

**BRIDGING THE GAP BETWEEN CITIZENS AND BRUSSELS
TOWARDS GREATER LEGITIMACY AND EFFECTIVENESS FOR THE
EUROPEAN UNION**

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Foreword

On 19 July 2001 the Minister of Foreign Affairs asked the Advisory Council on International Affairs (AIV) to produce an advisory report on issues relating to the future of the European Union (EU). The report was prepared by the AIV's European Integration Committee (CEI), which consists of the following persons: Professor F.H.J.J. Andriessen (chair), Dr B. Knapen (vice-chair), H.J. Brouwer, W.S.J.M. Buck, P. Dankert, H.C. Posthumus Meyjes, Professor J.Q.T. Rood, P. Scheffer, W.K.N. Schmelzer, Professor A. Szász, M.G. Wezenbeek-Geuke and Professor J.W. de Zwaan. For the purposes of this report the European Integration Committee was enlarged to include Professor B.A.G.M. Tromp and E.P. Wellenstein of the Peace and Security Committee (CVV) and J.G. van der Tas of the Human Rights Committee (CMR) of the AIV. Additional assistance was provided by the CEI's official advisors, R.C.J.M. van Schreven and J.A. Werner, and also by A.R. Westerink (Ministry of Foreign Affairs). The secretary to the CEI was M.M.J. Louwerens. J.W. van der Veer and B. Frequin (trainees) also assisted in the preparation of the report.

The AIV finalised this report on 3 May 2002.

The Declaration on the Future of the European Union in the Final Act of the Treaty of Nice identified four subjects that would have to be addressed in a debate on this topic.¹ The Laeken European Council of December 2001 decided that a Convention should consider these and various related subjects. The Laeken Declaration formulated some 50 questions, which were divided into the following themes: (1) a better division and definition of competence in the European Union; (2) simplification of the Union's instruments; (3) more democracy, transparency and efficiency in the European Union; (4) towards a constitution for European citizens. Questions about the external policy (a theme which the AIV believes should be dealt with in the Convention) were not grouped together under a separate heading but spread among the above themes. The Convention began on 28 February 2002. Ultimately, an Intergovernmental Conference (IGC) will take decisions on these matters in 2004. The AIV produced an interim report on 9 November 2001, in which it indicated that the debate should focus on the themes of legitimacy and democracy, coherence of external action, the fight against terrorism, and security.² In the present report the AIV will deal substantively with the themes contained in the Declarations of Nice and Laeken and the subjects it has itself raised.

1 The four subjects in the Nice Declaration are: (1) how to establish and monitor a more precise delimitation of powers between the European Union and the Member States, reflecting the principle of subsidiarity; (2) the status of the Charter of Fundamental Rights of the European Union; (3) a simplification of the Treaties with a view to making them clearer and better understood without changing their meaning; (4) the role of national parliaments in the European architecture (see the Declaration on the Future of the Union, annexe IV to the Treaty of Nice). Annexe I to the Conclusions of the Laeken European Council formulates some 90 questions on these themes.

2 Letter containing interim report AIV-214/01 of 9 November 2001 (see Annexe II).

The report is organised as follows. Chapter I contains a general analysis of developments in the European Union now and in the future. This analysis focuses on the implications of the forthcoming enlargement on which political agreement has been reached. The issues raised are then examined from this perspective: constitutional issues in chapter II, institutional issues in chapter III, external security and coherence of foreign policy as well as internal security and the fight against terrorism in chapter IV and, finally, economic issues in chapter V. Chapter VI lists all the recommendations contained in this report. Annexe I contains the request for advice, Annexe II the interim report produced on 9 November 2001 and Annexe III a list of abbreviations.

I **Enlargement of the European Union: taking stock**

The European Union 'stands at a crossroads, a defining moment in its existence'. These are the words of the Laeken Declaration, in which the European Council also rightly describes the European Union as a 'success story'. Against a historical background of mistrust, enmity and violence there has been a remarkable coming together, motivated by a deep-seated desire on the part of the European Union's growing membership to achieve peace, prosperity and democracy. Whereas at the outset the chief aim was economic unification, with overt political aims, the cooperation and ambitions now extend across a whole range of areas.

But lasting success is not assured. For example, the European Union is on the eve of a major enlargement. Within a few years ten new Member States will have joined and there is a real prospect that the present number will eventually double. Owing to the major differences between the Member States not just in prosperity but in other ways too, the European Union will become even more heterogeneous. Enlargement is therefore more than just a matter of figures. The European Union will change qualitatively. Existing problems relating to effectiveness, efficiency, cohesion and the European Union's external image will become almost unmanageable with 25 or more members.

The forthcoming enlargement therefore raises many questions about the further direction of integration. Can an European Union of 25 or more members continue to function in its present form as an effective group? An obvious question is what effect enlargement will have on the extent of the European Union ambitions and on modes of cooperation between the Member States. Will it still be possible to make progress in areas of common importance with a larger number of members or will enlargement, if everything is left as it is, compel the European Union to take a step backwards, thereby introducing the threat of stagnation and dilution? This raises the question of what institutional and policy adjustments would be necessary to prevent this and to ensure the continuing ability of the European Union to function effectively. And, if it proves impossible to achieve the necessary adjustments, should a core group consisting of a limited number of Member States set the pace within the European Union as a whole?

These questions will be addressed in this report. However, the AIV wishes to emphasise at the outset that, in addition to urgent institutional reforms of a more far-reaching nature than those agreed in the Nice European Council (in 2000), enlargement will also require an adjustment of European Union policy. This applies in particular to the structural funds and agricultural policy, which in light of their financial prospects and other factors should be thoroughly reformed. In addition, the AIV stresses that certain reforms of the procedures of the Council and the Commission are already possible without treaty amendment and need not therefore be postponed until the forthcoming IGC.

However much enlargement may be a political imperative in itself, it is not the only issue that is raising questions about the future. The democratic legitimacy of integration too is featuring on the European agenda to an increasing extent. Once again this is a consequence of the success of the European Union. No longer is integration confined to areas that affect limited segments of society. The euro, labour market policy, health guidelines and judicial cooperation affect societies as a whole. They are examples of the oft-mentioned 'Europeanisation' of domestic politics. But this is precisely why the public's lack of involvement in the European Union and relative indifference to it, which

sometimes turns to dislike or even hostility, is a matter of mounting concern, particularly since it appears to be rooted in an undercurrent of resistance to 'Brussels'. After all, ambition and effectiveness are not the only requirements for the continuing success of integration. Without sufficient public support, the actions and decisions of the European Union will ultimately lack the requisite democratic legitimacy.

Without sufficient public support there is even a danger of serious setback or failures. Indeed, this danger has already become apparent in the present European Union (in the referendum setbacks on treaty amendments). The question of how the European Union should be organised in order to make it more transparent and democratic is therefore one of the key issues addressed in the Laeken Declaration. In this connection, the AIV believes that steps to enhance legitimacy and increase public support must have a central role. If it were necessary to decide between enhancing effectiveness and enhancing legitimacy the AIV believes that the latter would deserve priority. The fact that the issue of democratic legitimacy plays such a central part in the debate on the European Union's future is seen by the AIV as marking a change of emphasis in the ongoing reform of the European Union, since not only institutional and policy issues but also questions of a constitutional nature are now coming to the fore.

In addition to enlargement and the vexing question of democratic legitimacy, the AIV believes that there is a third reason that it is necessary to strengthen integration. This is the growing evidence of intergovernmental trends within the European Union. In recent years there has been a distinct shift in the relative positions of the European institutions and the Member States, above all to the detriment of the European Commission. This has placed pressure on a cornerstone of the Community edifice, which is also a vital link in what is known as 'the Community method'. As this method has, in the AIV's opinion, been a major factor in the success of integration and is essential for future progress, strengthening the Commission's position should be an essential aim of institutional reforms.

The constitutional dimension in particular, which is prominent in the Laeken Declaration and hence on the agenda of the Convention, raises the question of the political objective of integration. What should the European Union become? To answer this question it is first necessary to understand the present nature of the European Union, since this indicates the parameters for its likely development in the future. The AIV is convinced that the European Union derives its unique significance from the fact that it is not comparable to an international organisation, being in substance much more than an inter-State framework of cooperation. At the same time, this report is based on the premise that the European Union is not a State in the classic sense of the word.

The AIV therefore views the European Union as a heterogeneous structure which is composed of both State-like elements and international law elements, but which is not moving further in the direction of State identity. The European Union derives its uniqueness from its lack of an unequivocally State-like power structure. Instead, it has a system of overlapping horizontal and vertical relationships without any clear political centre serving as a focal point for loyalty and legitimacy. Another characteristic of the system is that it is a mix of supranational and intergovernmental elements and that the interplay between these dimensions has been a major force behind the European Union's evolution into its present form.

This hybrid form is reflected above all in the division of powers within the European Union. In a limited number of fields, powers are vested exclusively in the European

institutions (in particular the European Commission and the European Central Bank), and in a number of other fields formal sovereignty still rests with the Member States. At all events, the Member States acting together - as *Herren des Vertrags* - have a decisive say in the further constitutional development of the European Union. Yet in a growing number of fields there is shared sovereignty, in which the Member States and Community institutions are reliant on each other to varying degrees, depending on the nature of the subject.³ In these fields the Member States have surrendered part of their freedom to determine policy. This reflects the fact that, as a consequence of various developments (including integration itself), they are confronted by issues that far exceed the scale of national policy and require Community action if policy is to be effective. The significance of the European Union lies in its capacity to initiate, institutionalise and guarantee this cooperation within a system of checks and balances that is known as the Community method. The essence of this method is that cooperation is not without commitment and instead binds the Member States to act in accordance with joint agreements initiated by the Commission as representative of the Community interest. It also provides scope for democratic control.

The corollary to the development described above is that an extremely complex and ever-changing mosaic of procedures, institutional arrangements, instruments and methods has developed within the European Union, often varying with the field or subject. This is partly a logical consequence of the complexity of the constituent parts and the diversity of policy fields. It is this mosaic which enables the European Union to respond to new situations in a flexible way in both institutional and policy terms. But at the same time it has also become the bane of the European Union. Its emergence has been accompanied by an increasing lack of transparency. It also poses a threat to legal uniformity in the Community and has brought about inefficiency and ineffectiveness. These defects will become even more apparent in an enlarged European Union.

Since it has been suggested that one way of rectifying these deficiencies would be to move towards the establishment of a State-like structure at European level (a United States of Europe), the AIV feels bound to stress that any such attempt is doomed to failure. A theoretical approach of this kind fails to recognise, as pointed out above, the extent to which integration is the product of the interplay between Member States and the Community institutions and the extent to which this interplay will continue for the time being to have a decisive effect on the further evolution of the European Union. Indeed, the importance of the relationship will, if anything, increase, both in the event of further integration and in the event of enlargement. This will reflect, among other things, the need for good governance and compliance with legislation, since they are dependent on the quality of both the national authorities and the Community institutions. In addition, the average Member State is so much better endowed with resources than the European Union (not only administrative but also financial resources) that it is hard to see how a comparable power structure could be developed within the European Union within the foreseeable future. Finally, it should be pointed out that integration is increasingly affecting areas of policy over which the Member States will be reluctant to relinquish control for the time being. This applies in particular to the field of security and defence, in which it would in fact be more appropriate to make sharper distinctions

3 See *inter alia*: Posthumus Meyjes, H.C., 'Europa met zijn dertigen; een onbekommerde toekomstverkenning', SEW, 1(2001), pp. 2-7; Rood, J.Q.T., et al., 'Europa onvoltooid? beschouwingen over de finaliteit van de Europese integratie', The Hague, Clingendael Institute, 2001; Rood, J.Q.T., 'Een einde aan de Europese integratie?', The Hague, Clingendael Institute, 2001.

between individual Member States based on their respective responsibilities and resources.

