The AIV would note though that the concept of European electoral lists, which the European Parliament has already considered, could make the entire discussion of degressively proportional representation versus proportional representation redundant.²⁷ The AIV recommends that this concept be developed further in the longer term.

Further enlargement will also have consequences for the efficient operation of the Court of Justice in Luxembourg. The operation of the internal market, the area of freedom, security and justice and, more generally, the principle of equal treatment require the uniform interpretation and application of European legal rules in all member states. This assumes the existence of a properly functioning system of courts in every member state²⁸ that are willing and able to apply those rules and, if necessary, to submit questions on their interpretation and validity to the Court of Justice for a ruling. A properly functioning preliminary ruling procedure is of prime importance for legal uniformity, legal certainty and the development of law in the EU. In the past, however, little attention was paid to the consequences of enlargement for the operation of this system.

The Court's capacity to deal with the growing number of incoming cases within a reasonable period and, in particular, the time needed to deal with requests from national courts for preliminary rulings have been a matter of concern for some years.²⁹ In recent

26 For a very critical, broad-based consideration of the court's judgment, see H.C.F.J.A. de Waele, 'Karlsruhe über Alles – Europese integratie, constitutionele toetsing en democratie volgens het Duitse Bundesverfassungsgericht', *Rechtsgeleerd Magazijn Themis*, 2010, pp. 51-62.

27 A report by UK Liberal MEP Andrew Duff, suggested that voters could have two votes at the next election, one for the national list and one for a European list.

28 Compare article 19 (1) of the EU Treaty, 'Member States shall provide remedies sufficient to ensure effective legal protection in the fields covered by Union law'.

29 House of Lords, Session 2007-08, Select Committee on European Union Tenth Report (HL 62-I), 'The Treaty of Lisbon: an impact assessment', par. 6.94. See also Association of the Councils of State and Supreme Administrative Jurisdictions of the European Union and Network of the Presidents of the Supreme Judicial Courts of the European Union, Report of the working group on the preliminary rulings procedure. The report was adopted by the Association's general assembly in Warsaw on 18 June 2008.

years, the Court has reduced the time it takes to an average of 17 months but if the procedure is to remain attractive to national courts it should take no longer than 10 to 12 months.³⁰ A further reduction is not expected, however, because the number of cases is more likely to increase owing to the enlargement from 15 to 27 member states and the extension of the Court's powers in the context of, for example, the area of freedom, security and justice. To permanently guarantee the uniform interpretation and application of EU law in a Union with many hundreds of millions of potential litigants and thousands of courts, the current system of preliminary rulings will inevitably have to be reformed in the near future.³¹

In accordance with the treaty provisions, every increase in the number of member states leads to a corresponding increase in the Court's members and their staff. It would be a mistake, however, to assume that more judges would be able to deal with the increased number of cases without any problems. The greater the number of judges and staff, the greater the problem of coordination for a court of last resort that is responsible for maintaining legal uniformity. Nor does the creation of specialised chambers offer a solution to the problem. Requests for preliminary rulings in particular are not suitable for specialised chambers to deal with given the broad and varied range of the interrelated legal areas they tend to cover. Needless to say, the dispensation of justice by a full court with 27 or more members is not a solution either. There thus remains an internal organisation with a fixed core of judges with the virtually impossible task of ensuring that their colleagues maintain the uniformity, continuity and quality of the Court's case law in the many hundreds of judgments handed down by the various chambers each year.

The question therefore arises of whether the number of judges at the Court should not be limited, with the various legal systems being represented at the Court through a system of rotation, which could also involve the advocates-general. *In the event of future enlargements, consideration should be given to both a reform of the preliminary rulings procedure and the limitation of the number of judges, both matters that require treaty amendment, and also to the conditions necessary for the satisfactory application of the preliminary rulings procedure by the courts in the acceding states.* The grounds for admissibility could also be applied more restrictively in order to reduce the Court's caseload.

There is a somewhat comparable problem regarding the composition of the European Court of Auditors. Here, too, the continued application of long-standing agreements, under which each member state can nominate one of its nationals for membership, is not conducive to efficiency. The Court of Auditors would become even more top heavy than it is at present. The AIV suggests that avenues be explored to radically reduce the number of members. One option would be to have a system in which small groups of member states jointly nominate a member. The presence of national expertise from all member states could be ensured by requiring the Court of Auditors' members to agree to appoint in their cabinets one or more senior officials from a member state that is not represented among their number.

30 This would reduce the time required to that taken in 1983, when preliminary rulings were generally issued within one year.

31 Relevant proposals are made in the report of the working group on the preliminary rulings procedure referred to in footnote 29.

The AIV believes that institutional problems, in so far as they exist, should not be used as a reason or excuse to refrain from further enlargement of the Union. If the Union thinks enlargement is desirable or necessary it must resolve any such problems. Whether the Union should enlarge further or not is primarily a political question that should not be subordinated to institutional and organisational questions.

Economic aspects

Can the economy of the EU as a whole cope with enlargement? Without reservation, this question can be answered in the affirmative. The impact of the 2004 and 2007 enlargements on the economies of the old member states seems to have been an unqualified success. Economic growth in the new member states did not come at the expense of growth in the old member states. On the contrary, the latter benefited because enlargement increased their sales markets. In 1999, just 4.7% of their combined exports went to the new member states; less than ten years later the figure had increased to 7.5%. According to a study by the European Commission,³² the incomes of the old member states increased by an average of 2.2% per annum until the outbreak of the economic crisis. A rough estimate attributes between 0.5% and 0.75% of this growth to the accession of new member states. Of all the old member states, the Netherlands has benefited the most from enlargement. It has generated nearly €11 billion in additional income, or more than €650 per inhabitant. In the new member states, EU membership has led to additional growth of 1.75% on average per annum. It can be concluded that absorption capacity is gradually increasing; in other words, it is becoming easier to integrate the acceding countries as they become more prosperous. Economic growth creates favourable conditions to harmonise rules, reform systems, coordinate policy and develop institutions.

The Netherlands Bureau for Economic Policy Analysis (CPB) convincingly argued in a 2006 study that EU membership has (and has already had) a very positive long-term effect on the economic development of new member states, usually as a result of productivity gains owing to economies of scale and increased competitive pressure.³³ Shared EU membership increases the trade between two member states by about 34%. Trade increases by another 22% if the quality of institutions improves, yielding a total trade increase of 56%. The CPB estimated that such an increase in trade can increase income by 38%. Although EU membership can have significant economic benefits, it still takes some considerable time before the average income of the new member states reaches that of the old member states. Per capita income in the new member states in 2004 was about 45% of the EU average. This can increase to 63% of the same average within ten years.

Admission to the internal market therefore increases a country's growth potential. The more open a country is, the more it benefits from the internal market but membership can also be the cause of greater openness in the home economy, too. Having institutions comply with EU standards can also enhance growth potential. Trade is not the only means by which EU membership increases income. Membership and the resultant adoption of

32 Study by the European Commission (2009). See < http://ec.europa.eu/enlargement/5years/facts_growth-and-jobs-en.htm>. See also Letter to the House of Representatives 'De uitbreiding van de Europese Unie' (government assessment), House of Representatives 23987, no. 104, 30 October 2009.

33 Arjan Lejour, Vladimir Solacic, Paul Tang, 'EU accession and income growth, an empirical approach', CPB discussion paper no. 72, 2006.

EU legislation reduce uncertainty, for example, which can in turn trigger an increase in investment.

The Social and Economic Council of the Netherlands (SER) also used data from the CPB in a study of the consequences of Turkey's accession to the EU.³⁴ It calculated that EU membership could prompt institutional reform and thus reduce corruption in Turkey. This alone could produce a 5.6% increase in gross national product (GNP) by 2025 and a 45% increase in the volume of exports. The decline in complicated bureaucratic procedures and arbitrariness could also lead to a considerable increase in the number of investors. Countries such as the Netherlands and Germany, two of Turkey's important trade partners, could see their exports to Turkey increase by up to 50%.

As already noted, a study by the European Commission provides more recent figures.³⁵ It shows that the average incomes of the new member states were 40% of those of the old member states in 1999 but 52% in 2008. Partly in view of the positive impact on incomes in the old member states, enlargement with the Western Balkans and Turkey would therefore be economically favourable for the EU as a whole, although it should be borne in mind that the combined economies of the Western Balkan countries are about as large as Slovakia's. The consequences of Turkish accession would be relatively small in those areas that are already covered by the Customs Union but will be considerably greater in other areas. Consideration of the pros and cons should also take account of the declining and ageing population in the EU. In 2050 there will be an estimated 50 million people fewer in the EU than at present. Migration from Turkey in particular could help the EU compensate for part of this population decline, although not everyone will see this as a satisfactory solution.

With regard to the fear of even more open borders among some sections of the population (see below), it is worthwhile asking whether there is a relationship between the EU's absorption capacity on the one hand and its ability to adapt to changing economic circumstances and lay the foundations for a new period of economic growth on the other – in other words, successful implementation of the Europe 2020 strategy. It thinks the EU's economic flexibility will be a decisive factor in its capacity to absorb new member states. The AIV would reiterate that absorption capacity is not an immutable given but can be influenced by policy – by the decision on whether or not to do something. The European Commission is aware that global competition is shifting jobs to countries outside the EU and that this has nothing to do with enlargement. With the exception of Ireland and Luxembourg, moreover, most member states also have more economic migrants from outside the EU than from inside.³⁶

Budgetary aspects

What conclusions on the consequences for the size and composition of the EU budget can be drawn from previous enlargements? This is another important aspect of absorption capacity that can be influenced by policy. The composition and size of the EU budget are decided by the member states' policy choices, and policy choices can change. The Union's enlargement with countries from the Western Balkans will have only

34 SER advisory report, *Sociaal-economische gevolgen van een toetreding van Turkije*, 8 November 2004.

35 See <http://ec.europa.eu/enlargement/5years/facts_and_figures/economy_growth_and_jobs_en.htm>.

36 See <http://ec.europa.eu/enlargement/5years/facts_and_figures/index_en.htm>.

a limited impact on the EU's finances. These countries, unlike Turkey, have relatively small economies.