What bearing does this analysis have on the issues that will be central during the Convention? At all events, it does not mean that the aim of the Convention should be to provide the European Union with a fully-fledged State-like structure. It does, however, mean that in those fields in which joint action of the Member States is necessary, the binding and, above all, supranational elements within the European Union should be substantially strengthened, the main criteria being enhanced effectiveness and greater democratic legitimacy.⁴

It should be noted first of all that this does not require an allocation of new areas of competence to the Union. The need for more or closer integration or cooperation can be more than adequately fulfilled in the fields which are part of the present pillar structure. So can the wishes expressed by the Member States about strengthening Europe's competitive position and about the Third Pillar, security and defence policy, the fight against terrorism, etc. What must now be done is to organise the decision-making procedures of the European Union in such a way that these wishes can actually be fulfilled.

It should also be noted that enlargement should in this respect be seen not so much as a potential threat but as an opportunity and a catalyst. For example, the geographical expansion of the European Union will make it necessary to adopt a more balanced and effective policy in relation to adjacent regions, not least Russia. This same enlargement will serve as a catalyst for institutional reform, since the existing arrangements will prove largely unworkable in an European Union consisting of 25 or more members. Nonetheless, there are still compelling reasons for instituting the necessary reforms now in order to avoid problems later.

In the opinion of the AIV, the following objectives should be central to the process of institutional and quasi-constitutional reform that has now started:

1. Enhancing democratic legitimacy; clearly this should mean focusing on measures to strengthen the position of the European Parliament and the Commission (while keeping in mind their interrelationship). Besides the powers of these two bodies, other issues that should be addressed include the transparency and openness of decision-making. Special attention should be given in this context to a clear separation of powers (legislative and executive) between the actors involved in decision-making. Such a separation is essential for adequate democratic control and for maintaining the central position of the Commission within the institutional system.
2. Strengthening the administrative effectiveness of the European Union; important issues include not only extension of qualified majority voting to new areas but also more effective coordination of the internal and external action of the European Union as well as the role of the Presidency in this context.
3. Strengthening the European Union's external image, taking particular account once again of the role of the Presidency by rotation.
4. Guaranteeing legal uniformity and legal certainty; this theme will be particularly relevant in the light of enlargement and should cover not only the supervisory role of the Community institutions but also the need for a simpler and more transparent set of legal instruments.

⁴ For an analysis, see: Stephan Keukeleire, 'Contactgroepen en directoriums in het buitenlands beleid van de EU: gevaar of noodzaak?', *Internationale Spectator*, 56(2002)3, pp. 139-144.

The AIV would once again point out that if it were necessary to decide between greater effectiveness and greater legitimacy the latter would deserve priority.

The ultimate test of reforms should, in the opinion of the AIV, be whether they serve to strengthen the 'Community method'. Ultimately, this model is the best way of guaranteeing enhanced effectiveness, legitimacy and cohesion, and of preserving a certain balance between large and small Member States. A series of recommendations will be made in the remainder of this report. These are regarded by the AIV as the *minimum* that must be achieved during the forthcoming IGC if the European Union is still to function after enlargement as an effective framework for integration and cooperation. The AIV wishes to reiterate that in those fields to which the Community method is not yet applicable, other decision-making procedures, including greater differentiation between Member States, may be necessary in order to arrive at effective policy within the European Union.

II A European Constitution?

II.1 General

The Laeken Declaration on the Future of the European Union poses the question of whether simplification and reorganisation of the Treaties on which European cooperation is based might lead to the adoption of a constitutional text in the European Union (EU).⁵ It also asks what the basic features of such a constitution might be. It is no coincidence that constitutional issues and questions regarding the purpose of European integration are arising at this juncture. This is partly due to what is termed Europeanisation, the growing recognition that, since developments within States can have cross-border effects, powers in more and more policy fields should possibly be shared with or transferred to the European Union. As a result, the European Union is presently active in almost all policy fields, including some which were, until recently, generally regarded as exclusively domestic, for example police and judicial cooperation.

II.1.1 Current situation

European cooperation is based on a number of Treaties, which grant the European Union significant, and sometimes even exclusive, legislative and executive powers in a great many policy fields. The Treaties regulate the system of governance of the European Union by defining the composition of its institutions and prescribing the scope of their powers and how they should be exercised. In short, the Treaties already contain a number of constitutional features or, to put it another way, the EU already has a constitutional order, which has been strengthened and deepened, firstly by interpretations of the Court of Justice of the European Communities (referred to below as the Court of Justice) and, secondly, by successive amendments to the Treaties.⁶

These constitutional provisions can be found at various places in the Treaties. It should be noted in this connection that the European Union derives its authority from the Member States, which reserve to themselves a number of powers, particularly in the area of external relations and the use of armed force, and that the European Union does not have a complete system of governance. Over 90% of the implementation and enforcement of European legislation and regulations is carried out by national administrations.

On the other hand, the Member States no longer have full sovereignty and freedom of action. They still seek, however, to ensure the security, prosperity and well-being of their citizens, who may hold their national authorities to account in this respect. The Member States will promote their interests and attain their objectives in the manner considered most suitable for this purpose and in the realisation that internal events are having an ever greater impact across borders, making European coordination and/or legislation necessary. Depending on the policy field, circumstances and situation, they may therefore sometimes promote their interests on the basis of their own exclusive sovereignty and at other times share sovereignty with other Member States. In other cases,

5 Laeken Declaration on the Future of the European Union, Annexe I to the Conclusions of the Presidency of the European Council of Laeken, 14 and 15 December 2001, p. 7.

6 'Does the European Union have a Constitution? Does it need one?', Jean-Claude Pirijs, www.jeanmonnet-program.org/papers, 2000.

Member States have surrendered that sovereignty and transferred it to the European Union, which then has clear added value.

As indicated in chapter I, the European Union is not a State but a combination of State and international law elements or, to quote Jacques Delors, 'un objet politique non-identifié',⁷ which represents this added value by means of powers that are sometimes exclusive.

II.1.2 A European Constitution: yes or no?

The present constitutional order leaves much to be desired in terms of effectiveness, transparency and democratic legitimacy. The constitutional provisions are currently scattered among successive Treaties, which together form a complex body of rules that is hard for European citizens to fathom. The AIV believes that these constitutional provisions should be organised in a clear and accessible manner. In view of the EU's essential features as described above, this should be done not in the form of a Constitution but by a Basic Treaty.

The AIV recommends that:

- *the constitutional order should be improved and clarified in such a way as to allow further 'constitutionalisation' of European cooperation. This could be done by drawing up a clear and readable Basic Treaty that helps to define the image and identity of the European Union and affords Europe's citizens greater legal certainty as regards primary legislation.*⁸
- *the Basic Treaty should include provisions on:*
 - *the objectives of the European Union;*
 - *fundamental rights;*
 - *fundamental principles such as equality, subsidiarity and proportionality;*
 - *the institutions;*
 - *the main institutional rules such as those governing majority voting, weighting of votes, legislation and codecision;*
 - *definition of powers;*
 - *the instruments for achieving the European Union's objectives;*
 - *the own resources for funding the European Union's activities;*
 - *the hierarchy of norms;*
 - *the modes of 'enhanced cooperation' between a given number of Member States;*
 - *the customary final provisions, regarding matters such as treaty ratification and amendment, accession and authentic language versions.*
- *Protocols should be added to the Basic Treaty containing provisions on the policy for implementing the objectives.*

The remainder of this chapter will deal only with the subjects which the AIV believes should be approached differently in the Basic Treaty than in the current Treaties. The AIV will indicate whether or not a treaty amendment is required for each recommen-

7 Interview in *Le Monde* of 19 January 2000.

8 'A Basic Treaty for the European Union – A study of the reorganisation of the Treaties', European University Institute, Robert Schuman Centre for Advanced Studies, 15 May 2000, p. 1.

dition, both in this chapter and the remainder of the report, using the following symbols: ○ = no treaty amendment, = treaty amendment.

II.2 The content of the Basic Treaty

II.2.1 Objectives of the European Union

The central objective as formulated in the Treaty on European Union, namely the creation 'of an ever closer union among the peoples of Europe', should be included and augmented in the Basic Treaty in order to make clear the added value of the European Union as compared to the Member States and subnational authorities in dealing with an increasingly complex world. The chief benefit is that the nations of Europe are able to achieve greater security, prosperity, well-being and democracy, both in Europe and in the world, than if each of them were to try to attain these objectives on its own.⁹

II.2.2 Fundamental rights

The European Treaties do not contain an explicit list of human rights. However, European law does provide certain safeguards for the protection of fundamental rights. For example, the Court of Justice has long described 'human rights' in its case law as an integral part of Community law. This established case law is now reflected in Article 6 (2) of the EU Treaty, which contains a reference to the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR). However, the European Union (like the European Community) is not a party to the ECHR, the European Social Charter (ESC) or the human rights covenants of the United Nations and the International Labour Organisation (ILO). It follows that the European Union is not subject to the jurisdiction of the European Court of Human Rights in Strasbourg.

The Nice European Council in December 2000 decided that the EU's Charter of Fundamental Rights, which had been drawn up by a convention, should be proclaimed as a political declaration. A decision on the final status of the Charter will not be taken until the 2004 IGC.¹⁰ The Nice European Council expressly decided that the Charter should not have legal force. However, it does have such force in practice since judgments of the Court of Justice are based on the Charter, where relevant.¹¹

The AIV considers that the Basic Treaty should be framed in such a way as to provide an optimal safeguard for the rights of citizens of the European Union. In the opinion of the AIV, an optimal safeguard would be created if:

- *the European Union/European Community were to accede to the ECHR, the ESC and the human rights instruments of the UN and the ILO.¹² The Basic Treaty should contain a provision that allows for such accession.*

9 Heather Grabbe, 'Preparing the EU for 2004', policy letter of the Centre for European Reform, December 2001.

10 As regards the Charter, see also 'A European Charter of Fundamental Rights?', AIV report no. 15, May 2000.

11 See, for example, the judgment of the Court of First Instance of the EC of 30 January 2002 in the case of max.mobil Telekommunikation Service GmbH v. the European Commission, finding no. 48.

12 The AIV made the same recommendation previously in report no.15, 'A European Charter of Fundamental Rights?', pp. 7-11.

If this option is not feasible, the AIV would prefer the adoption of a step-by-step approach. A first step would be for the 2004 IGC to decide that what is evolving in practice should be put on a formal footing and that human rights protection should be given binding and hence legal force in the Basic Treaty. This would emphasise the fundamental importance of the Basic Treaty to Europe's further integration. One option would be to include the present Charter in its entirety in the Basic Treaty. However, the Charter contains weaknesses: for example, the general power to limit fundamental rights is formulated too broadly, certain new fundamental rights such as the right to housing are missing, and others such as the right to education are formulated more weakly than in the European Social Charter.¹³ The inclusion of the entire Charter of Fundamental Rights in the Basic Treaty would therefore entail the inclusion of these 'weaknesses' too, which the AIV does not recommend. What is therefore needed is an arrangement which avoids this, but at the same time affords better protection of fundamental rights than citizens have enjoyed hitherto. An important criterion in this connection is that the same value should be placed on fundamental economic, social and cultural rights in the European Union as on fundamental civil and political rights. It does not automatically follow, however, that the two categories of fundamental rights have the same legal effect. The significance of these rights in proceedings instituted by citizens may differ.

The AIV recommends for this purpose that:

- *the Basic Treaty should contain a section on fundamental rights based on the Charter of Fundamental Rights.*

If this too is not feasible, the AIV recommends that:

- *the preamble to the Basic Treaty should contain a reference to the Charter of Fundamental Rights, which should be attached to the Basic Treaty as a declaration (as stated above, the AIV does not favour the incorporation of the Charter of Fundamental Rights in full into the Basic Treaty). In addition, the present Article 6 of the EU Treaty and its reference to the ECHR should be included in the Basic Treaty and supplemented by a reference to the Charter of Fundamental Rights in such a way that the Charter of Fundamental Rights affords additional protection in areas not covered by the ECHR. This could be worded as follows: 'The Union shall respect fundamental rights, as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms [.....] and with due observance of the Charter of Fundamental Rights, and as they result from the constitutional traditions common to the Member States, as general principles of Community law.'*

The European Union would thereby undertake to respect the rights referred to in the Basic Treaty. Moreover, citizens could apply for relief to the national courts if they considered that a Member State were not correctly applying or enforcing a right contained in the Charter. The national courts could then refer the issue to the Court of Justice for a preliminary ruling, which is also fully competent to interpret and apply the Charter of Fundamental Rights. In such a case, it would be up to the Court of Justice to rule on how the Charter should be applied in the given circumstances. It should be noted that in a recent judgment the Court of First Instance has made it much easier for citizens to

¹³ See the letter of recommendation of 9 November 2000, ref. no. AIV-154/00, in which the AIV also noted that the general power to limit fundamental rights is worded too broadly and that the Charter should contain a clearer definition of those having rights under it.

invoke the Charter of Fundamental Rights directly in proceedings before the Community courts.¹⁴

II.2.3 Weighting of votes

The present arrangements in the Treaties concerning the weighting of votes are so opaque and complex that even insiders have difficulty understanding them. This would be an argument for excluding these provisions from the Basic Treaty, which is intended to be readable and comprehensible. On the other hand, they are an essential element of the institutional framework and the balance of the European Union.

The AIV therefore recommends that:

- *the provisions on the weighting of votes should be included in their entirety in the Basic Treaty, and*
- *the arrangements on the weighting of votes agreed at Nice should be reviewed for the purpose of making them clearer and more intelligible for Europe's citizens. The AIV abides by its earlier recommendation that the Member States should be divided into six clusters and that each Member State in a given cluster should have the same number of votes. Countries acceding to the European Union should be assigned to these clusters on the basis of the size of their population, provided that the system of the 'blocking minority' is maintained.*¹⁵

II.2.4 Delimitation of powers

The AIV recommends that:

- *the powers of the European institutions, which are now scattered throughout the Treaties should be brought together.*

However, this does not mean that the powers can be precisely delimited: the nature of traditional State sovereignty has changed radically and the individual Member State has become just one of the players in a multitiered administrative structure comprising the European Union, national States and subnational authorities, each of which has its own powers. Regions of strong government are particularly likely to express a desire for a precise delimitation of powers between the various administrative levels. This is prompted by a fear of seeing their powers 'ebb away to Brussels', for example as a result of a broad interpretation - or political decisions on the interpretation - of the EU 'acquis' and its further evolution. The AIV has considered this issue in the past, concluding that this fear is unfounded. First of all, there are more than sufficient safeguards against the surreptitious arrogation of new powers by the European Union.¹⁶ For example, new powers can be conferred on the European Union only by amendment of

14 See the *Jégo-Quéré* judgment of the Court of First Instance, Case T-177/01, 3 May 2002, which shows that a private individual may also apply directly to the Court of First Instance if a Community measure of general application concerns him directly in that the measure in question 'affects his legal position, in a manner which is both definite and immediate, by restricting his rights or by imposing obligations on him.' The Court of First Instance based this ruling on Article 47 of the Charter of Fundamental Rights, which grants everyone access to the courts.

15 See 'An inclusive Europe II', report no. 5 of the AIV, November 1998, p. 26.

16 See: 'A multi-tiered Europe: the relationship between the European Union and subnational authorities', report no. 19 of the AIV, April 2001, pp. 31-34.

the Treaty or in accordance with Article 308 of the EC Treaty.¹⁷ In both cases, the consent of all Member States is required. In addition, provision may be made for any new powers to be limited or conditional. Second, the concern felt by some people that powers may be broadly interpreted or even abused now appears unwarranted. Although there may have been some justification for this fear in the past in view of the rather broad interpretation of powers by the Court of Justice, recent judgments show that the Court is now acting with restraint.¹⁸

The AIV considers the inclusion of the subsidiarity and proportionality principles in the Basic Treaty provides a sufficient safeguard for the concerns described above (see also chapter III, General Affairs Council).¹⁹

Another argument advanced in favour of a precise delimitation of powers is that it would enhance the transparency of decision-making since it would become clear which tiers of government are responsible for particular decisions. This would then boost public support for these decisions. The AIV notes in this respect that it is difficult, if not impossible, to assign these powers to particular tiers of government on a lasting basis since they change over time as a result of political and social developments and hence changes in legislation. This is one reason why the division of powers has been kept flexible in federal states too, for example the United States and Germany. Furthermore, many powers, especially powers of implementation, are not exclusively assigned to a single tier of government and are instead often divided among different tiers of government. The AIV does, however, agree that it is important for decision-making to be more transparent and will return to this topic below (see II.2.6).

II.2.5 Own resources for funding the activities of the European Union

Under the present Treaty, the EU budget is financed wholly from own resources. Save for customs duties and agricultural levies, these own resources consist mainly of transfers.²⁰ The amount of EU revenue is, by definition, equal to the amount of the expenditure approved by the budgetary authority (i.e. the European Parliament and the Council), since revenue and expenditure in the budget are required to be in balance. As matters stand at present, the European Parliament has control over only part of the expenditure, namely the non-compulsory expenditure, and no control whatever over revenue.

17 Article 308 provides that: 'If action by the Community should prove necessary to attain, in the course of the operation of the common market, one of the objectives of the Community and this Treaty has not provided the necessary powers, the Council shall, acting unanimously on a proposal from the Commission and after consulting the European Parliament, take the appropriate measures.'

18 For example, the Court of Justice held in Case C-376/98 of 5 October 2000 that Article 95 of the EC Treaty concerning public health could not be used as a legal basis for a directive on harmonisation of the statutory and administrative law provisions of the Member States in relation to tobacco advertising and sponsoring.

19 See Article 5 of the EC Treaty, which provides that in areas which do not fall within its exclusive competence the European Community should take action 'only if and in so far as the objectives of the proposed action cannot be sufficiently achieved by the Member States and can therefore [...] be better achieved by the Community.'

20 See Article 269 of the EC Treaty.

The AIV recommends that:

- *the principle that the European Union should provide for the resources it needs in order to achieve its objectives and implement its policy should be included in the Basic Treaty;*
- *the provision concerning the way in which the Union should provide for these resources should be included in a Protocol to the Basic Treaty;*
- *decisions in the Council on the manner of financing and on expenditure should be taken by reinforced qualified majority. The European Parliament should have a right of codecision by qualified – or reinforced qualified – majority.²¹ The distinction between compulsory and non-compulsory expenditure should be dropped and the right of amendment by the European Parliament should be extended to all categories of expenditure (see also III.3).*

This means that the ‘own-resources decision’ should in future be regarded as ‘ordinary’ legislation and need no longer be ratified nationally. The European Parliament would gain influence as a result of this amendment.

II.2.6 Hierarchy of Community acts

In the present situation, no clear distinction can be made in the European Union between primary and secondary legislation, between a European ‘Act’ and subordinate legislation. It is essential for this distinction and the manner of decision-making to be clear and comprehensible so that decisions can be made more efficiently and democratically.

The AIV therefore recommends that:

- *a provision on what is termed ‘the hierarchy of Community acts’ (or hierarchy of norms) be included in the Basic Treaty in order to regulate this distinction. In the case of legislation proper, the European Parliament should be involved through the codecision procedure and the Council should decide by qualified majority.²² Secondary legislation could then be introduced by means of simplified procedures.*

II.3 Amendments to the Basic Treaty

Under the present procedure treaty amendments are made only when they have been ratified by each Member State in accordance with its constitutional provisions. This procedure would also do justice to the constitutional status of the Basic Treaty. Amendments to the Basic Treaty would accordingly be a matter to be decided by the Member States and the national parliaments. It follows that the European Parliament could not for the time being have a formal say in amendments to the Basic Treaty. However, the European Parliament should have a say in the preparations for amendments to the Basic Treaty, for example through participation in a convention established to draw up the amendments. By contrast, there should be a simpler procedure for amending the

21 Qualified majority or reinforced qualified majority *by analogy* with Article 205 of the EC Treaty, which provides that acts are adopted when there are at least 62 votes in favour (qualified majority) or at least 62 votes in favour cast by at least ten members (reinforced qualified majority).

22 See Article 251 of the EC Treaty. Codecision means that the European Parliament has a say in legislation and can make amendments.

Protocols to the Basic Treaty so that they can be adapted more quickly as circumstances change. The national parliaments could nonetheless retain a say in the amendments to the Protocols through a provision requiring the assent of a majority of them.

The AIV recommends that:

- *the Member States and the national parliaments should have the right to approve amendments to the Basic Treaty. The procedure laid down in Article 48 of the Treaty of the European Union could continue to apply for this purpose.²³ In addition, greater public support should be generated by arranging for the amendments to be prepared in a convention.²⁴*
- *a relatively simple 'Community' procedure could be created for amendments to Protocols to the Basic Treaty; this would involve a decision by the Council on the proposal of the European Commission by qualified majority (or, possibly, reinforced qualified majority) and the assent of the European Parliament ('avis conforme').*
- *assent to proposed amendments to Protocols by a qualified majority of the national parliaments (to be determined in accordance with the rules governing the weighting of votes in the Council) should be required within a predetermined period.*

23 Article 48 of the EU Treaty: 'The government of any Member State or the Commission may submit to the Council proposals for the amendment of the Treaties on which the Union is founded. If the Council, after consulting the European Parliament and, where appropriate, the Commission, delivers an opinion in favour of calling a conference of representatives of the governments of the Member States, the conference shall be convened by the President of the Council for the purpose of determining by common accord the amendments to be made to those Treaties. [...] The amendments shall enter into force after being ratified by all the Member States in accordance with their respective constitutional requirements.'

24 See: 'A convention, or conventional preparations? The European Union and the ICG 2004, November 2001', AIV report no. 24, November 2001.

III Institutional issues

III.1 General

Reform of the European Commission, the European Parliament and the Council is urgently needed in view of the forthcoming enlargement. The focus on constitutional issues during the convention must not be at the expense of these urgently needed institutional reforms.

The AIV has already addressed institutional issues in previous reports and will elaborate on its proposals in this chapter.²⁵ Its premise is that where powers should be shared with or transferred to the European Union the Community institutions should play a central role. However, where Member States retain their own powers greater coordination of national policy is necessary. Here there is a central role for the Council. The AIV seeks to redress the institutional imbalance that has occurred as a result of the shift of power from the Commission to the Council. The institutional balance envisaged in the Treaties should be restored. To this end the AIV makes recommendations that could be introduced in the short term (2004, or even earlier if no treaty amendment is required) and goes on to make recommendations for the medium term that would fundamentally change the present institutional structure.

III.2 The European Commission

As mentioned above, the AIV believes that the current trend whereby the Council's position is strengthening at the expense of the Commission's should be reversed. It therefore advocates strengthening the position of the Commission, since this body is ideally placed to promote the general European interest, maintain the level of integration achieved and enhance the Community content of policy decisions. The Commission should therefore be given the means to continue playing its role of initiator, mediator and implementer to good effect. The recommendations made by the AIV for this purpose should be seen in conjunction with the recommendations for changes to the other institutions that are necessary to maintain an institutional balance. However, this does not mean that the balance should be static.