The budgetary consequences of Turkish membership will relate chiefly to CAP and structural funds expenditure. It was proposed as early as 2004 that the CAP would have to be radically reformed in anticipation of the possible accession of Turkey. The question is whether the volume of current entitlements should be maintained. The SER has calculated that without a change in the CAP, transfers to Turkey will account for about 10% of the EU budget. By way of comparison, Spain received 20% of EU expenditure in 2003. The financial consequences should be seen, of course, in relation to the expected economic benefits, which may be many times the direct costs.

In view of the expected duration of the negotiations with Turkey, its membership will probably not affect the EU's Financial Perspectives in full until after 2020. Should Turkey join before that date, the agricultural and structural funds reforms in the forthcoming Financial Perspectives (2013-2020) will also have consequences for Turkey. The negotiations will begin soon. *Even if Turkey does not accede until after 2020, the AIV believes that – regardless of the relationship with Turkey – the forthcoming Financial Perspectives should take a critical look at the largest items of expenditure in the EU budget.*

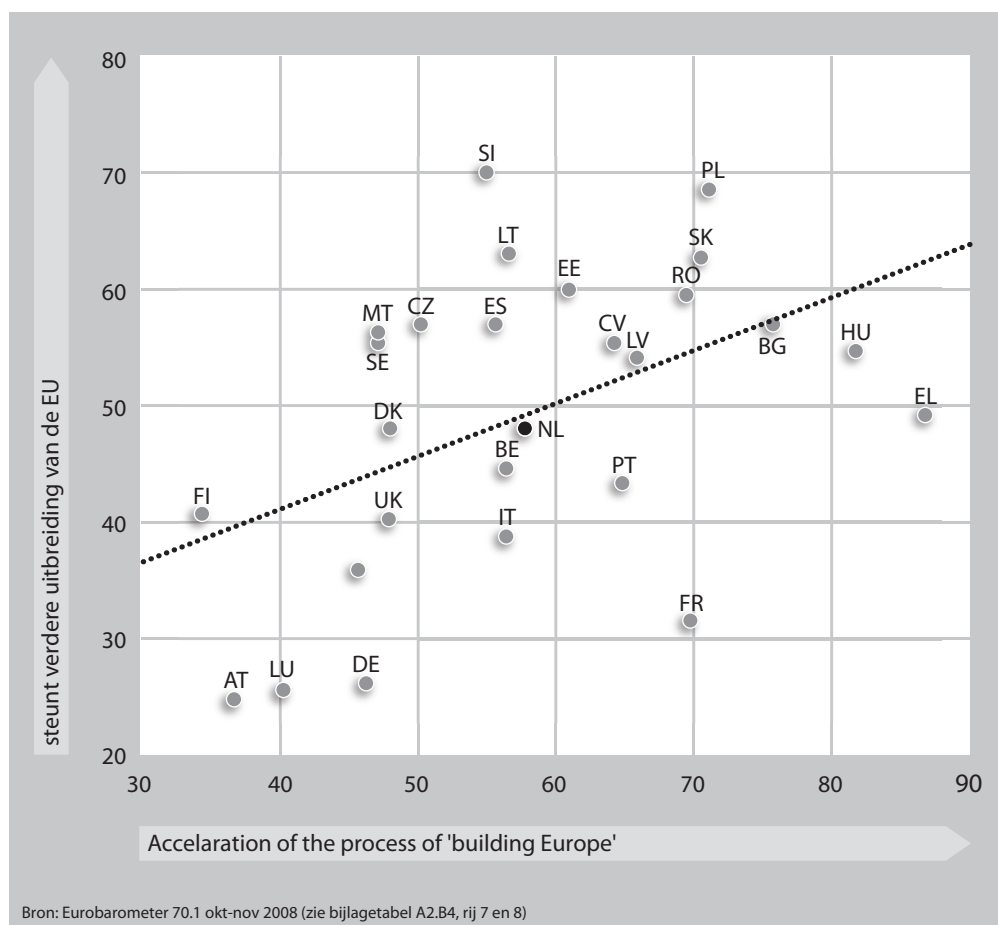
Public acceptance

Establishing and maintaining public support is probably the most challenging aspect of absorption capacity. Political leadership is required but is far from straightforward. A general statement from European political leaders on the benefits of an even larger EU in terms of greater prosperity, security and global political influence will probably not be enough to win the public over to further enlargement. The reality of enlargement is that the benefits are enjoyed largely by European citizens as a whole and are therefore diffuse (although there are also demonstrable benefits for certain groups, such as the export sector). The disadvantages (including the geographical movement of jobs in certain sectors and the increase in crime in some regions), by contrast, are very tangible for specific groups in society. Along the same lines, Katinka Barysch notes: 'While the benefits are long-term and amorphous, the economic costs of enlargement are immediate and concentrated on a geographical and sectoral basis.'³⁷

The diagram below shows the public support for enlargement in the member states in the autumn of 2008. It can be seen that a majority of the population in virtually all member states was opposed to an increase in the number of member states. The weak support in Germany, France and the United Kingdom is particularly notable. Although a majority in the Netherlands is against further enlargement, the percentage of opponents is not as high as in these countries. Public opinion in the Netherlands is considered further in the next chapter.

³⁷ Katinka Barysch, *EU enlargement: How to reap the benefits*, London, Centre for European Reform, 2004, p. 31.

Support for further enlargement in the EU member states



It should be borne in mind when considering these figures that the perceived advantages and disadvantages of enlargement are strongly influenced by the prevailing social climate. In a number of member states (including the Netherlands), this is marked by growing opposition to the politics of open borders and the arrival of yet more foreigners as a result of the principle of the free movement of persons. This is particularly true regarding the possible accession of Turkey.

In a report published in 2009, the Independent Commission chaired by the former president of Finland, Marti Ahtisaari, took stock of the relationship between the EU and Turkey. In particular it looked at the relationship between public support and the political position.³⁸ The commission examined the causes of the deadlock in the accession negotiations between Turkey and the EU and drew attention to numerous factors in favour of Turkish accession to the EU. It also noted that shortly after the European Council had unanimously decided to open accession negotiations with Turkey in 2004, a number of member states took a different course. Politicians began to oppose Turkish accession and negotiation of various chapters was formally or informally blocked. In several countries, this change in position coincided with elections, leading the commission to

³⁸ *Turkey in Europe, breaking the vicious circle, second report of the Independent Commission on Turkey*, September 2009.

conclude that domestic electoral considerations were involved. Attacks on the EU-Turkey registration process were fuelled by popular concerns about immigration, worries about job losses, fears of Islam and a general dissatisfaction with the EU. According to the commission, some politicians argued that Turkey was intrinsically un-European, that even if it fulfilled all conditions it should not join the EU and that 'Turkish accession would flood Europe with Turkish migrants'.

The rhetoric employed in the debate was then used to argue for another form of cooperation between Turkey and the EU even though all member states had agreed to accession negotiations on the basis of two elements: an *open-ended process* and, nevertheless, the *objective of accession*. This contradiction was built in on purpose. Furthermore, in view of the existing, very close ties between Turkey and the EU it is uncertain what the added value of, for example, a '*privileged*' partnership would be as an alternative to full membership.

Although it is difficult to reconstruct in retrospect and it has never been studied, the commission's findings raise the question of whether public opinion is encouraging politicians to distance themselves from Turkish accession or whether the politicians' views are fuelling popular perception that there is something wrong with Turkey. Presumably they both influence each other, with opinion leaders other than politicians also playing a key role.

Geopolitical dimension

The geopolitical dimension of absorption capacity relates to the impact of further EU enlargement on the Union's ability to exert a stabilising influence on its immediate vicinity and to act as an authoritative player on the world stage. At present, the EU acts chiefly as a 'civil power', concerned mainly with development cooperation and human rights, in combination with a modest military capacity to carry out peace operations.³⁹ The geopolitical dimension affects several aspects of absorption capacity.

Firstly, enlargement can help strengthen the EU's potential for added weight in the international scales. This potential is measured chiefly by economic power, market size and population, factors that are obviously of importance in the light of the current power shifts in the international system. But the Union must be able to capitalise on this additional weight through more effective external action. As already noted, the EU still has a long way to go.

Secondly, as noted above, the enlargement process as it has unfolded since the end of the Cold War is (and has been) primarily a security policy undertaking. By giving countries the prospect of membership subject to undertaking the conditions of democratisation, market reform and the settlement of minority questions, the Union has made a significant contribution to increasing security and stability on a pan-European scale. In this respect, enlargement – in addition to the Neighbourhood Policy – can be seen as an instrument to implement the European security strategy. With regard to Turkish membership, there is the specific consideration that Turkish accession would increase the chance of reaching urgently required agreements with NATO on operational cooperation. Turkey is currently blocking such cooperation because, as a non-EU member, it feels overshadowed by Greece and because, in Turkish eyes, the EU is more concerned with protecting the interests of the Greek majority on Cyprus.

39 See Karen E. Smith, *European Union Foreign Policy in a Changing World*, Cambridge, Polity Press, 2008, second edition.

Given the nature and location of future accession candidates, however, use of the accession instrument will not become simpler. This is the case in the Balkans with its unresolved ethnic conflicts and in Turkey with the Kurdish issue. As already noted, the example of Cyprus shows how much strain the accession of an internally divided country can put on relations within the European Union and with external countries. The latter also means that future enlargement may place a heavy burden on the EU's capacity to resolve conflicts.