The AIV recommends that:

- *the President of the Commission should be elected by the European Parliament and that this election should be confirmed by the European Council by qualified majority.*
- *the new President of the Commission should take into account the recommendations of the Member States when assembling his or her team. The composition of the new Commission should require the approval of the European Parliament. Finally, the appointment should be made by the European Council by qualified majority. In the event of a difference of opinion between Council and Parliament, the procedure should be repeated until a Commission has been appointed.*

²⁵ See the AIV reports entitled 'The IGC 2000 and beyond: towards a European Union of thirty Member States' (no. 12, January 2000), 'An inclusive Europe II' (no. 5, November 1998), 'A multi-tiered Europe: the relationship between the European Union and subnational authorities' (no. 19, April 2001) and 'A convention, or conventional preparations?' (no. 24, November 2001).

- *the individual members of the European Commission should also have the confidence of the European Parliament (see also III.3).*
- *the existing provision under which the Council grants the Commission a general power to adopt implementing instruments should be included in the Basic Treaty.²⁶ This principle of delegation should in practice be translated into a review of the procedure of the management committees, in such a way that they only play an advisory role in the future. The Commission should adopt the implementing instruments which it considers necessary and should, if necessary, be accountable for them to the European Parliament. This will help to establish a clear 'hierarchy of Community acts'. Only in respect of subjects on which the Council still decides, in principle, by unanimity can there be scope for review of an implementing measure of the Commission which is contrary to the majority opinion of the Committee. However, unanimity would be required for such review. ○*

This recommendation is explained in more detail below (III.2.1).

- *the Commission should be reduced to a maximum of 15 members.*
- *Member States may nominate candidates. In addition, the Nice agreements about the rotation system should in practice be implemented in such a way that large Member States are represented on the Commission relatively more often than small ones.²⁷ ○*

Aside from arguments such as efficiency and strengthening the Community character of the European Commission, the AIV has an additional reason for making this last proposal. After the accession of a large number of small countries, the extremely heterogeneous composition of the European Union (a few large and many small Member States) could well give rise to problems in cases where decisions are taken by a simple majority. It would then be necessary to adopt a rotation system in which large countries are represented more frequently on the Commission so that they are not tempted to resort to other means of preserving their influence.

III.2.1 Comitology

There are three levels of decision-making in the European Union: first of all, the Council may, on the proposal of the European Commission and often subject to codecision by the European Parliament, take decisions to achieve treaty objectives. At the second level, the Council confers on the European Commission, in the acts which the Council adopts, the power to implement the rules which the Council lays down. In specific cases the Council may reserve the right to exercise implementing powers itself.²⁸

²⁶ See the procedure set out in Article 251, EC Treaty.

²⁷ See the relevant provisions in the Nice Treaty, under Protocol A, Article 4, Provisions concerning the Commission, where it is provided that the Council, acting unanimously, will adopt the implementing arrangements for a rotation system 'on the basis of the following principles: (a) Member States shall be treated on a strictly equal footing as regards determination of the sequence of, and the time spent by, their nationals as members of the Commission; consequently, the difference between the total number of terms of office held by nationals of any given pair of Member States may never be more than one; (b) subject to point (a), each successive college shall be so composed as to reflect satisfactorily the demographic and geographical range of all the Member States of the Union.'

²⁸ See Article 202, EC Treaty.

Finally, national or regional authorities have the power to introduce and implement secondary legislation of this kind.

The general principle is therefore that the Council delegates the power to adopt implementing measures to the European Commission, which should have policy discretion in this connection. In practice, however, the power and policy discretion of the Commission are subject to severe constraints. First of all, because the Council often makes use of the option, by way of exception, of exercising implementing powers directly. And, second, as a result of the existence of 'comitology'. Comitology is a collection of procedures involving committees of national experts that have the power to assist the Commission in the exercise of its implementing powers. This amounts to a curb on the Commission's power to adopt implementing measures, because the committees not only have the power to advise the Commission but also to place severe retrospective strictures on its power. It is difficult if not impossible to exercise political control over such procedures. Moreover, this form of decision-making in this fashion is slow and inefficient and may even grind to a halt after enlargement. On the other hand, comitology does enable the Commission to tap other sources of expertise and does enable the Member States to retain influence over the procedure.

The AIV recommends that the progress, effectiveness and transparency of the decision-making should be given priority by restricting the committees to an advisory role. This would preserve the benefits of comitology. An exception would be possible only for those subjects on which the Council still in principle decides by unanimity. This simplification would be appropriate since the decisions involve implementing instruments and must respect the framework adopted by the Council and the European Parliament.

III.3 The European Parliament

Extra powers should be conferred on the European Parliament in order to reduce the democratic deficit, but this would not in itself be sufficient. The European Union must base its legitimacy on both its own institutions and the Member States. It should also be remembered that there is a widespread feeling that the European Parliament lacks real support and legitimacy, for example because there are no European, only national, electoral lists and no full-fledged European political parties. The AIV considers that measures to strengthen the formation of political parties at European level and make political parties more recognisable to Europe's citizens are essential if the European Parliament is to generate the requisite minimum of interest and involvement. The AIV also believes that the European Parliament should be granted new and farther-reaching powers. The first two recommendations are intended to boost support for the European Parliament and the last recommendation to indicate what new and stronger powers should, in the AIV's view, be conferred on the European Parliament. A distinction should be made here between legislative, budgetary and supervisory powers.

The AIV recommends that:

- *the 2004 elections for the European Parliament should be held on the basis of European electoral lists, and the Treaty provision allowing financial support for the creation of political parties at European level should be translated into practical measures.*
- *the role of the European Parliament in the appointment of the President of the Commission should be strengthened and individual members of the Commission too should be politically accountable to the European Parliament for their own portfolio.*

However, the Commission, as a body, should remain accountable for the general policies in these areas of responsibility. The European Parliament should be able to compel, by means of a simple majority, the resignation of both the European Commission as a whole and individual Commissioners.

- *codecision should be extended to all subjects of primary and subordinate legislation on which the Council decides by majority vote.*
- *the conciliation procedure should be conducted by a Coordination Council (see III.4) and in public session.²⁹*
- *the European Parliament should obtain the right of assent ('avis conforme') to the amendment of a Protocol to the Basic Treaty (also recommended in II.3).*
- *the difference between compulsory and non-compulsory expenditure should be abolished so that the power of the European Parliament can extend to the entire European budget, including expenditure on agriculture and the structural policy.*

At present, the European Parliament has the power simply to approve or reject the budget, although a distinction must be made between compulsory and non-compulsory expenditure. Compulsory expenditure results from the Treaties or instruments adopted on the basis of the Treaties and consists to a large extent of expenditure under the Common Agricultural Policy. The European Parliament has the right to submit amendments in respect of non-compulsory expenditure but not in respect of compulsory expenditure. The AIV also recommends (in II.2 above) that the European Parliament should be given the right of codecision on matters regarding the financing of the European Union's own resources.

III.4 The Council

III.4.1 Present situation

Besides its policy-making and implementing powers the Council of Ministers has legislative powers. As a result of 'Europeanisation', the current trend is for the Council to act more and more as legislator. The General Affairs Council is responsible not only for framing foreign policy but also for horizontal coordination of the specialist meetings of the Council. Moreover, the European Council, consisting of Heads of State and Government, has acquired an increasingly prominent place in the institutional arena of the European Union and is responsible for determining general political guidelines and setting the European Union's strategic agenda, in consultation with the Commission.

Over time, the original function of the European Council has become diluted, because it has increasingly concerned itself with legislation, details and the solution of issues unresolved by the Presidency and/or the Specialist Council meetings. Since the coordinating function of the General Affairs Council has tended to decline over the years, the pull exerted by the European Council has increased still further. The force of this pull is due mainly to the extent to which 'Europe' has penetrated all fields of policy. Another consequence of 'Europeanisation' should be that the Member States strengthen their national coordination of EU matters since there are now more 'European' dossiers and

²⁹ The conciliation procedure is for the resolution of disputes between the European Parliament and the Council concerning the outcome of the codecision procedure.

more players. Improvement on this point would be desirable in many Member States. And in the absence of adequate and timely national coordination, it is difficult to achieve fast, effective and clear decision-making in Brussels.

There is now a widespread feeling that the European Council does not function properly and is opaque and ineffective. This is evident, for example, from a report of the Secretary General of the Council and a letter from Herr Schröder, the German Chancellor, and Mr Blair, the British Prime Minister.³⁰ As the procedure of the European Council is highly informal and decision-making is poorly prepared, the European Council has not proved to be a suitable forum for the adoption of a long-term planning. It also has little control over the implementation of its decisions.³¹

Finally, enlargement will double the number of members of the Council, which will then no longer be able to operate effectively. The problems of coordination that will occur in the Council after enlargement will also play a role in the European Council and the preparations for the European Council. Major improvement of Council's structure is therefore essential.

III.4.2 The European Council

The AIV recommends that:

- *the European Council should concentrate on its original function of outlining policy for the development of the European Union and setting political and administrative priorities. Its agenda should be cleared of one-off items and should, in particular, no longer provide scope for negotiation on topics that cannot be resolved at a lower level. It should be possible to avoid these problems once the Coordination Council has been established, since it will be responsible for preparing the agenda of the European Council and, in particular, preventing detailed points of dispute from being referred for settlement at a higher level. ○*
- *the European Council should increasingly take decisions by majority voting and limit its efforts to achieve consensus. Abandonment of the requirement of unanimity in the European Council is essential, particularly in an enlarged European Union. The Presidency has an important role to play in this connection. ○*

III.4.3 The General Affairs Council and the Coordination Council

The AIV recommends that:

- *the General Affairs Council should be transformed into a CFSP (Common Foreign & Security Policy) Council and concentrate on foreign policy in the widest sense of the word, including trade policy, development cooperation and the accession of new Member States. ○*

30 Report of the SG Council, 'Préparer le conseil à l'élargissement', 1636/1/02 of 7 March 2002, and the letter of 25 February 2002 of Chancellor Schröder and Prime Minister Blair to Mr Aznar, the Spanish Prime Minister, as President of the Council.

31 Another point is the limited legitimacy of the European Council *as a body*. To enhance this legitimacy, the AIV made recommendations in report no. 12, 'The IGC 2000 and beyond' (pp. 30-31), which still hold good. These were: more meaningful reporting of its deliberations to the EP; discussion in the EP, prior to the European Council, on socio-economic guidelines in the context of EMU and on matters concerning the CFSP; a right for the EP to propose agenda items; debate in the EP following the customary address by the President of the EP, and the presence of the president of the EP when agenda items of importance to the EP are being discussed.

- *a special Coordination Council should be established to coordinate the overall activities of the European Union; this should consist of the members of government responsible at national level for coordinating European policy. These members should have sufficiently broad national mandates to play the role assigned to them effectively. The AIV makes no recommendations as to the nature of these mandates, since this is a matter for the Member States themselves.³² The Coordination Council should be responsible in particular for:*
 - (a) *preparing the agenda and conclusions of the European Council; the Coordination Council should also ensure in principle that legislative activities are excluded from the agenda of the European Council;*
 - (b) *checking the progress of the activities in the Specialist Council meetings and identifying any inconsistencies between policies in order to safeguard the cohesion of overall EU policy;*
 - (c) *checking the progress of work commissioned by the European Council;*
 - (d) *checking implementation of the principles of subsidiarity, proportionality and effectiveness;*
 - (e) *conducting conciliation talks with the European Parliament in the context of codecision.*

- *4.4 Specialist Council meetings*

The AIV recommends that:

- *decisions on all matters, including financial and budgetary policy, should be taken by qualified majority vote; where matters are decided by qualified majority vote, the European Parliament should also have a right of codecision, in order to strengthen its legislative role. Exceptions to this rule should be limited to constitutional matters such as amendment of the Basic Treaty, admission of new members and the framing of policy for which there is no treaty basis. Also important in this connection are the further communitisation of the Third Pillar and the use in practice of the possibilities created in the Second Pillar (see also chapter IV).*
- *the deliberations of the Council on matters involving the exercise of its legislative powers should be held in public in order to ensure transparency for Europe's citizens. Debates with the European Commission on this subject should also be held in public.*

III.4.5 The rotating Presidency

One advantage of the rotating Presidency is that the Member State occupying the Presidency has the opportunity to bolster its image and to increase public support for the European Union by raising the Union's profile among its people. However, once the European Union has, say, 25 Member States, each one will be able to hold the Presidency only once every 12,5 years or, in other words, eight times a century. This will largely dissipate the beneficial effect. A Presidency that rotates every six months is

³² It should be noted that this coordination focuses on the end of the decision-making procedure. However, it is just as important that coordination should take place at the start of policy-making and decision-making procedures at all times and at all levels. It should also be remembered that the appointment of a Minister of European Affairs will not automatically produce a major advance in national coordination. This is true of the Netherlands and of most other Member States; the scope for such an advance is limited by the complexity and diversity of the expanding EU agenda.

therefore not conducive to effectiveness, continuity and visibility. The rotation system also detracts from the credibility of the European Union's external activities, although this credibility has admittedly been enhanced somewhat by the appointment of the High Representative for the CFSP. Finally, the number of countries that must make disproportionate efforts to perform the duties of the Presidency will increase after enlargement. This can no longer be viewed as efficient in a European Union that is becoming more and more complex all the time.