In this respect, future enlargement rounds offer the Union opportunities but also entail risks. The accession of Turkey, for example, will increase the importance of the EU's relationship with neighbouring countries in the Middle East and the Caucasus. Turkey's ties with these countries and its experience and knowledge of the region could benefit the EU's relations in these areas. Yet the risk of instability and conflicts in these areas is undeniably high and will remain so. *The risk of the Union becoming involved in these conflict zones underlines the need to strengthen the effectiveness of foreign and security policy actions in the context of further enlargement.*

The AIV concludes that while the need to strengthen external policy as a consequence of enlargement may increase, the opportunities to actually do so will not necessarily keep pace as a result of a larger number of member states and greater heterogeneity in terms of interests, geography and history. The AIV would call attention to the importance of the institutional dimension of absorption capacity in this respect.

Other aspects

In addition to the aspects considered above, the EU's absorption capacity is influenced by other issues such as migration, crime and neighbourhood policy. The prospect of conducting a joint justice and police policy with candidate countries should be an important yardstick for these countries' ultimate membership. Mutual confidence in each other's legal systems largely determines the proper functioning of both the internal market and cooperation in the field of justice and home affairs. The free movement of goods and services is impeded if a member state does not apply and enforce European and national rules on the production, trade and sale of products and services, for example in the field of food safety or financial services, or does not enforce them effectively enough. In the field of police and justice, too, a lot of cooperation is based on the principle of mutual recognition of each other's judgments and administrative decisions. Furthermore, uniform interpretation and application of European law in all member states is of vital importance. The joint task of the Court of Justice and national courts to ensure such uniformity therefore requires the existence of an independent, capable and accessible⁴⁰ national judiciary.

Confidence in the quality and effectiveness of legislation, public administration and the administration of justice is consequently of great importance to the functioning of the Union and should remain an important benchmark for the accession of new member states. The EU's integration capacity will be increased if problems are not expected in these areas. Confidence among EU citizens in the rule of law in an acceding country is also a factor that can increase support for that country's accession.

In this respect, recent proposals by Turkey to amend its constitution in order to make the country more democratic and therefore bring it closer to EU membership are encouraging.

40 Compare the final sentence of article 19 (1) of the Treaty on European Union: 'Member states shall provide remedies sufficient to ensure effective legal protection in the fields covered by Union law.'

The proposals would make it more difficult to ban political parties and would prevent parliamentary interference in the appointment of judges. They would also curtail the power of military courts.⁴¹ The proposals were adopted by a majority of the Turkish parliament at the beginning of May 2010. Since the majority was less than the required two-thirds of the votes cast, a referendum in September 2010 will provide the final word on the fate of the constitutional reforms.

The AIV also recognises the seriousness of the problems in the Western Balkans. The states there, like Turkey, must still fulfil a large number of conditions. Countries that join the European Union are required to incorporate the Schengen *acquis* and the justice and home affairs instruments in their own legislation and to implement them as such. This can have consequences for the capacity of the ICT infrastructure (think, for example, of the Schengen Information System, which is already creaking at the seams, but also of the Visa Information System (VIS), European Dactyloscopy (Eurodac), Data Interoperability in Statistics (DIS) and Europol Information System (EIS)). In terms of institutional absorption capacity it can have significant consequences for the agencies in this area, such as FRONTEX,⁴² the European Law Enforcement Agency (Europol), Eurojust,⁴³ SitCen⁴⁴ and the Fundamental Rights Agency. The accession of, say, Turkey would be important to an agency such as FRONTEX because the European Union would then border such countries as Syria, Iraq and Iran. The accession of smaller countries would not present an acute problem although a great deal would have to be done to establish confidence in each other's legal systems given the fact that much of police and justice cooperation is based on the principle of mutual recognition.

The European Commission is concerned about the mediocre to poor border controls in some countries, such as Kosovo ('borders remain porous').⁴⁵ The Dutch government publication 'State of the European Union' considers the need to improve the control of external borders. Macedonia, Montenegro and Serbia have been exempt from visa requirements since 2010. If Albania and Bosnia and Herzegovina satisfy the requirements set by the Commission, they will become eligible for visa exemption in the course of 2010.

Corruption unfortunately still has deep roots and undermines the economy, privatisation, the financing of political parties, the impartiality of judges, civil servants and politicians and the openness, integrity and transparency of public administration. An important requirement is therefore that Turkey and the countries of the Western Balkans take measures to combat corruption (and organised crime) more effectively. The same is true of the justice systems, which are also being encouraged to invest more in cooperation.

41 'Turks plan voor nieuwe grondwet', *NRC Handelsblad*, 23 March 2010.

42 European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union.

43 An agency that supports cooperation among judicial authorities in the EU in their fight against serious transnational crime.

44 The Joint Situation Centre (an intelligence body of the EU).

45 Communication from the Commission to the European Parliament and the Council, 'Enlargement Strategy and Main Challenges 2009-2010', Brussels, 14 October 2009, Com. (2009).

A number of issues are of particular importance to the Commission, namely the rights of women, children and minorities, the protection of refugees, the prosecution of war criminals and the protection of personal data and privacy. Turkey has been called upon to make considerable efforts to comply with international human rights instruments.⁴⁶ In a resolution on the functioning of the rule of law and justice and home affairs matters, the European Parliament stressed that the rule of law was an essential principle of democratic, economic and social development and one of the key conditions for accession to the EU. Even though it is satisfied with the action being taken in the region to make progress in this area, the European Parliament found that some countries still have serious problems, particularly in the fight against corruption and organised crime.

Not only the European Union but many other bodies are also actively engaged in reforms relating to the rule of law. The Council of Europe has traditionally been very active in this area. Several bodies are involved in a range of issues. They include the Parliamentary Assembly of the Council of Europe (PACE), the Commissioner for Human Rights (CHR), the European Court of Human Rights (ECtHR), the Committee for the Prevention of Torture (CPT), the Group of States Against Corruption (GRECO) and the European Commission for the Efficiency of Justice (CEPEJ). The Organisation for Security and Cooperation in Europe (OSCE) issues progress reports. Bilateral judicial reform programmes to which the Netherlands contributes, such as the MATRA programme,⁴⁷ are also important.

While the recent Stockholm programme⁴⁸ sets out a line for the current member states, the European Union's new internal security strategy⁴⁹ is written in part with a view to the external dimension of internal security, namely through the creation of a security zone around Europe and the stabilisation of the Balkans. It cannot yet be concluded from the most recent enlargement of the EU (accession of Bulgaria and Romania) that the EU can exercise more influence on such matters as combating corruption once a country has joined the EU.

In view of the electoral sensitivity of issues such as migration and crime, and to prevent problems being imported from possible future member states, the AIV believes EU enlargement should be accompanied by a phased assessment of the accession conditions, with accurate, detailed and fixed monitoring gradually being introduced to track the progress of the security and justice dossiers. Permanent supervision of actual implementation is an essential complement to the adoption of the justice and home affairs *acquis* that aspirant member states must commit themselves to during the accession phase. The EU must ask itself how implementation can be improved and secured.

The AIV is aware that a body within the EU must be made responsible for this assessment. *Since the AIV believes no new institution or agency should be created, this responsibility should be fulfilled through increased coordination and the prevention of duplications. Coordination must be directed chiefly at aligning the European Parliament's*

46 *Ibid.*

47 An acronym of Maatschappelijke Transformatie, meaning 'Social Transformation'.

48 European Council Conclusions, 10/11 December 2009.

49 Brussels, 23 February 2010.

Committee on Foreign Affairs, the competent services of the European Commission, the European Commission's representations in the candidate countries and the Fundamental Rights Agency in Vienna.

The AIV believes that subjects relating to justice and home affairs should not be the last to be addressed during accession negotiations. Attention should first be paid to the order of the negotiations; it would be advisable to place justice and home affairs not at the end but more towards the beginning. *The AIV recommends that the Council, the European Parliament and the national parliaments take a firm stance on this aspect of the accession conditions: accession must not be permitted until the requirements are met. The Council can ensure this is the case by means of the unanimity procedure. If political pressure on the accession negotiations makes it virtually inevitable that a country will qualify for accession even if there are doubts, the Council in consultation with the European Commission can step up its supervision. A third step is to build in a stricter assessment point during the ratification process for accession.*

Finally, the AIV finds that although monitoring the rule of law has its own internal dynamic within the Union, a little self-criticism should be exercised and attention should also be paid to reciprocity in such a mechanism. There are justified doubts about Italy's respect for the rule of law, for example, under the current prime minister, Silvio Berlusconi. By looking critically at malpractices not only in candidate countries but also in countries that have been part of the EU for some time, the Union can continue to strengthen mutual confidence, especially now that the cross-border provision of evidence and recognition of judgments is gradually becoming a reality. By doing so, the EU would also strengthen the pursuit of legal uniformity and harmonisation and could credibly insist on conditions that safeguard the proper functioning of democracy and the rule of law, such as the independence of the judiciary. *The AIV is aware that the issue of reciprocity is sensitive and therefore recommends that such a mechanism be introduced in stages.*

III The Dutch perspective

The request for advice asked the AIV to consider ‘in so far as possible’ the *Dutch* (national) perspective when answering the questions. This chapter therefore looks specifically at the Dutch position. What are the reasons for the Dutch government’s reservations about further enlargement? Why is a majority of the Dutch population against the admission of new member states in general and Turkey in particular? The answers to these questions will again refer to the relationship with other policy fields, in particular domestic immigration and integration.

With regard to enlargement, the EU member states can be roughly divided into two groups: the ‘precise’ and the ‘flexible’. The first group thinks accession conditions should be strictly observed while the second is more flexible about their application in practice. An obvious link can be made between a member state’s understanding of the desired outcome of the integration process and its attitude to the conditions. Countries that take a relatively minimalist position on the scope and depth of European cooperation will be more inclined to tolerate departures from the admission criteria. The reverse is true of member states that think the EU still has many steps to take to bring about closer integration.

III.1 Reasons for Dutch reservations

Although doubts have arisen in recent years about the Netherlands’ enthusiasm for integration, it is difficult to deny that the Netherlands is in the ‘precise’ camp. It sees itself as ‘a strict but fair – and therefore reliable – partner’ in the enlargement process.⁵⁰ There are several reasons for the Dutch stance. Firstly, there is the general consideration that Dutch foreign policy draws in part on a legalistic tradition, no matter how pragmatically it has been applied at times. This means that the Dutch government generally takes international obligations seriously and expects other countries to fulfil them, too. With regard to the possible membership of Croatia and Serbia, the Dutch demand that these countries cooperate in full with the International Criminal Tribunal for the former Yugoslavia (ICTY) weighed heavily.⁵¹ An obstacle to Iceland’s candidacy is the repayment of the compensation that the Netherlands paid to depositors following the collapse of Landsbanki Icesave.

There is also concern about Dutch influence being diluted in an ever larger Union. From founding member, the Netherlands has become one of many. The fear that the Netherlands will lose its identity and position in an ever larger European context was a factor in the vote against the constitutional treaty. With the accession of Romania and Bulgaria, the fear has only intensified. In addition, the Dutch government is concerned about the consequences of a larger membership for the EU budget and for the position

50 See Government Assessment, House of Representatives 23987, no. 104, 30 October 2009, p. 4.

51 In June 2010 foreign minister Maxime Verhagen ended his opposition to the ratification of the Stabilisation and Association Agreement concluded between the EU and Serbia. He did so after the prosecutor at the ICTY, Serge Brammertz, had issued a favourable report on Serbian cooperation with the Tribunal.

of the Netherlands as a net contributor in particular.⁵² Will an increase in the number of members lead to a redistribution of expenditure or an increase in the budget? The latter is a serious possibility and there is concern that it might lead to the Netherlands having to make a higher contribution. A third cause is related to the CAP. The Netherlands is an enthusiastic supporter of radical reform of European agricultural policy but the accession of new countries could significantly reduce the likelihood of a sizable reduction in agricultural expenditure. Virtually all candidate countries and potential member states still have a relatively large primary sector; they will not willingly abandon their expectations of and entitlements to agricultural subsidies.

Finally, Dutch reservations can also be explained by the fact that many Dutch politicians tend to be swayed by the widespread popular mistrust of further enlargement. It could be said that there is a lack of political courage. On the other hand, geopolitical considerations are seldom decisive in Dutch politics, *certainly not in the case of enlargement*. The Dutch government has noted that the 2004 enlargement strengthened the EU's presence on the world stage and believes energy scarcity, instability on the fringes of Europe and the emergence of China and India are forcing us to approach enlargement 'with an open mind'.⁵³ The AIV can only applaud this stance.

The AIV believes that a key element in a more 'precise' stance is also a willingness to invest through pre-accession policy in cooperation and integration so that willing candidate countries can comply with the conditions quickly and precisely.

III.2 Public opinion

The tendency among political leaders to listen to popular opinion has been strengthened by the 'No' vote in the referendum on the European Constitution. Representative opinion polls reveal that the Dutch public have become increasingly critical of further EU enlargement in recent years.⁵⁴ 46% think there are more disadvantages than advantages. The main concerns are the cost, the influx of cheap labour and an increase in crime.⁵⁵ In the spring of 2006, a majority could not be found for further EU enlargement.⁵⁶

Opinions on Turkey's membership of the EU – unlike those on other countries' – have always been sharply divided and have fluctuated widely over time. The reasons for the opposition to Turkish membership were studied in 2004. The three main arguments were: (1) Turkey is Islamic, (2) Turkish membership will increase immigration from the country, and (3) Turkey is not a European country. The three main arguments in favour of accession were: (1) Turkey will be more inclined to *adopt the EU's values and standards*, (2) Turkey is a bridge to the Islamic world, and (3) in principle, all European countries have

52 The AIV's advisory report 'The Finances of the European Union', number 58, The Hague, December 2007, presents a balanced consideration of the Netherlands' position as a net contributor.

53 See Government Assessment, House of Representatives 23987, no. 104, 30 October 2009, p. 4.

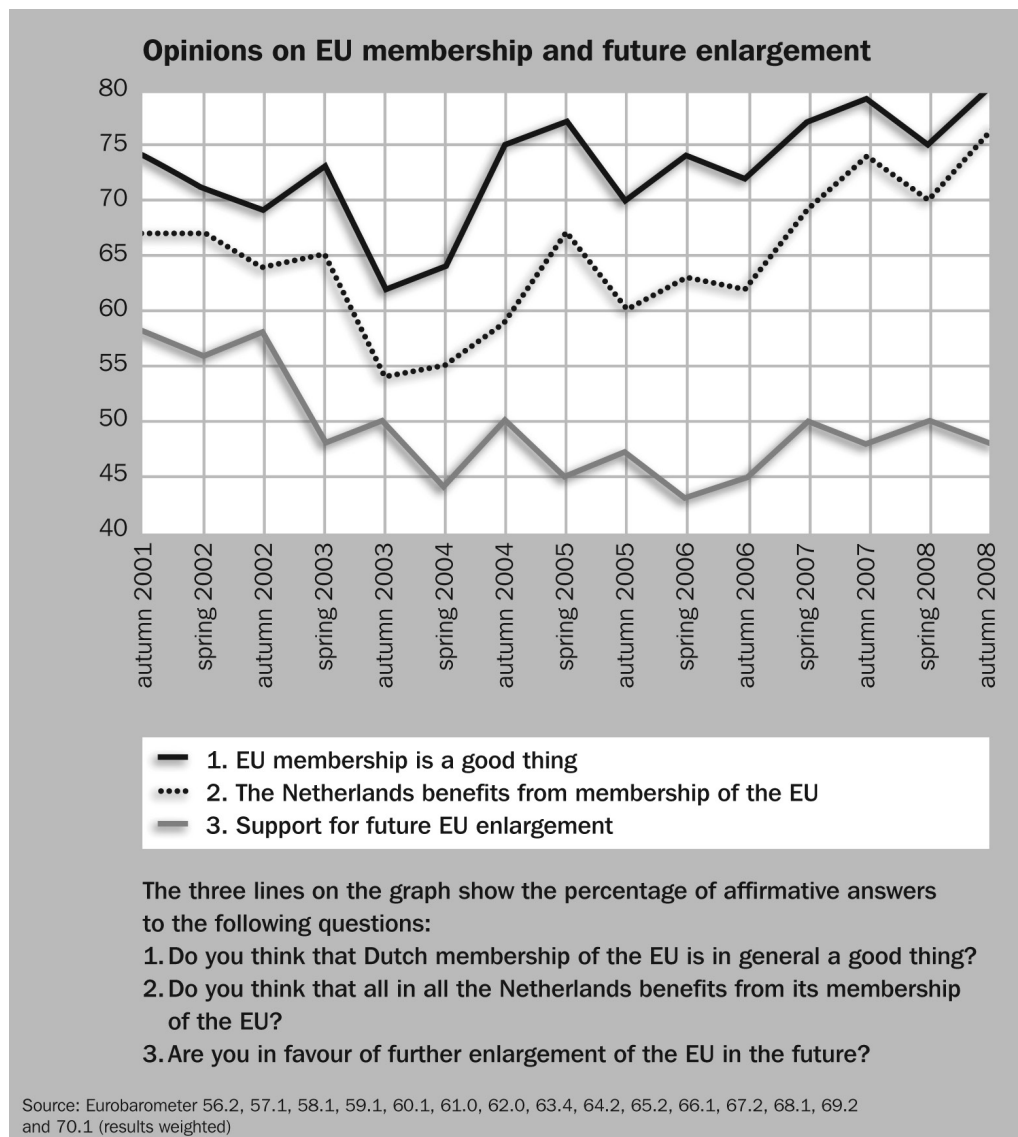
54 The findings of several polls have been compiled and analysed by Philip Everts in his book *De Nederlanders en de wereld. Publieke opinies na de Koude Oorlog*, Assen, Van Gorcum, 2008.

55 Everts, p. 315 (figures from Onderzoeksbureau De Vos en Jansen for *Algemeen Dagblad*, 3 May 2004).

56 Everts, p. 315 (figures from Eurobarometer 65, spring 2006).

the right to join the EU. Only about 30% of those questioned thought Turkish accession would be economically beneficial to the Netherlands and the EU. There is therefore a wide gap between perception and reality on this important point. Furthermore, a majority did not think Turkish membership would benefit European security.⁵⁷

In October 2005, when the EU decided to open negotiations with Turkey, 52% of the Dutch disapproved. The potential accession of richer and more closely related countries, such as Norway and Switzerland, aroused little opposition but there was little popular support for the accession of the poorer Balkan countries either. A growing proportion of the population has turned against EU enlargement with Turkey in the past decade. Currently, between two-thirds and three-quarters of the population are against it. The diagram below clearly shows that the Dutch have not become more averse to the EU in general but have become far more critical of EU enlargement.



57 Everts, p. 319.

In the autumn of 2008, nearly 80% of Dutch respondents thought EU membership was a good thing. The percentage that thought the Netherlands benefited from membership was nearly as high. In contrast, the support for future enlargement was less than 50%. In comparison with the beginning of this century, there has been a sharp fall in the number of supporters.

The European Outlooks periodically issued by the CPB and the Netherlands Institute for Social Research (SCP) provide a great deal of insight into the motives of the supporters and opponents of enlargement.⁵⁸ A 2009 survey, using focus group methodology, examined Dutch opinions on Europe by means of 'stories' that tried to give a balanced picture of the themes that determine public opinion and the associated dilemmas. The EU's strength was seen primarily in abstract terms and was forward-looking but the fears and mistrust that 'Europe' aroused were deeply rooted in everyday life. The fears and mistrust were also backed up by concrete examples. The threats that emerged from the 'stories' were not only more concrete but also more numerous. The positive themes that were named included the benefits of bloc formation, culture and diversity, security, the environment, the single currency and the economic strength of Europe.