The AIV has previously advocated replacing the rotation system with a system in which the Presidency is of longer duration and the emphasis is on technical coordination. In view of the above arguments, the AIV abides by this recommendation, particularly since a Presidency by rotation will have less scope to determine the agenda if the Coordination Council proves effective. The AIV elaborates on this earlier recommendation below.

The AIV recommends that:

- *the system of appointing the Presidency be changed in view of the forthcoming increase in the number of Member States and the fact that most of the new members will be small countries. The Presidency of the European Council and the Specialist Council meetings should be replaced by a system in which the President does not represent a Member State. The relevant Council meetings should elect the President by a qualified majority from among their own number for a two-year term of office. Re-election should not be possible. If a Chairman ceases to hold office at national level, the relevant Council should elect a new Chairman.*

In a previous report the AIV recommended that the European Commission should act as Chairman. New insights have led the AIV to abandon this view, since the role of the Commission as initiator and intermediary is not compatible with the Presidency of a different institution, namely the Council, and could even weaken the position of the Commission.

III.5 Other institutions

III.5.1 The European Court of Auditors

Whereas the Court of Justice needs to have in-house knowledge of the national legal systems of all Member States, the same requirement does not apply in the case of the Court of Auditors, whose function is to monitor the application of European legislation. It follows that it is not necessary for each Member State to be represented in the Court of Auditors. In view of the importance which the AIV attaches to the independent and expert performance of the audit functions of the Court of Auditors, the AIV considers that:

- *the Court of Auditors should have a maximum of five Members.*

III.5.2 The Court of Justice

The AIV will not deal in this report with the role of the Court of Justice, primarily because substantial reforms of the Court were introduced in the Treaty of Nice and it would be advisable first to wait and see what effect they will have. It should also be noted that the Court may, if it wishes, itself make proposals.

III.6 Differentiation

In previous reports the AIV has pointed out that, even when the European Union was considerably more homogenous, integration was always accompanied by forms of differentiation, both inside and outside the European Union. In view of the great diversity that will result from the influx of new members, the phenomenon of differentiated integration may be expected to become even more intense in the future, partly because the integration of new Member States will be accompanied by often protracted transitional periods and, possibly, exceptions with regard to parts of the EU acquis.

The AIV is, however, convinced that differentiated integration will also be necessary for the further development of the EU acquis and cooperation in what are not strictly areas of Community responsibility. Further integration will sometimes prove impossible in the enlarged Community. In that case, the AIV believes that the clauses on enhanced cooperation, as amended by the Treaty of Nice, will provide ways of ensuring that progress can be made on integration in specific policy fields by a smaller group of Member States, subject to the requisite safeguards concerning Community unity and legal certainty. The AIV therefore recommends investigating the possibilities. Safeguards should exist for the judiciary, and the European Parliament should have a right of assent. Outside the Community dimension, the AIV believes that differentiation between the Member States by means of constructive abstention and the formation of 'coalitions of the willing and able' will be essential if the European Union is to be able to act effectively, particularly in the Second Pillar.

Although the AIV is in favour of the forms of enhanced cooperation referred to above, it would not for the time being recommend the establishment of a permanent 'federalist core group' as advocated by Joschka Fischer, the German foreign minister, and others as an alternative to the reforms already instituted. However, serious consideration would have to be given to such a scenario after 2004 if the treaty revision to be agreed at that time fails to produce a sufficient result.

III.7 Role of the national parliaments

National parliaments should become more involved in EU affairs. The AIV has already recommended in this report that they play a part in amending both the Basic Treaty and its Protocols. Further recommendations should be based on the conviction that involvement of the national parliaments at an early stage in policy-making enhances their involvement in EU legislation and hence its legitimacy. This should not, however, result in a mixing of powers. The Protocol to the Treaty of Amsterdam on the role of national parliaments in the European Union contains important elements designed to guarantee this early involvement. The AIV believes that it is up to the political institutions in the Member States to make the best possible use of these opportunities. It is essential for national parliaments to respond alertly if they are to play their role effectively.

III.8 Medium term

The above recommendations should all be implemented in the short term (2004, or even earlier if no treaty amendment is necessary). In the medium term, however, a fundamental review of the institutional principles of the European Union is needed if a real answer is to be found to the key issues of the European Union's legitimacy and effectiveness. As already indicated in chapter I, the AIV considers that the Community method must be strengthened if progress is to be made with integration in the future,

since this provides the best guarantee of further enhancement of democratic legitimacy, effectiveness, cohesion and the preservation of a certain balance between large and small Member States.³³ Intergovernmental trends are becoming increasingly evident within the European Union and the changing nature of the relationship between the European institutions and the Member States has weakened the position of the Commission. However, the AIV believes that the Commission must play a central role if the more far-reaching institutional reforms that are necessary in the longer term are to be successful, particularly since only the Commission can act as a central hub in preparing and implementing policy and only the Commission can be scrutinised effectively by the European Parliament. The AIV would note in this connection that the Commission itself must accept a greater degree of responsibility and adopt a stronger profile.

The Commission's position would be greatly strengthened by the adoption of the recommendations made earlier in this chapter, for example limitation of its size and, as regards its implementing role, restrictions on comitology. In the medium term the Commission's role in legislation should be reviewed: its legislative function should again become its central role as originally envisaged. The Commission would then make proposals for legislation in direct consultation with the European Parliament. In the AIV's view, an essential element in this connection should be the institution of a bicameral representative system in order to enhance the involvement of citizens in legislation and improve their access to it.

The introduction of a bicameral model would provide citizens with more information about the European Union through two channels: first, a directly elected European Parliament (the Peoples' Chamber) and second a chamber consisting of representatives of the Member States (a Chamber of States).³⁴ Citizens would then be represented at European level through the Peoples' Chamber and at national level through the Chamber of States. Initially, the national parliaments could play a prominent role in designating or electing a Chamber of States, but in due course there would have to be direct elections for it. Both chambers would gradually take on the task of preparing EU legislation proposed by the European Commission. The AIV considers that the convention responsible for preparing the 2004 IGC should express its opinion on the idea of a Chamber of States. Although unanimous support for the establishment of a Chamber of States is unlikely, consideration of the subject by the convention could provide a good indication of the extent to which it would be a useful tool for promoting further democratisation.

As regards the Council, the AIV indicates above that the present trend towards a greater legislative role for the Council should be reversed. The AIV also considers that the Council should act as policy coordinator in fields in which the Member States still have their own powers and have not yet delegated them to the Commission.

It is also important to note that integration is concentrating more on policy fields in the Second and Third Pillars. Another reform that is essential in order to strengthen the Community method is the gradual integration of the Third Pillar into the First Pillar. This would enable the European Commission to play its roles of initiator, mediator and

33 This is also in keeping with previous reports; see report no. 12, *'The IGC 2000 and beyond'*, pp. 21 et seq.

34 This recommendation was previously made in report no. 12, *'The IGC 2000 and beyond'*, p. 21

implementer in these fields too. Given the nature of the Second Pillar, its integration into the First Pillar would not seem appropriate, even in the longer term. Here too, however, the Community element could be strengthened (see chapter IV).

IV The Second and Third Pillars of the European Union

IV.1 The Common Foreign and Security Policy (CFSP) and the European Security and Defence Policy (ESDP)

IV.1.1 Why is a coordinated foreign and security policy necessary?

The European Union needs a credible, coherent, efficient and effective common foreign, security and defence policy for various reasons. First, because it is crucial for maintaining the stability that is essential to the European Union's economic and political interests. This is all the more crucial since, after enlargement, the European Union will border on regions which are or may become less stable. Second, the European Union is founded on a body of values which it endeavours to promote worldwide (democracy, human rights and the rule of law). Third, such a policy is essential for an economic heavyweight such as the European Union, which may reasonably be expected to behave consistently in its dealings with third parties. The CFSP makes a real contribution to the coordination of these external dealings. And, finally, it enhances the credibility of the European Union, both internally and externally.

As regards the promotion of the values referred to above or, to put it another way, the efforts to achieve an international community of values based on international legal rules, the AIV would point out that in this respect the European Union is itself a success story, which demonstrates that peace, security and stability can be achieved by putting national sovereignty into perspective and subordinating interstate relationships to the rule of law.³⁵ This also partly explains the pull which the European model exerts. At this juncture, with the next round of enlargement approaching, it is of the greatest importance that the candidate countries should fully recognise and adopt the values on which the European Union is based: this is ensured by means of the requirement that they should comply with all the 'Copenhagen criteria' prior to accession. As far as the maintenance of peace and stability is concerned, the AIV believes that the European Union must have the ambition to achieve this worldwide, although the emphasis must initially be put on its own region.

IV.1.2 The CFSP and ESDP to date

The first step on the path to a common foreign policy was European Political Cooperation (EPC, 1970), in which Member States held informal discussions on matters of foreign policy. Although the results were hardly spectacular in the first few years, EPC did help to create a practice of consultation and coordination and to foster mutual trust. The CFSP was established by the Treaty of Maastricht (1992) and assigned to the mainly intergovernmental Second Pillar. The European Security and Defence Policy (ESDP) was added to this by the Treaty of Amsterdam, when the Petersberg tasks of the Western European Union (WEU) were transferred to the European Union.³⁶

35 Steven Everts, 'Shaping a credible EU foreign policy', February 2002.

36 In the Petersberg Declaration of 19 June 1992 the Member States of the Western European Union (WEU) declared that they were prepared to make available military units from the whole spectrum of the conventional armed forces for military tasks conducted under the authority of the WEU. Apart from contributing to the common defence, the WEU could have responsibility for conducting military operations

cont. on p. 31 ▶

Decisions are taken by unanimity in the Second Pillar. Since 1997, two exceptions have been possible in order to streamline decision-making. First of all, implementing decisions on the basis of the policy frameworks unanimously adopted by the European Council (also known as common strategies) may be passed by majority vote.³⁷ The second exception is the 'constructive abstention' procedure, under which an abstention from voting by a Member State does not block a unanimous decision. Important roles in the framing of the CFSP are played by the General Affairs Council (the Foreign Ministers), the High Representative for the CFSP (the position now held by Javier Solana) and the Political and Security Committee, which is also known by its French acronym, COPS. The main functions of COPS, which consists of senior national civil servants, are to monitor the international situation in the fields covered by the CFSP and ESDP and to help to determine policy by submitting reports to the Council either at the request of the Council or on its own initiative. It is also involved in crisis management. COPS is assisted by the Policy Planning and Warning Unit, which consists of seconded diplomats. This unit provides the High Representative, the Council and COPS with analyses of international political events and formulates policy options.