Negative themes relate to loss of culture, bureaucracy, the unique Dutch approach to, for example, euthanasia and drugs policy, the internal power struggle, lack of unity, unseen economic benefits, poor communication, the lack of a European ideal, public ignorance about Europe, the democratic deficit and crime as a result of open borders. A further theme regularly emerging from the 'stories' is 'the Poles' flooding the labour market.

The researchers at the CPB/SCP were particularly interested in whether counter-arguments would persuade the respondents to change their minds on European questions. The table below shows the different answers given on Turkish accession. Both supporters and opponents were asked whether they would stick to their opinions in the light of the counter-arguments.

58 See in particular European Outlook 6, *Europe's Neighbours. European neighbourhood policy and public opinion on the European Union* (2008) and European Outlook 7, *Markets and power in 2030 and public opinion on the European Union* (2009).

Should Turkey join the EU even if...?

Question		%
Do you think Dutch membership of the EU is a good thing or a bad thing?	Good	57
	Neither good nor bad	29
	Bad	9
	Don't know	5
Are you for or against Turkish membership of the EU?	Definitely for	5
	More for than against	29
	More against than for	46
	Don't know	20
Would you still be in favour of accession if many Turks sought work in the Netherlands and Dutch people lost their jobs or would you change your opinion?	I would still be for	42
	Then I would be against	33
	Don't know	25
Would you still be for accession if the arrival of Turkish immigrants made Islam more prominent in Dutch public space?	I would still be for	33
	Then I would be against	43
	Don't know	24
Would you still be against accession if it reduced tension between the West and the Islamic world?	I would still be against	52
	Then I would be for	20
	Don't know	28
Would you still be against accession if it made the Dutch on average €300 per annum better off or would you change your mind?	I would still be against	60
	Then I would be for	10
	Don't know	30
Are you for or against closer cooperation with EU neighbours such as Morocco and Ukraine?	Definitely for	9
	More for than against	37
	More against than for	42
	Don't know	12
Are you for or against the immediate admission of workers from new EU member states?	For	4
	More for than against	27
	More against than for	52
	Definitely against	17
Would you still be against accession if it led to more economic growth in the Netherlands?	I would still be against	46
	Then I would be for	17
	Don't know	37

Taken from: SCP/SCP 2008, table A1.

The table shows that the counter-arguments might persuade the respondents to change their minds but most opponents of Turkish membership remain opposed even if accession would reduce tension between the West and the Islamic world or if everyone in the Netherlands would on average be €300 per annum better off. The researchers concluded that the opinions were relatively stable and should therefore be taken seriously by policymakers. They also concluded that people who change their minds under the influence of counter-arguments usually changed them back again. This means that public opinion, as revealed by the study, can be taken more or less as a constant in the short term.

The AIV would note, however, that in practice opinions do change in the longer term. Public opinion on nuclear energy, for example, has changed significantly in the past few years. It can also be concluded from the study that economic benefits ultimately do not have a lasting positive influence on public opinion regarding the accession of Turkey or, presumably, of other countries. Arguments concerning the possible threat to cultural identity are usually more persuasive. Geopolitical arguments seem to have little influence on public opinion. This agrees with the finding that graduates are persuaded more easily by arguments relating to peace and security in Europe while the less highly educated are more concerned about threats to their private lives.⁵⁹ In other respects, the CPB/SCP researchers have reason to believe that the opinions polled give a good picture of how the Dutch public really thinks about Europe.

III.3 The AIV's position

The polls show that enlargement clearly splits public opinion in the Netherlands. The split seems to be closely associated with the visibility of and contact with people of foreign origin in day-to-day life. René Cuperus was right to say that public opinion on the desirability of, for example, Turkish membership of the EU is determined not by the Copenhagen criteria but by perceptions of and experiences with the problems of immigration and integration at home.⁶⁰ This probably explains why there is so much opposition to EU enlargement from people living in mixed districts in large cities. This is of great concern to the AIV, not least because opposition to enlargement is in stark contrast to the objective fact that, as a trading nation, the Netherlands will benefit greatly from a larger internal market. Further enlargement offers demonstrable opportunities for the economy's substantial export sector. It was noted in the previous chapter that the accession of ten countries in 2004 generated €11 billion for the Dutch economy in the first three years alone.⁶¹

It has to be asked how policymakers should respond to the underlying reality at home. The AIV noted in the previous chapter that political leaders must take account of the feelings in society but they must not hide behind them. They have their own responsibility. Temporary political popularity must not be at the expense of the Netherlands' long-term interests. Politicians must not boost their own popularity by failing to point out

59 SCP, 2008, p. 11.

60 René Cuperus, 'The rise of European populism', Peter M.E. Volten (ed.), *Perceptions and Misperceptions in the EU and Turkey. Stumbling blocks on the road to accession*, Groningen, CESS Harmonie Paper 23, 2009.

61 See also Government Assessment, p. 3.

the benefits of enlargement to an open trading nation like the Netherlands. *In the AIV's opinion, any suggestion that enlargement is seen as an automatic process must be avoided. Nothing seems as destructive to support for the European integration process than the image of a runaway train that ignores public warnings to stop. Parliamentary approval of new membership applications must therefore satisfy high standards of political vigilance. The AIV is also convinced that a government information policy restricted to highlighting the economic and security benefits of enlargement, no matter how self-evident they are, is inadequate.* The public attitude to enlargement is part of a larger complex of opinions, attitudes and responses in society on issues that are not directly connected to enlargement, such as the arrival of immigrants, the blurring of national borders and increased international exchange. The strength of this argument varies, of course, depending on the candidate country concerned.

Many members of the public see enlargement from the worrying angle of a familiar but disappearing world. Since the recent enlargement they have seen the EU as a source of insecurity rather than as a source of protection. National identity – when defined as a political community's characteristic lifestyle and values – is thought to be under threat. With all the caution that must be exercised when interpreting the results of such studies, it can nevertheless be assumed that this cultural dimension is more important than the economic dimension. In other words, fear of the loss of national identity probably produces a stronger reaction against enlargement than fear of the loss of acquired social rights. The seriousness of the concerns about national identity varies, of course, depending on the characteristics of each individual candidate country.

If this analysis⁶² is correct, mobilising support for an even larger EU will depend heavily on the success of policy on the integration of minorities. The AIV cannot but think that this issue has been badly neglected in the past. This explains why the number of people supporting the EU's open door policy has steadily fallen. Since a detailed consideration of internal integration policy is beyond the scope of this report, suffice it to say that the government's efforts to enable migrants to take part in society as fully fledged citizens – based on strict criteria on language skills and economic training – must be vigorously continued. They are an important means to prevent tensions between the indigenous Dutch and those of foreign extraction.

Targeted measures to increase public support should include the strict monitoring of candidate countries' efforts to comply with the minimum requirements of the rule of law and the established human rights norms. Persistent reports of systematic corruption, political pressure on the judiciary and the persecution of opponents of the incumbent government are evidently not conducive to enlargement. *The lesson that has to be learned from the recent admission of Romania and Bulgaria is that candidate countries may accede only if they satisfy the accession conditions in full.* To date, the EU has proved insufficiently capable of correcting new member states that have shown serious shortcomings, chiefly in the field of justice and home affairs. The strongest incentive to push through the necessary reforms again seems to be the prospect of membership.

We shall return to this in the next chapter.

62 See the articles by Paul Scheffer, 'De boel bij elkaar houden is niet genoeg', *NRC-Handelsblad/Opinie & Debat*, 20-21 March 2010, and 'De vertrouwensvraag is gesteld', *de Volkskrant*, 3 April 2010.

IV Conclusions

The specific questions the government and the House of Representatives' Permanent Committee on European Affairs asked the AIV to answer are preceded in the request by the following political assessment of the enlargement process:

'The European Union's enlargement process has proven to be one of the most successful instruments of the Union's external policy in recent decades. Enlargement has united old and new member states in the joint pursuit of peace, security, democracy and prosperity for their peoples.'

The AIV wholeheartedly agrees with this assessment and accordingly wishes to place its answers in a broader political context. The joint pursuit of peace, security, democracy and prosperity for its peoples has made the EU a zone of political stability in an often turbulent environment and a world of radically shifting power relations. *Future enlargements must support this process and spread its influence in the European area and the geographical neighbourhood. This criterion must determine the solidity required of the arrangements to be made with candidate countries and thus the speed of the process. Absorption capacity must be analysed in this context, not as a separate criterion. If it is not, there will be a danger of its inhibiting or impeding the enlargement debate.* As can be seen from the consideration above of the five dimensions of absorption capacity, it is not a static given and it is therefore worthwhile influencing it through targeted policy.

IV.1 The importance of pre-accession

The AIV is convinced that arguments of a geopolitical nature will appeal less to the electorates in many countries than concerns about more immigrants within national borders, crime and shifts in economic activity and thus jobs. To foster support by increasing understanding of the geopolitical importance of enlargement, these concerns must be alleviated by means of firm agreements with candidate countries (not after accession but during the pre-accession phase) and further steps in the pre-accession process must be made dependent on the outcome of the required changes. This message must clearly be communicated politically. *Since the Union's absorption capacity is generally placed under less strain if the pre-accession process is more successful, the AIV favours the strict application of clear conditions, a process that has actually already started in response to the prospect of Turkish accession (see the decisions of the European Council of 2004 and 2005).*⁶³ Setting clear conditions will also strengthen the Union's position to insist on change during accession negotiations. At the same time the Commission's criterion that enlargement may not delay the integration process ('guarantees of progress') must be modified; in many cases integration is delayed by factors other than enlargement and – as noted above – enlargement has actually accelerated integration in a number of respects.⁶⁴ *But here, too, the more energy that is put into the preparations for accession, the less energy that is needed later for absorption.*

63 See *Bulletin EU 12-2004* and *Bulletin EU 12-2005*.

64 See, for example, Jan Rood, 'A Federation in the Making? The Dynamics and Future of European Integration', in Alfred van Staden et al., *Cannons and Canons. Clingendael Views of Global and Regional Politics*, Assen, Van Gorcum, 2003, pp. 107-125.

An important lesson learned from the accession of Bulgaria and Romania is that the EU can successfully set conditions during the pre-accession phase but has very little opportunity to influence a country once it has crossed the threshold of accession. Formal sanctioning mechanisms, such as the suspension of participation in Council meetings or the temporary withdrawal of voting rights, require the application of a laborious procedure.⁶⁵ It must therefore be asked what additional instruments can help exert permanent pressure on member states – old and new – that remain in default. A link to the benefits member states enjoy from the structural funds would seem reasonable in the circumstances. Reverting to practices that breach the membership conditions should lead to a reduction or even suspension of payments, as already actually happens on a limited scale.

IV.2 Answer to the main question

In the light of the above, the AIV arrives at the following answer to the final, fundamental question in the request for advice:

The European Commission included a special report on the EU's capacity to integrate new members in its Communication on the enlargement strategy and main challenges 2006-2007 (COM(2006) 649). To what extent have the Commission's conclusions and recommendations been followed up? In what way have they been integrated into Commission and Council policy? In what way could these conclusions and recommendations be acted upon if this has not already happened?

The discussion inside – and outside – the EU institutions further to the Commission's 2006 Communication on enlargement strategy has produced compelling analyses and recommendations but at the highest level it has not yet produced any clear and detailed operational policy conclusions of a more than general nature. The AIV thinks the EU needs to set out and articulate in clear terms, especially for its citizens, an explicit policy line for both the short and the long term. The Union needs to take decisions regarding Croatia *at once* and will soon have to do so regarding other countries in the Western Balkans.

Accession negotiations with Turkey have been going on since 2005. Owing to its large population, lower level of economic development (although the gap is narrowing), and weak tradition of the rule of law, the country is the *largest* challenge to the EU's absorption capacity. Rightly or wrongly, the cultural differences with Turkey certainly explain part of the opposition to its accession among large sections of the population, especially in the old member states. The Turkey dossier might be by far the most substantial, both politically/strategically and socioeconomically, but the way in which the EU handles the Balkans dossiers will help shape the success of the further enlargement process and so, indirectly, subsequent decisions on Turkey.

⁶⁵ Article 7 (3) of the Treaty on European Union, for example, lays down that where a member state breaches 'the principles of freedom, democracy, respect for human rights and fundamental freedoms and the rule of law' the Council, acting by a qualified majority, may decide to suspend certain of the rights deriving from the application of the treaties to the member state in question, including the voting rights of the representative of the government of that member state in the Council. Before deciding to do so, however, the European Council (heads of state and government), acting by unanimity on a proposal by one third of the member states or by the Commission and after obtaining the consent of the European Parliament, must determine the existence of 'a serious and persistent breach' of those principles by a member state. The Council must also take into account the possible consequences of such a suspension on the rights and obligations of natural and legal persons.

Public acceptance in the EU is particularly relevant here. The fact that the Balkan countries are fairly small or very small and will have a limited economic and financial impact on the Union does not mean that the policy decisions are less important. On the contrary, public perception of the impact of the next enlargement will have serious consequences for the subsequent process.

The AIV recognises two key issues, both lying outside the financial and economic domain. Shared and external political problems – i.e. those outside the formal *acquis* – in the candidate countries must be resolved once and for all before the countries accede; they must not be placed on the EU's agenda after accession, as was the case with Cyprus. Great emphasis must also be placed on internal security in the enlarged Union, particularly where police and justice policy, crime prevention and corruption are concerned (not only as regards legislation but also, and especially, as regards implementation and enforcement). As argued above, shortcomings must be identified and convincingly addressed during the pre-accession phase.

In this approach, countries must not be allowed to accede in groups for political rather than practical reasons. Every candidate must be judged exclusively on its own merits, even if that leads to a politically unwelcome delay. Romania and Bulgaria have shown that it is an illusion to think shortcomings will be easier to address after – and because of – accession. The existence of a sufficiently reliable and efficient civil service in the acceding state, one that enjoys the confidence of both the home population and the EU member states, is essential for public support.

With regard to the negotiations with Turkey, it should be noted that this country cannot accede until the entire negotiation process has been completed. A great deal will depend on the reform process within Turkey. The political evolution unfolding there is only partially due to the relationship with the EU. Both sides must exercise political caution if negotiation is not to be frustrated by the two processes interfering with each other. The EU owes it to itself to complete all 'chapters' in the negotiations in an objective and businesslike manner, as it must with every other candidate country, in accordance with the same Copenhagen criteria. The financial and economic consequences will be considerably greater but they cannot be calculated in advance: they will be heavily influenced by the Financial Perspectives for after 2013. These Financial Perspectives, which the EU will already have adopted, might place significantly different emphasis on agricultural expenditure and the structural and cohesion funds. The institutional impact of the accession of Turkey, which has a similar population to Germany's, will plainly be evident in the voting ratios in the Council. The same is true of the accession of the Balkan countries, each of which will have an influence on the 55% of member states required to form a qualified majority in the Council.

At this stage there is no point in speculating about the further course of events and the possible duration of the negotiation process with Turkey but the AIV would point out that the final decision should give serious consideration to the geopolitical importance of Turkish membership. Turkey is a large and rapidly developing power on the border between Europe and the Middle East and as a member of NATO has already been involved in defending the West for more than half a century. Full Turkish membership of the EU would greatly strengthen the EU's position in that part of the world. It would enable the EU to act on the world stage as a community that has exorcised the demons of the past and, through its diverse composition, epitomises the ideal of civilisation based on dialogue and cooperation among different cultures and religions. With Turkey in its ranks, the EU will probably have a stronger voice in the endeavour to resolve the

conflicts in the Near and Middle East. In a more general sense, Turkish membership would significantly strengthen the Union's common foreign and security policy.

In addition to the political side of Turkish membership, there is an economic side. The picture that is all too often presented of Turkey as a country of paupers, many of whom must emigrate to earn a living, has long been a caricature of reality.⁶⁶ Turkey's economy is growing strongly and its accession would considerably increase the internal market and thus serve Dutch interests. Furthermore, Turkey would grow in importance as an EU trading partner (it has been a 'priority country' for the Netherlands for years), including in relation to the Middle East in general. The country has come through the recent financial crisis in reasonably good shape and the rising standard of education in Turkey, with 80 universities, is impressive.

European political leaders should also ask themselves what would happen if Turkey were refused membership or if Turkey were to feel so unwelcome that it rejected membership. Not only would the fruits of accession remain unplucked but it would certainly not be in the Union's interests if Turkey unilaterally sought regional supremacy or associated itself with the Arab Middle East or Iran.⁶⁷ The consequences for European security and NATO would be just as unattractive.

In this light, it needs to be asked how long accession talks with Turkey can continue if no tangible results are achieved. The problem with accession is that nothing is definite until everything is finished yet there is a need for examples and results of concrete cooperation. Only by 'getting to know each other' and demonstrating the benefits of Turkish accession can popular support be increased. This is also the case in Turkey itself, where political support for accession is crumbling because of the growing sense that the negotiations will not succeed; it would therefore be wise to explore other options. There seems to be speculation in some EU countries that Turkey will break off the negotiations to save its pride. Even if the governments in the EU agree to Turkish accession, the possibility cannot be ruled out that it will be prevented by national referendums in, for example, France and Austria.

In this respect, the AIV wonders whether the current accession negotiations in the field of foreign policy could seek closer cooperation with Turkey, a NATO ally, on individual themes (for example, the Middle East and the southern Caucasus). The institutional structure of the Common Foreign and Security Policy (CFSP) and the Common Security and Defence Policy (CSDP) would certainly permit this. Furthermore, an undertaking was given to Turkey as early as 1999 that it would be involved in the CFSP in one way or another. A breakthrough would first be required, of course, regarding Cyprus. The EU has barely occupied itself with this problem, leaving it to the United Nations (UN). On the other hand, the majority Greek population of Cyprus is not without blame, having rejected the UN peace plan for the island. Furthermore, they are preventing trade between Northern Cyprus and the EU from flourishing as foreseen. With its refusal to open Turkish harbours and airports to ships and aeroplanes from Southern Cyprus, Turkey is also not helping to

66 According to Sabrina Tavernise and Michael Slackman Turkey is now the sixth largest economy in Europe. See their article 'Turkey speaks up in Mideast', in *The International Herald Tribune*, 9 June 2010.

67 For a compelling consideration of this issue, see the article by Bram Vermeulen, 'Overmoed speelt ambitieus Turkije parten', *NRC Handelsblad*, 12-13 June 2010. Compare also Philip Stephens, 'West must offer Turkey a proper seat', *Financial Times*, 17 June 2010.

find a way out of the current impasse. A solution to the Cyprus question is urgent not only on account of the local situation but also because, as noted elsewhere in this report, it is standing in the way of good working agreements between the EU and NATO.

The AIV believes the accession negotiations could also be used to strengthen economic and justice and home affairs cooperation with Turkey. The most promising opportunities for closer economic cooperation between the EU and Turkey seem to lie in the field of energy, although Turkey will consider energy to be a trump card, a means of putting pressure on the EU. Better policy coordination and common action to combat organised crime, drugs trafficking and illegal immigration are also in each other's interest. The EU could make the first move by abolishing visa requirements and admitting Turkey to the Schengen regime. This could be worked out during the forthcoming Belgian presidency of the EU (second half of 2010).

In summary, an EU initiative to strengthen cooperation with Turkey in a variety of fields in anticipation of its eventual membership should not only entail recognition of Turkey's legitimate pursuit of a substantial role in its wider environment. It should also provide, without having to wait for the outcome of time-consuming negotiations, a suitable operational framework for the shared geopolitical interest in the constructive development of the region and the vital contribution Turkey can make.