The name 'Common Foreign and Security Policy' can give rise to misunderstanding because the Second Pillar covers only diplomacy and external security and not all aspects of foreign policy. Examples of aspects not covered by the CFSP are the external policy of the European Union in the fields of trade, monetary policy, development cooperation and aid programmes, in other words policy fields of the First Pillar that have external aspects. Here the European Commission plays a leading role, in contrast with the situation under the CFSP where its role is of very limited significance. The First Pillar also differs fundamentally from the Second in that it often concerns legislation and not, as in the case of the Second Pillar, coordination of the national policy of the Member States. Hitherto, little has come of the coordination between the CFSP and ESDP on the one hand and other external policy (a function of the European Commission and the Council under the Treaty) on the other. With regard to this 'other external policy' the European Parliament can exercise certain powers. The powers of the European Parliament in the Second Pillar are as follows. First, the Presidency of the Council must consult the European Parliament about the main aspects and fundamental choices in the field of the CFSP. Second, the Presidency must ensure that due account is taken of the views of the European Parliament. Finally, the European Parliament may put questions or make recommendations to the Council and hold debates on the progress made in the implementation of the CFSP.

The instruments hitherto available to the European Union in order to give shape to its external relations have for the most part been civilian instruments such as trade and aid policy. These are entirely in keeping with its tradition and structure. CFSP instruments are declarations, demarches, establishing and suspending diplomatic relations, etc. The European Union uses these instruments to maintain diplomatic and political

▶ cont. from p. 30

for humanitarian tasks, peacekeeping tasks and crisis management. When the WEU was integrated into the pillar structure of the EU, the Petersberg tasks became an aspect of the CFSP. Agreement on the integration of the crisis management functions of the WEU into the EU was reached at the Nice European Council.

37 Three such strategies have been developed to date, for relations between the EU and Russia, Ukraine and the Mediterranean Region.

relations with practically every country in the world. In doing so, it attaches great importance to promoting the values and principles on which the European Union is based.

The Member States have become increasingly convinced, particularly as a result of their experience in the Balkans, that they need to be able to mount a joint military response to serious political conflicts. In recent years, therefore, the European Union has been working to extend its military options. An important development in this respect was the provision in the Treaty of Amsterdam to the effect that the Western European Union (WEU) was no longer the defence component of the European Union and that the European Union would itself assume responsibility for the military and police duties in the form of the Petersberg tasks. It was also agreed in the Helsinki European Council (1999) that an autonomous capacity to take decisions and, where NATO as a whole is not engaged, to launch and conduct EU-led military operations should be developed by 2003 at the latest. Although this did not imply the creation of a European army, it did mean that Member States agreed that they would deploy on a voluntary basis, by 2003, military forces of up to 50,000-60,000 persons capable of the full range of Petersberg tasks. It would be beyond the remit of this report to deal exhaustively with the subject of ESDP.

The total funds at the disposal of the European Union for external relations, including the aid programmes (but excluding the programmes of the European Investment Bank), amount to EUR 10 billion annually. By contrast, the annual budget for the CFSP is so small (EUR 40 million) that it is often exhausted by as early as April. Moreover, the procedures for drawing on the funds from this budget are unsatisfactory.

IV.1.3 Current situation

Since the early years of EPC, the European Union has taken large strides towards a coordinated common foreign and security policy. A distinct EU identity and priorities are emerging in this area, with a focus on preserving peace, on construction and reconstruction, on working towards an international legal community founded on international legal rules, and on multilateral solutions and the development of worldwide relations based on the European Union's value system. Nonetheless, when viewed in the light of the constant calls for a vigorous European policy, progress has been meagre. For example, the European Union has not had the capacity to play an independent role in the present situation in the Middle East.

The European Union still lacks a sufficiently coordinated, coherent and effective foreign and security policy and a clear external image. There is a desire for greater cooperation and coordination and a growing realisation among the Member States that, individually, they are able to achieve less and less. Often, however, they still balk at accepting the consequences of establishing common positions and at making concessions in respect of their own views and positions. For this reason, the Member States will not be prepared to communitise the Second Pillar in the foreseeable future. In the light of this political given, recommendations are made below for strengthening the CFSP within the existing framework and achieving better coordination between the CFSP and the other areas of external action.

IV.1.4 Recommendations

The AIV would make the following recommendations on the assumption that efforts must be made within the Second Pillar to introduce majority voting for diplomatic issues and to allocate a more important role to Community institutions. Defence policy

is not eligible for such an approach since it is inconceivable that Member States would allow the deployment of their national military or police resources to be dictated by a majority decision.

IV.1.4.1 Diplomacy

Continuation of the present decision-making procedure based on unanimity will produce an unworkable situation, particularly after enlargement.

The AIV therefore recommends that:

- *more use be made in the short term of the scope for majority voting already provided by the Treaties. The 2004 IGC should go further and, against the background of enlargement, introduce qualified majority voting for all Second Pillar decisions taken in both the CFSP Council and the European Council, in so far as the issue under consideration is not the deployment of military or police resources.*

The AIV has already made recommendations in this report concerning the organisation and presidency of the Council which will help to strengthen the European Union's foreign policy and improve its coordination and coherence. For example, the establishment of a CFSP Council that deals with both First Pillar subjects (trade policy, development cooperation, aid, etc.) and traditional foreign and security policy issues would represent a step forwards. It has also proposed in the recommendation at III.4.5 that the CFSP Council should elect a president from among its own members for a two-year term of office. The expected consequence is that the Presidency will be held by the foreign minister of a Member State which has strong foreign policy potential, thereby avoiding the weakness of a Presidency that rotates among all the large and small countries every six months. This is particularly important in the Second Pillar, in which the President has important external duties.

The AIV recommends that:

- *the CFSP Council should determine what is (and is not) a priority, ensure proper coordination with all relevant policy fields and give its conclusions a sound financial basis.*

Particular attention should be paid to coordination in international economic and political forums. There is an urgent need for improvement of procedures and the adoption of clear positions.

The AIV also recommends that:

- *greater responsibility for preparing and implementing policy should be assigned to groups of Member States which have (or wish to develop) a clear interest in the relevant field, for example because they disburse funds or deploy aid workers or possess specific expertise relevant to the policy fields or the region or country concerned.*

This could be done on the basis of the existing provisions of the Treaty, under which the Council formally requests Member States which have special (e.g. diplomatic) capacities to make use of them on behalf of the European Union and together with the High Representative.

At present, Member States tend to wish to be involved in everything and therefore often deal with matters superficially, complicating the situation and preventing rapid action. The establishment of groups of this kind could generate greater synergy

between the Member States and the institutions in Brussels. As a corollary, it would be worthwhile for diplomatic missions to work more closely together and, where possible, to combine their activities.

The AIV therefore recommends that:

- *the activities of the diplomatic missions should be coordinated more vigorously than before, and the European Union missions too should be involved.* ○

However, more is necessary if the coordination and coherence of the European Union's foreign policy are to be improved. The internal division within the European Union, which is currently personified by the Commissioner for External Relations (Mr Patten) and the High Representative (Mr Solana), should be bridged as far as possible. Mr Solana is often quoted in the papers and has political weight and presence, but has few if any policy instruments. By contrast, Mr Patten can deploy the instruments of the First Pillar, but has no general political mandate to act on behalf of the European Union as a whole.

The idea of a 'personal union' between the two jobs is currently gaining support as a way of solving this problem. The AIV acknowledges that such a solution appears attractive if it is regarded as a step towards a fully integrated First and Second Pillar in the rather longer term. However, the proposed 'double hatting' has some drawbacks, even as a temporary solution. This is because it will not start the communitisation of the Second Pillar, since the decision-making procedures will not change. A particular problem is posed by the conflict between the two sets of responsibilities: on the one hand the holder of the combined job would be a member of the Commission and as such bound by the principle of collegiate decision-making and accountable to the European Parliament, and on the other he would have a relationship with the Council of which he would be the High Representative (in this capacity he would be subject to the Council's instructions). The AIV would also point out that problems could occur in the appointment procedure, over which the Council would certainly like to exercise greater influence than it has at present or would have in the procedure for the formation of a European Commission as envisaged in this report (see III.1). Some people advocate merging the staffs of the two jobs, which would actually mix the responsibilities of the Commission and the Council. Such arrangements pose a threat to the Commission's independence in the field of external relations and may accordingly undermine its position in its 'own' field (the First Pillar). This would jeopardise the efforts being made to promote the Community approach as far as possible.

The AIV recommends that in view of the possible institutional problems raised by 'personal union', the greater coherence of the First and Second Pillars should be promoted by other means, namely by:

- *giving the High Representative a formal right of initiative, which he would exercise in consultation with the European Commission (i.e. the Commissioner for External Relations). This could result in a joint initiative. If the High Representative were to make proposals in fields for which he has a mandate, the Council could disregard them only by a decision passed by a qualified majority.*
- *arranging for the European Commission to exercise its right of initiative in the Second Pillar in consultation with the High Representative. This too could result in a joint initiative.*

- *greatly increasing the funds made available for the CFSP by means of the normal budget procedure, while at the same time guaranteeing the rapid availability of the requisite funding.*

If the 2004 IGC nonetheless decides that there should be a personal union, it should be stipulated as a condition that the independence of the official concerned as a collegiate member of the European Commission is guaranteed, for example in the job description, and that the position of Secretary General should not be allocated to this official.

IV.1.4.2 Deploying military and/or police resources in crisis situations

A different situation arises where there is a crisis or military personnel and/or police officers are to be deployed, since only some of the Member States would be willing and able to participate effectively in carrying out such tasks. For the time being, the European Union is not an actor in this field. This may mean that the European Union will prove unable to take effective action and that decision-making will shift to informal groups of Member States outside the framework of the European Union. This situation is due in part to a generally recognised weakness of the CFSP, namely its laborious and time-consuming decision-making procedure.

In the AIV's opinion, firstly, decisions on what action to take in times of crisis and decisions on military or police deployment should be taken (to a greater extent) within the European Union and, secondly, the European Union's decision-making procedure should allow it to act more quickly, effectively and efficiently. For this purpose, the AIV recommends an arrangement that would allow a small number of Member States that are directly involved (by virtue of the nature of the international situation that has arisen and/or their willingness to make available military resources) to play a leading role in exceptional circumstances. This limited group of Member States should be able to act on behalf of the European Union, subject to approval or correction by the competent bodies of the European Union in plenary session.

Those bodies should also be able to attach conditions to the action taken by the group of Member States acting on behalf of the European Union: for example, the Council could set a time limit for the power of the group to act on behalf of the European Union. In this way, the need for a speedy response could be reconciled with the preservation of procedures in the CFSP framework.

The AIV specifically recommends that:

- *provision for a 'manifest crisis' procedure under the CFSP be included in the relevant Protocol.³⁸ This procedure should ensure that a group of Member States can be quickly formed and take rapid and effective action on behalf of the European Union and its Member States, subject to approval or correction by the competent bodies of the European Union in plenary session. The High Representative and the European Commission should be fully involved in the deliberations of this limited group of Member States, which should designate one of their number to be leader. Decisions of this group on matters of a non-military nature would be deemed to*

³⁸ This provision could possibly be added as a new, third paragraph to the present Article 22 of the EU Treaty. 'Manifest crisis' is defined in this connection as an international development which confronts the European Union with a situation of such a nature that the EU has an immediate and special need to act.

have been approved by the Council, unless the Council decides otherwise by qualified majority. However, decisions of a military or defence nature would require confirmation by the Council by unanimous vote (subject to constructive abstention). Where appropriate, the group would make use of the military structures of the ESDP.

- *the relevant procedure and action be the responsibility of the CFSP Council, which may call in the Justice and Home Affairs Council where appropriate (for example in cases involving the fight against terrorism).*

IV.2 The Third Pillar of the European Union, internal and external security and the fight against terrorism

IV.2.1 Origin

Initially, intergovernmental consultation on the fight against terrorism took place, and when needed, between the ministers responsible for police affairs at 'Trevi' meetings. In due course these meetings were held every six months and after 1987 they were combined with the meetings on asylum policy, border control, immigration and border crossings and serious crime (drug trafficking, fraud and money-laundering) between the ministers responsible for immigration and the relevant member of the European Commission. The Third Pillar (for cooperation in the fields of justice and home affairs) was established by the Treaty of Maastricht. This led to the formation of the Justice and Home Affairs Council, to which the forms of consultation referred to above were transferred. The Treaty of Amsterdam transferred the provisions on asylum, immigration policy and the free movement of persons to the First Pillar, while the provisions on police and judicial cooperation in criminal matters remained in the Third Pillar (Title VI of the EU Treaty).

Europol too was established in the context of the Third Pillar. Europol is the organisation intended to facilitate intensive cross-border police cooperation in the fight against organised crime. Initially, this was limited to information exchange. Since the Treaty of Amsterdam, however, Europol has been competent to request Member States to cooperate in criminal investigations. The Treaty also provides that a number of specific measures designed to boost cooperation in the fight against crime must be taken with regard to Europol within five years of its entry into effect. Europol has played a role in combating terrorism since 1999. As identity checks at internal borders have been abolished, one of Europol's main tasks will be to arrange for the rapid exchange of judicial and police data.

The Tampere European Council (1999) decided that a special unit known as Eurojust, composed of national prosecutors, magistrates and police officers, should be established. The aim of Eurojust is to facilitate coordination in investigating and prosecuting serious cross-border crime. It will act, for example, in cross-border cases which are investigated by Europol and in which the national authorities need immediate legal advice and assistance.

IV.2.2 Current situation

Decisions on matters within the policy fields of the Third Pillar are taken by unanimity. The European Commission is fully involved in developing policy and, like the Member States, has a right of initiative. The European Parliament has no right of codecision and is merely informed and consulted. The Third Pillar involves both legislation and, to a high degree, organised cooperation between national authorities.

The attacks on the World Trade Centre and the Pentagon of 11 September 2001 greatly speeded up the process of cooperation in the Third Pillar. This section discusses some but not all measures taken. The most striking development is the decision to introduce an EU arrest warrant. An EU list of terrorist organisations is being compiled, the decision has been taken to implement existing international counter-terrorism conventions and measures have been taken to prevent and combat the financing of terrorism. It has also been decided to intensify the exchange of information, for example by regular consultation between the heads of the counter-terrorism units and intelligence services. In addition, Europol, which has established a working group of 20 seconded experts in the field of counter-terrorism, has been given a wider mandate. The Council has also reached a political agreement on a 'Framework decision on combating terrorism', which contains definitions of various terrorist offences. And, finally, Eurojust has now been formally established.

Although Member States are increasingly recognising that measures at European level are inevitable, they are still reluctant to share or transfer powers since they are regarded as key areas of national sovereignty.

IV.2.3 Recommendation

The AIV would point out that the assumption that the limitation of rights is necessary or inevitable is open to doubt since there are sufficient ways of improving safety within the existing framework that are as yet unused or underused. In the fight against terrorism it is always necessary to strike the proper balance between enhancing effectiveness and efficiency on the one hand and upholding fundamental rights in full on the other.

In summary, the AIV notes that the subject matter of the Third Pillar, unlike that of the Second Pillar, is at least partly suitable for communitisation (as was decided in the case of asylum and immigration policy at the Amsterdam Council). The Community method would be much faster and more effective than the present one when it comes to common legislation.

The AIV recommends in this context that:

- *the Third Pillar be gradually transferred to the First Pillar. In so far as this cannot be achieved at the 2004 IGC, the ICG should provide that a decision on this transfer may be taken without holding a new IGC, for example by reinforced qualified majority vote and/or the assent of a majority of the national parliaments, as advocated elsewhere in this report for amendments to a Protocol. In this way, the decisions on the remit and powers of Europol and Eurojust could in due course be taken using the Community procedures in the First Pillar. The cooperation would then remain a matter for national authorities, and the role of the Commission would be to facilitate rather than implement.*

V Coordination of economic and monetary policy in the European Union

V.1 General

The introduction of euro notes and coins on 1 January 2002 was the last step in the monetary unification of the European Union. However, economic integration is still far from complete. This will involve, for example, optimisation of the internal market for labour, goods, capital and services, and mutual coordination (a rather less clearly defined concept) of budgetary and tax policy and employment. Although there is clearly a connection between monetary policy (now unified) and the forms of general economic policy that are still determined mainly at national level, views on the nature of this connection and the desirable degree and form of policy coordination can differ in specific cases.

As the form and content of general economic policy coordination are of great importance to the Netherlands because of its open economy, steps to strengthen and improve this coordination should be taken in the forthcoming treaty negotiations, taking account of past experience.

V.1.1 Description

As matters stand at present, economic policy is coordinated in the Economic and Monetary Union (EMU) mainly by the European Council, the Economic and Financial Affairs Council (ECOFIN) and the informal meeting of finance ministers of the euro area (the Eurogroup). On the recommendation of the European Commission, ECOFIN establishes the Broad Economic Policy Guidelines, which also include specific recommendations for individual Member States. The details are subsequently worked out in the four underlying coordination procedures.

The best-known of these four procedures is the Stability and Growth Pact. The essence of the Pact is that the Member States should pursue the objective of a balanced budget or a surplus in the medium term in order to avoid exceeding the maximum deficit of 3% laid down in the Treaty of Maastricht (1992).

There are also the Luxembourg Process for the implementation of employment strategy in the European Union and the Cardiff Process for the structural reform of product and capital markets. In addition, the finance ministers, the European Commission and the European Central Bank (ECB) conduct a macroeconomic dialogue with the social partners in the context of the Cologne Process in order to exchange information on budgetary policy, wage trends and the monetary policy aimed at price stability. Finally, a strategy for improving the competitive position of the European economy has been pursued since the Lisbon European Council in 2000. This Lisbon Strategy consists of various action plans, deadlines and criteria.

These procedures differ from one another in the extent to which the Member States are bound by them. The greater the need for coordination, the greater is the degree of compulsion and the severity of any sanctions. The most severe sanction exists under the Stability and Growth Pact for excessive budget deficits: Member States can be forced to pay a penalty if they fail to comply with the recommendations of ECOFIN. The recommendations in the other coordination procedures are of a less radical nature and

can therefore better be regarded as a form of encouragement based on the peer pressure exerted by other Member States on those who do not keep in step and thereby jeopardise the general interests of the European Union. This is the essence of the Broad Guidelines and, to a lesser extent, of the Luxembourg Process. The Cardiff and Cologne Processes make no provision whatever for sanctions and are reliant on performance benchmarking and the selection of best practices.

V.2 Evaluation

Despite the limited enforceability of these procedures, it may generally be concluded that they have been put to good use since the Treaties of Amsterdam and Maastricht came into force and that progress has been made in their application. For example, the Broad Guidelines are nowadays addressed more and more directly at the Member States, and even the 'softer' coordination mechanisms are not entirely toothless, as events in relation to Ireland have shown. Fortunately, the quality of the analyses and assessments by the European Commission has improved significantly in recent years and the Commission is now playing its role as an independent party effectively. Clearly, the expertise and prestige of the Commission member involved in the coordination procedure and his staff are essential to its success. The Commission's objective assessment is an essential factor in effectively correcting national policy that could jeopardise the common interest.

However, this assessment cannot be other than provisional. The question arises of whether the soft method of policy coordination applied in the context of EMU is sufficient to maintain budget discipline in the event of an economic downturn. For example, the Commission was obliged to conclude in 2001 that four Member States still had large budget deficits rather than surpluses or almost balanced budgets, and that the situation was deteriorating rather than improving. As the European Commission put it, these countries had 'missed the opportunity of the recent favourable growth environment to meet the target of the Stability and Growth Pact.' In addition, it noted that 'the sustainability of public finances in the light of ageing populations gives cause for concern.' It is also still uncertain whether relations within the European Union are such that all Member States, both large and small, can be treated equally. It is essential in this connection that ministers conduct an open debate on the recommendations of the Commission before taking their decision. If power politics play a role owing to a revival of intergovernmentalism, account should be taken of a difference in treatment between large and small Member States. In the long run, this could cause tensions fatal to the entire mechanism. It should be noted that ECOFIN has not adopted the Commission's recommendation that Germany and Portugal should be given an 'early warning' about their seriously worsening budgetary position. Although recommendations that are substantively correct have been made and both Member States have given an undertaking, the appropriate procedure has not been properly followed. This raises the question of whether the opportunity presented by the forthcoming Treaty review should not be seized in order to strengthen the procedures. The AIV believes that it should, and makes a number of related proposals.

Generally speaking, a great deal remains to be done in economic policy coordination. This is particularly true of the structural reforms of the labour and product markets. Given the major differences between the Member States this policy can best be pursued at national level, with great emphasis being put on the best practices method. It should, however, be clear from the outset that the conclusions resulting from these policy comparisons will be applied in practice. The mechanism of policy competition

can play a useful role in this connection. A properly functioning internal market is of essential importance in this respect, since neither policy coordination nor policy competition would stand a chance without it.

V.3 Recommendations

The first point to be made is that the existence of so many different coordinating procedures is a weakness since there is a risk of duplicated coordination and overlapping. It would therefore be entirely wrong to give in to the wish of successive Presidencies to introduce new coordination initiatives. On the contrary, there is much to be said for merging the different procedures into a single general coordination procedure that has clear rules and priorities. ECOFIN's Broad Guidelines should serve as an example.

The AIV therefore recommends that:

- *the different coordination procedures be merged and that although the degree of compulsion in the various policy fields may differ it should not be entirely absent even from the weakest form of coordination.*

Second, there is a need for intensification of the coordination during the preparatory stage of policymaking. Although the finance ministers of the euro area have agreed to notify one another in advance of important policy proposals, this is an informal arrangement which has proved largely ineffective in practice. As the economies of the Member States are closely intertwined, it would be desirable to put this arrangement on a formal footing and convert it into a binding treaty commitment.

The AIV therefore recommends that:

- *Member States be obliged to notify the other Member States and the European Commission in good time about economic measures and budgetary developments which may affect the economy of the entire euro area. The Member States should also be obliged to give timely notice to the Commission of the main aspects of their stability programmes.*

Third, in view of recent events in connection with Germany and Portugal, it is evident not only that the early warning instrument should be applied in the same way to all Member States but also that the procedures need to be improved. The AIV recommends that the role of the Commission in assessing national budgets be strengthened. In the past the AIV has recommended that where the Commission advises the Council about a budget deficit or imminent budget deficit, it should also have the power to forward its advice at the same time to the parliament of the Member State concerned.³⁹ The policy proposals could then be adjusted at an earlier stage and any peer pressure could have greater effect. The AIV considers that there is still an urgent need for this improvement.

The AIV recommends that:

- *the European Commission be given the power to send its advice on the assessment of national budgets to the parliament of the Member State concerned in appropriate cases.*

³⁹ 'The IGC 2000 and beyond', pp. 19

V.4 Candidate countries and the euro zone

Some candidate countries have already indicated that they wish to join the euro zone as quickly as possible. (It should be recalled that new Member States must take part in the Exchange Rate Mechanism II (ERM II), under which non-euro currencies must fluctuate within margins of 15% in relation to the euro, for at least two years before joining the euro zone). The rapid accession of these new Member States to the euro zone is often viewed as a threat to the stability of the euro. This fear is largely unfounded since the combined economic weight of the candidate countries is relatively small. Nonetheless, the public perception of the danger is in itself a fact that should not be ignored. Another point is that it might be economically disadvantageous for the candidate countries themselves to meet the accession criteria and budgetary balance objectives in the Pact at an unduly early date. Compliance with the largely nominal accession conditions for EMU is hard to reconcile with the real conditions for economic growth and transition. In any event, the Treaties should not be adjusted to provide an escape from this dilemma, since full application of the relevant criteria is essential to the stability of the euro and economic growth in the euro zone.