IV.3 Final remarks

The AIV has deliberately placed this report in the broader context of EU policy as a whole in a turbulent world. The complex question of further EU enlargement coincides with the EU's exceptional struggle to overcome the financial and economic aftermath of the banking crisis. This task, which is testing the EU's administrative effectiveness and creativity to the utmost, currently has priority. At this juncture, complications caused by enlargement policy must be anticipated and averted wherever possible. This is particularly true of the decisions that have to be taken in the near future on the Western Balkans and on the countries that have exceptionally sensitive relations with each other. Constructive, but cautious, policy on these countries also requires them to work on a substantial improvement in their relations.⁶⁸ This responsibility rests with both the first countries to join and those that are in the pre-accession phase or still have to embark upon it. The EU cannot admit new members if they would impede or even disrupt the gradual process of admitting other countries. This requires the EU not only to prepare a strategic plan for the region but also to make clear agreements with the countries concerned before final decisions are taken.

68 On behalf of the EU presidency, the Spanish foreign minister, Miguel Angel Moratinos, successfully brought political leaders from all potential accession candidates together in Sarajevo at the beginning of June 2010, albeit only in their personal capacity. The difficulties encountered when preparing for this initiative show that formidable political obstacles still have to be overcome to arrive at constructive regional cooperation. The EU must continue to insist on change in this area. It can be concluded from many forms of transnational cooperation, for example trade and culture, that the peoples of the region are willing to put the past behind them. This positive attitude can be further mobilised in the context of pre-accession policy.

V Summary

The European Commission has defined the term ‘absorption capacity’ in very general terms as ‘whether the EU can take in new members at a given moment or in a given period, without jeopardizing the political and policy objectives established by the Treaties’.

The AIV prefers the term introduced by the European Commission – ‘integration capacity’ – because it better expresses the link with the political objectives of European cooperation and the positive and dynamic nature of the European project.

In the AIV’s opinion the current official term, ‘absorption capacity’, is problematic for four reasons.

Firstly, the term is not precise. It may therefore give rise to subjective interpretations depending on the political needs of the day.

Secondly, it is a dynamic term. The EU’s capacity to take in new members changes over time. It can also be fundamentally influenced by the policy pursued and by financial and economic circumstances. Previous enlargements accelerated the integration process in a number of ways. Many of the benefits of EU membership increased as more countries joined the Union.

Thirdly, absorption capacity is not an abstract given but a product of each acceding country’s size and specific circumstances. The countries that could currently be considered for EU membership can be divided into several groups: a number of highly developed West European countries (Norway, Iceland, Switzerland), the countries of the Western Balkans, and Turkey. There are considerable differences between these countries’ prosperity, population size, political stability and institutional development. Relations between some of them are also often difficult. The enlargement strategy must therefore be well thought out.

Fourthly, absorption capacity is determined by a variety of factors. The AIV has identified the following five dimensions:

- a. the institutional and administrative dimension: the EU’s capacity to act;
- b. the economic dimension: the general development of prosperity;
- c. the budgetary dimension: the consequences for the EU budget;
- d. public acceptance: identification with and support from the EU’s citizens;
- e. the geopolitical dimension: the impact on stability in the direct vicinity of the EU and on the EU’s standing in world politics.

These five factors can point in different directions depending on each individual case of enlargement.

For all these reasons the AIV concludes that the term ‘absorption capacity’ is intrinsically highly politically charged and careless use of it could easily give rise to a spurious argument in the enlargement debate. It can nonetheless be a useful instrument to prevent enlargement based on shaky grounds.

In the AIV’s opinion, the enlargement process has on the whole been successful. By offering the prospect of membership, the Union has helped stabilise a large number of

countries with major political, economic, social and moral problems. The process has contributed to the continent's security and facilitated national development processes. It has also created new export opportunities for the old member states. The enlargement process has therefore had very important results and the EU would have missed a historic opportunity if it had neglected its responsibilities. It cannot be denied, though, that mistakes were made in the enlargement process. It will be some years before a final opinion can be given on this historically unprecedented undertaking. That opinion will be based in part on how and how quickly the Union overcomes the current financial and economic crisis and whether it can develop sufficient coherence to play a significant political and economic role on the international stage. The AIV thinks the latter's importance is still often underestimated.

Provided the EU itself is capable of handling the accession of new member states, and the accession conditions, as formulated in the Copenhagen criteria and subsequently tightened up, are strictly applied, the AIV is in principle in favour of further EU enlargement. The reasons given above for the favourable opinion on recent enlargements also apply to further enlargement. In so far as absorption capacity can be increased through policy, policy should focus on it.

Where the term 'absorption capacity' is used to highlight the potential cost of enlargement, the AIV would note that not enlarging also has its cost. As well as considering its absorption capacity, the EU must ask itself whether it can deal with the consequences of *not* integrating.

Of the five dimensions, the institutional/administrative, economic and budgetary dimensions are largely objectifiable and quantifiable; the public acceptance and geopolitical dimensions, however, are determined chiefly by subjective perceptions.

The AIV believes an active pre-accession policy should create the best possible assurances that the candidate countries will be able to satisfy the stricter Copenhagen criteria as quickly as possible. But there must in turn be a realistic prospect of membership.

The AIV's opinion on the five dimensions is as follows:

a. Institutional and administrative aspects

With a view to the EU's capacity to act, the AIV would note that a series of treaty amendments have been made (Amsterdam, Nice and Lisbon) so that the EU institutions could function in an enlarged Union. This is a good example of how absorption capacity can be strengthened through targeted policy.

In the AIV's opinion, however, the European Commission is already too large. This weakens its authority. The Netherlands must therefore keep a reduction in the Commission's size on the agenda. It must also ensure there is no excessive increase in the Commission's civil service. Finally, the Netherlands must do its utmost to retain its influence on thinking and policymaking in Brussels.

The European Parliament will have the final word on any further enlargement. The AIV does not think the size of the European Parliament (currently 736 seats, with the Treaty setting a maximum of 750) is an obstacle to its democratic operation. Preliminary discussion by specialised committees and political parties ensures that the *modus operandi* is acceptable. The impact of a future major enlargement, e.g. with the Western

Balkans and Turkey, on the division of seats between the small member states (at least six seats) and the larger member states will be more disadvantageous to the larger member states. The AIV thinks this is unreasonable and undesirable and favours a reduction in the minimum number of seats allocated to the smallest member states and the retention, even after enlargement, of the same degree of degressive proportionality in the allocation of seats in the European Parliament that is currently thought to be reasonable. The AIV recommends that a more radical approach, such as European electoral lists, be worked out for the longer term.

The AIV recognises that further enlargement could cause problems at the Court of Justice regarding the length of its proceedings and European legal uniformity. The AIV therefore calls for a modification of the preliminary ruling system and a limit on the number of judges.

The AIV believes the number of members of the European Court of Auditors should also be limited.

The AIV concludes that institutional problems, in so far as they exist, must not be used as an excuse to refrain from further enlargement. If the Union thinks enlargement is desirable or necessary it must resolve any such problems. Whether the Union should enlarge further or not is primarily a political question that should not be subordinated to institutional and organisational questions, which can in principle be resolved. The interests of enlargement must come first.

b. Economic aspects

The AIV has no doubt that the EU economy as a whole can cope with further enlargement. Previous enlargements had a small but unarguably positive impact on the economies of the old member states. The impact on the new member states was both positive and considerable. The new member states grew more quickly towards the EU level and integration problems declined. Integration capacity therefore increased.

The current EU's capacity for economic reform is one of the factors determining its capacity to take in new member states. Strengthening the EU's reform capacity, for example by implementing the Europe 2020 strategy for the period 2010-2020, will also strengthen its absorption capacity. This, too, is an example of how absorption capacity can be influenced by policy decisions.

c. Budgetary aspects

The AIV also thinks this aspect of absorption capacity can be influenced by policy decisions. The composition and size of the EU budget, after all, are determined by the member states' policy decisions, which can be changed and are currently being thoroughly reviewed.

The AIV would point out that budgetary consequences should be seen in the light of the expected economic benefits of enlargement, which in principle will be many times greater than the direct cost.

d. Public acceptance

The AIV thinks public support is the most challenging aspect of absorption capacity. A majority of the citizens in virtually all member states are opposed to further enlargement. The AIV wonders whether public opinion is encouraging politicians to distance themselves from enlargement or whether politicians' views are fuelling public scepticism of enlargement. Presumably they both influence each other, with other opinion leaders also playing a key role. Fostering support for enlargement should in any event be an essential part of the EU's enlargement policy.

e. Geopolitical aspects

The AIV thinks enlargement is above all a geopolitical undertaking, its main objectives being to increase stability in the EU's direct vicinity and to strengthen the Union's standing on the world stage. The former is particularly relevant to the Balkan countries, which must not remain a 'black hole' within the Union's territory, and to Turkey, which consciously turned to the West nearly 90 years ago after it abolished the sultanate and installed the Kemalist Republic and is now a strategic regional player.

Other aspects

In addition to these five dimensions, the EU's absorption capacity is influenced by other issues such as migration, crime prevention and safeguarding the rule of law. The prospect of conducting a joint justice and policing policy with candidate countries should be an important yardstick for their ultimate accession. Confidence in the quality and effectiveness of a candidate country's legislation, public administration and justice system can increase support for its accession.

The Dutch perspective

For a number of very different reasons, the Netherlands has always insisted on strict compliance with the accession conditions. These reasons include: a legalistic tradition, concerns about the Netherlands' loss of influence and its position as a net contributor, and sensitivity to the opposition to enlargement among large sections of the population. The Dutch position is 'precise' rather than 'pliable'.

In view of the changes taking place in the world, the AIV thinks enlargement should be approached with an open mind. It also believes a key element in a more 'precise' stance is a willingness to invest through pre-accession policy in cooperation and integration so that candidate countries can comply with the conditions quickly and precisely.

Dutch public opinion has become increasingly critical of enlargement but not of the EU in general. Polls indicating that there is an overwhelming dislike of enlargement fill the AIV with concern. Such opinions are at odds with the objective fact that the Netherlands is a trading nation that will greatly benefit from a larger internal market. It must be asked how politicians should respond to the underlying domestic reality. The AIV thinks the benefits of enlargement should be brought to the fore. At the same time, any suggestion that enlargement is seen as an automatic process must be avoided. An information policy that is restricted to highlighting the economic and security benefits is inadequate. The public attitude to enlargement is part of a larger complex of opinions in society on issues that are not directly connected to enlargement, such as the arrival of immigrants, the blurring of national borders and increased international exchange.

Concluding remarks

Future enlargements must strengthen the EU as an area of prosperity and stability and provide opportunities to improve the Union's standing on the world stage. Absorption capacity must be seen in this broader political setting, not as a separate criterion. Otherwise, it will inhibit or impede the enlargement debate.

To foster support, concerns must be alleviated by means of firm agreements with candidate countries (not after their accession but during the pre-accession phase) and further steps in the pre-accession process must be made dependent on the outcome of the required changes. Politicians must communicate this message clearly.

There are very few opportunities to influence a country once it has been admitted to the EU. The EU's absorption capacity is put under less strain if more energy is invested in making the pre-accession phase a success. This is why strict conditions must be set in tandem with active support from the EU during the pre-accession process. The Union needs to take decisions regarding Croatia at once and will soon have to do so regarding other countries in the Western Balkans.

The success of the further enlargement process will hang on the Balkan dossiers. Two factors will be decisive: solutions to shared and external problems and a major emphasis on internal security in the enlarged Union. Countries must not be allowed to accede in groups for political rather than practical reasons. Every candidate must be judged exclusively on its own merits, even if that leads to a politically unwelcome delay.

The final decision on Turkey's accession should give serious consideration to the geopolitical importance of Turkish membership. It offers the prospect of greater stability in a turbulent region to the southeast of the current EU and a stronger EU presence on the world stage. An important political question is how long accession talks with Turkey can be continued if no tangible results are achieved. In anticipation of Turkey's eventual membership, the EU should seek specific forms of cooperation with it, particularly in the field of foreign and security policy, something the Union declared it was willing to do more than ten years ago.

In the near future the EU will have to address the complicated problems in the enlargement dossiers for the Western Balkans at the same time as it is struggling with the financial and economic aftermath of the banking crisis. The latter currently has priority and will demand a great deal of energy.

Complications in the enlargement policy must therefore be anticipated and averted by means of a considered and coherent pre-accession strategy for the countries in the Western Balkans. Given the divisions among these countries, they must significantly improve their relations with each other before they can accede to the EU. In particular, local conflicts must first be resolved. This must be a key element in the strategy.

Annexes

Request for advice

Mr F. Korthals Altes
Chairman of the Advisory Council
on International Affairs
Postbus 20061
2500 EB DEN HAAG

Date 20 December 2009
Re Request for advice on EU absorption capacity

Dear Mr Korthals Altes,

In accordance with the conclusions of a parliamentary committee meeting on 11 November 2009 with members of government on EU enlargement, we request the advice of the Advisory Council on International Affairs (AIV) on the following subject.

The European Union's enlargement process has proven to be one of the most successful instruments of the Union's external policy in recent decades. Enlargement has united old and new member states in the joint pursuit of peace, security, democracy and prosperity for their peoples.

It is of course vital that enlargement take place in accordance with agreed procedures and criteria. In this regard, the Copenhagen criteria, agreed in 1993, determine when a country is considered ready to accede to the EU.

At the same time, it was agreed that the EU's capacity to absorb new members, while maintaining the momentum of European integration, would be another major consideration in decisions on enlargement. This principle was reiterated by the European Council of December 2004. More recently, in adopting a more sharply delineated enlargement strategy, the European Council of December 2006 stressed 'the importance of ensuring that the EU can maintain and deepen its own development. The pace of enlargement must take into account the capacity of the Union to absorb new members. The European Council invites the Commission to provide impact assessments on the key policy areas in the Commission's Opinion on a country's application for membership and in the course of accession negotiations.'

The concept of the 'capacity of the Union to absorb new members', or absorption capacity, has however never been fleshed out.

The government and the Permanent Committee on European Affairs therefore request that the AIV respond to the following questions:

1. What factors, and which specific components of the *acquis*, determine 'the capacity of the Union to absorb new members', i.e. its absorption capacity.
2. Which actors bear responsibility for defining the concept of absorption capacity?

3. Is the discussion about absorption capacity influenced by specific cultural or national factors?
4. Is a common, EU-wide definition of the concept of absorption capacity feasible or desirable? Can absorption capacity be measured, objectively or otherwise?
5. What role do financial concerns (such as the size of the EU budget or the budget review) play in defining absorption capacity?
6. To what degree do economic concerns (for instance, concerning the internal market) influence the discussion about absorption capacity, either negatively or positively?
7. How are institutional issues included in this discussion? How does the entry into force of the Lisbon Treaty influence the issue of absorption capacity?
8. Is there a relationship between public support for enlargement and absorption capacity?
9. How could the concept of absorption capacity be used to inform discussions on the character and organisation of the EU in the future? Is there a relationship between absorption capacity and the desire to strengthen mechanisms that enforce compliance with norms and values after accession?
10. The European Commission prefers to use the term integration capacity rather than absorption capacity. What effect does this distinction between integration and absorption have on the discussions within the EU institutions, the member states and candidate countries?
11. The European Commission included a special report on the EU's capacity to integrate new members in its Communication on the enlargement strategy and main challenges 2006-2007 (COM(2006) 649). To what extent have the Commission's conclusions and recommendations been followed up? In what way have they been integrated into Commission and Council policy? In what way could these conclusions and recommendations be acted upon if this has not already happened?

In answering these questions, we would ask you to consider – in so far as possible – the Dutch (national) perspective.

We look forward to receiving your advisory report.

Yours sincerely,

[signed]

Maxime Verhagen
Minister of Foreign Affairs

[signed]

Frans Timmermans
Minister for European Affairs

[signed]

Harm Evert Waalkens
Chair of the Permanent Committee
on European Affairs of the House
of Representatives

Further elaboration of the Copenhagen accession criteria (1993)

Following the EU's substantial enlargement in May 2004, the European Council has reaffirmed at each successive meeting that it wished to continue the accession process with the candidate countries (since the accession of Bulgaria and Romania on 1 January 2007, these have been Croatia, Macedonia and Turkey). It also stressed that the Union's capacity to take in new member states would be an important factor in the further process. At the December 2006 European Council, it was specifically stated that the future of the other countries in the Western Balkans (Albania, Bosnia and Herzegovina, Montenegro and Serbia) 'lies in Europe'.

Accessions that take place after 2007 will have to take account of the lessons learned from the enlargement of 1 May 2004. This means amongst other things that the process will not be conducted at such a pace that the EU is in danger of losing control.

To qualify for membership of the EU, the current candidate countries and 'aspirant candidate countries' must first comply with the conditions established by the European Council in Copenhagen in 1993. These Copenhagen criteria can be divided into three main groups:

- political criteria: a candidate country must have stable institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities;
- economic criteria: a future member state must have a functioning market economy, as well as the capacity to cope with competitive pressure and market forces within the Union;
- the *acquis communautaire*: existing legislation must be adopted and implemented.

In addition to these Copenhagen criteria, a negotiation framework was introduced for future EU member states in 2004 that is stricter in a number of respects. It was drawn up not least with a view to Turkey. The main conditions are:

- negotiations will be split up into a number of chapters. The Council will decide by unanimous vote upon a number of benchmarks before negotiation of a chapter can be closed or opened; these benchmarks can relate to the introduction of legislation and the implementation of the *acquis*;
- long transitional periods, exemption rules, specific measures or a permanent option to take safeguard measures are possible, for example with regard to the free movement of people, structural funds and agricultural policy;
- with regard to candidate countries with which negotiations still had to be opened (at the time) and where accession could have substantial financial consequences for the EU (i.e. Turkey), negotiations cannot be concluded until the financial framework for the period 2014-2020 has been agreed;
- the common objective of the negotiations is accession, on the understanding that the negotiations are an open-ended process whose outcome is not guaranteed in advance. If a candidate country cannot assume the full membership obligations, it must still be fully anchored in the European structures;
- if a candidate country commits a serious and persistent breach of the principles of freedom, democracy, respect for human rights and the rule of law, negotiations can be suspended.

At its December 2006 meeting, the European Council added the following elements to the accession strategy:

- difficult issues, such as administrative and judicial reform and the fight against corruption, will be raised at an early stage;
- the outcome of political and economic dialogues will be fed into the accession negotiations;

- the pace of the accession process will be determined in part by the reforms in the negotiating country, with each country being judged on its own merits;
- accession dates will not be named until the negotiations are nearing completion;
- the EU's capacity to integrate new member states and broad and stable support for enlargement will be taken into account.

The European Council of June 2007 decided that the new EU Treaty would also refer to the accession criteria.

List of abbreviations

AIV	Advisory Council on International Affairs
BRIC	Brazil, Russia, India and China
CAP	Common Agricultural Policy
CEPEJ	European Commission for the Efficiency of Justice
CFSP	Common Foreign and Security Policy
CHR	Commissioner for Human Rights
CPB	Netherlands Bureau for Economic Policy Analysis
CPT	Committee for the Prevention of Torture
CSDP	Common Security and Defence Policy
ECHR	European Court of Human Rights
ENP	European Neighbourhood Policy
EU	European Union
GDP	Gross Domestic Product
GNP	Gross National Product
GRECO	Group of States against Corruption
MATRA	Maatschappelijke Transformatie (Social Transformation)
NATO	North Atlantic Treaty Organization
OSCE	Organisation for Security and Cooperation in Europe
PACE	Parliamentary Assembly of the Council of Europe
SCP	Netherlands Institute for Social Research
SER	Social and Economic Council of the Netherlands
UN	United Nations

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*** Joint report by the Advisory Council on International Affairs (AIV) and the Advisory Committee on Aliens Affairs (ACVZ).