Moreover, participation in the euro area (and hence participation in the common monetary policy or, rather, the common interest rate policy) is beneficial for a Member State only if it has achieved a sufficient degree of convergence. It is recommended that this subject be given due consideration in the accession negotiations.

The AIV recommends that:

- *the broad guidelines for the new Member States should be drawn up as quickly as possible. The primary aim of the broad guidelines that will be drawn up for the new EU Member States (which will not yet be EMU members) in the regular course of the policy coordination procedure after accession must also be to achieve real convergence.*

V.5 The European Central Bank (ECB)

The enlargement of the European Union will affect not only the coordination of economic policy but also the functioning of the Governing Council of the European Central Bank.⁴⁰

Unlike, say, the EU Council, the Governing Council of the ECB does not have a wide-ranging policy agenda (it usually meets only once a month to discuss monetary policy) and there are no potentially paralysing conflicts of political interest. Nonetheless, a continuing increase in the number of members of the Governing Council could undermine its effectiveness (or perceived effectiveness). This is why it would in due course be desirable to limit the number of presidents of National Central Banks (NCBs) who have the right at any given time to vote in the monetary decision-making procedure. This could be achieved, for example, by the introduction of a rotation system. These considerations led the Nice European Council to include an 'authorisation clause' in

40 The Governing Council of the ECB is the main decision-making body of the European System of Central Banks (ESCB). The Governing Council consists of the six members of the ECB's Executive Board and the Presidents of the National Central Banks (NCBs) of the Member States which are part of the euro area. One of its tasks is to take decisions on the common European monetary policy. All members take part in the meetings of the Council in their personal capacity and are guided in their decisions on monetary matters by the necessity of maintaining price stability in the euro area as a whole.

the Treaty which would make it possible to amend the voting procedure in the Governing Council of the ECB outside the fixed framework of an IGC. This authorisation clause may be used only if the European Council agrees unanimously with the proposals put to it by the ECB or by the Commission. The proposal must also have been approved by all national parliaments of the EU Member States.

If it is indeed decided to limit the number of NCB presidents on the Governing Council by introducing a rotation system, it would be necessary to ensure that the large Member States do not compromise the principle of national equality contained in the Treaty of Maastricht (one man, one vote) by giving themselves a permanent voting right. The creation of a distinction between large and small countries in the area of monetary policy, which has now been entirely communitised, would be especially undesirable since it might set a precedent in other fields. However, it would be equally undesirable for the Governing Council of the ECB to consist at any time solely of NCB presidents from small and less economically developed countries.

The AIV therefore recommends:

- *the introduction of a balanced rotation system that not only respects the principle of equality but also reflects the heterogeneity of the Member States represented.*

VI Summary and recommendations

The AIV stated in chapter I that ‘the ultimate test of reforms should be whether they serve to strengthen the Community method.’ Ultimately, this model is the best way of guaranteeing enhanced effectiveness, legitimacy and cohesion, and of preserving a certain balance between large and small Member States. A series of recommendations have been made for this purpose in this report. These proposals (with the exception of the recommendations for the medium term) are regarded by the AIV as the minimum that must be achieved during the next IGC if the European Union is still to function after enlargement as an effective framework for integration and cooperation.

The AIV repeats below all the proposals made in this report. It also indicates in respect of each recommendation whether or not a treaty amendment is required. O = no treaty amendment, = treaty amendment.

As regards constitutional reforms the AIV recommends that:

- the constitutional order should be improved and clarified in such a way as to allow further ‘constitutionalisation’ of European cooperation. This could be done by drawing up a clear and readable Basic Treaty that helps to define the image and identity of the European Union and affords Europe’s citizens greater legal certainty as regards primary legislation.
- the Basic Treaty should include provisions on:
 - the objectives of the European Union;
 - fundamental rights;
 - fundamental principles, such as equality, subsidiarity and proportionality;
 - the institutions;
 - the main institutional rules such as those governing majority voting, weighting of votes, legislation and codecision;
 - definition of powers;
 - the instruments for achieving the European Union’s objectives;
 - the own resources for funding the European Union’s activities;
 - the hierarchy of norms;
 - the modes of ‘enhanced cooperation’ between a given number of Member States;
 - the customary final provisions, regarding matters such as treaty ratification and amendment, accession and authentic language versions.
- Protocols should be added to the Basic Treaty, containing provisions on the policy for implementing the objectives.

The remaining recommendations deal only with the subjects which the AIV believes should be approached differently in the Basic Treaty than in the current Treaties.

As regards fundamental rights, the AIV considers that the Basic Treaty should be framed in such a way as to provide an optimal safeguard for the rights of citizens of the European Union. In the opinion of the AIV, an optimal safeguard would be created if:

- the European Union/European Community were to accede to the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), the European Social Charter (ESC) and the human rights instruments of the UN and the ILO. The Basic Treaty should contain a provision that allows for such accession.

If this option is not feasible, the AIV would prefer the adoption of a step-by-step approach. The AIV recommends for this purpose that:

- the Basic Treaty should contain a section on fundamental rights based on the Charter of Fundamental Rights.

If this too is not feasible, the AIV recommends that:

- the preamble to the Basic Treaty should contain a reference to the Charter of Fundamental Rights, which should be attached to the Basic Treaty as a declaration (the AIV does not favour the incorporation of the Charter of Fundamental Rights in full into the Basic Treaty). In addition, the present Article 6 of the EU Treaty and its reference to the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) should be included in the Basic Treaty and supplemented by a reference to the Charter of Fundamental Rights in such a way that the Charter of Fundamental Rights affords additional protection in areas not covered by the ECHR. This could be worded as follows: 'The Union shall respect fundamental rights, as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms [...] and with due observance of the Charter of Fundamental Rights, and as they result from the constitutional traditions common to the Member States, as general principles of Community law.'

As regards the subjects of weighting of votes, own resources for funding EU activities and the hierarchy of Community acts, the AIV recommends that:

- the provisions on the weighting of votes should be included in their entirety in the Basic Treaty, and
- the arrangements on the weighting of votes agreed in the Nice Council Meeting should be reviewed for the purpose of making them clearer and more intelligible for Europe's citizens. The AIV abides by its earlier recommendation that the Member States should be divided into six clusters and that each Member State in a given cluster should have the same number of votes. Countries acceding to the European Union should be assigned to these clusters on the basis of the size of their population, provided that the 'blocking minority' system is maintained.
- the powers of the European institutions, which are now scattered throughout the Treaties, should be grouped together.
- the principle that the European Union should provide for the resources it needs in order to achieve its objectives and implement its policy should be included in the Basic Treaty;
- the provision concerning *the way in which* the Union should provide for these resources should be included in a Protocol to the Basic Treaty;

- decisions in the Council on the manner of financing and on expenditure should be taken by reinforced qualified majority. The European Parliament should have a right of codecision by qualified - or reinforced qualified - majority. The distinction between compulsory and non-compulsory expenditure should be dropped and the right of amendment by the European Parliament should be extended to *all* categories of expenditure.
- a provision on what is termed 'the hierarchy of Community acts' (or hierarchy of norms) be included in the Basic Treaty in order to regulate this distinction. In the case of legislation proper, the European Parliament should be involved through the codecision procedure and the Council should decide by qualified majority. Secondary legislation could then be introduced by means of simplified procedures.

As regards amendments to the Basic Treaty and the Protocols, the AIV recommends that:

- the Member States and the national parliaments should have the right to approve amendments to the Basic Treaty. The procedure laid down in Article 48 of the Treaty of the European Union could continue to apply for this purpose. In addition, greater public support should be generated by arranging for the amendments to be prepared in a convention.
- a relatively simple 'Community' procedure could be created for amendments to Protocols to the Basic Treaty; this would involve a decision by the Council on the proposal of the European Commission by a qualified majority (or, possibly, reinforced qualified majority) and the assent of the European Parliament ('avis conforme').
- assent to proposed amendments to Protocols by a qualified majority of the national parliaments (to be determined in accordance with the rules governing the weighting of votes in the Council) should be required within a predetermined period.

The AIV makes the following recommendations for institutional reform:

It recommends with regard to the European Commission that:

- the President of the Commission should be elected by the European Parliament and that this election should be confirmed by the European Council by qualified majority;
- the new President of the Commission should take into account the recommendations of the Member States when assembling his or her team. The composition of the new Commission should require the approval of the European Parliament. Finally, the appointment should be made by the European Council by a qualified majority of votes. In the event of a difference of opinion between Council and Parliament, the procedure should be repeated until a Commission has been appointed.
- the individual Commission members too should be accountable to the European Parliament.
- the existing provision under which the Council grants the Commission a general power to adopt implementing measures should be included in the proposed Basic Treaty. This principle of delegation should in practice be translated into a review of

the procedure of the management committees, in such a way that they only play an advisory role in the future. The Commission should adopt the implementing measures which it considers necessary and should, if necessary, be accountable for them to the European Parliament. This will help to establish a clear hierarchy of Community acts. Only in respect of subjects on which the Council still decides, in principle, by unanimity can there be scope for review of an implementing measure of the Commission which is contrary to the majority opinion of the committee. However, unanimity would be required for such review.

- the Commission should be reduced to a maximum of 15 members. Member States may nominate candidates. In addition, the Nice agreements about the rotation system should in practice be implemented in such a way that large Member States are represented on the Commission relatively more often than small ones.

The AIV recommends with regard to the European Parliament that:

- the 2004 elections to the European Parliament should be held on the basis of European electoral lists, and the Treaty provision allowing financial support for the creation of political parties at European level should be translated into practical measures.
- the role of the European Parliament in the appointment of the President of the Commission should be strengthened and individual members of the Commission too should be politically accountable to the European Parliament for their own portfolio. However, the Commission, as a body, should remain accountable for the general policies in these areas of responsibility. The European Parliament should be able to compel, by means of a simple majority, the resignation of both the European Commission as a whole and individual Commissioners.
- codecision should be extended to all subjects of primary and subordinate legislation on which the Council decides by majority vote.
- the conciliation procedure should be conducted by a Coordination Council and in public session.
- the European Parliament should obtain the right of assent ('avis conforme') to the amendment of a Protocol to the Basic Treaty.
- the difference between compulsory and non-compulsory expenditure should be abolished so that the power of the European Parliament can extend to the entire European budget, including expenditure on agriculture and the structural policy.

The AIV recommends with regard to the Council that:

- the European Council should concentrate on its original function of outlining policy for the development of the European Union and setting political and administrative priorities. Its agenda should be cleared of one-off items and should, in particular, no longer provide scope for negotiation on topics that cannot be resolved at a lower level. It should be possible to avoid these problems once the Coordination Council has been established, since it will be responsible for preparing the agenda of the European Council and, in particular, preventing detailed points of dispute from being referred for settlement at a higher level.

- the European Council should increasingly take decisions by majority voting and limit its efforts to achieve consensus. Abandonment of the requirement of unanimity in the European Council is essential, particularly in an enlarged European Union. The Presidency has an important role to play in this connection.
- the General Affairs Council should be transformed into a CFSP (Common Foreign & Security Policy) Council and concentrate on subjects of foreign policy in the widest sense of the word, including trade policy, development cooperation and the accession of new members.
- a special Coordination Council should be established to coordinate the overall activities of the European Union; this should consist of the responsible members of government at national level for European policy. These members should have a sufficiently broad national mandate to play the role assigned to them effectively. The AIV makes no recommendations as to the nature of these mandates, since this is a matter for the Member States themselves. The Coordination Council should be responsible in particular for:
 - (a) preparing the agenda and conclusions of the European Council; the Coordination Council should also ensure in principle that legislative activities are excluded from the agenda of the European Council;
 - (b) checking the progress of the activities in the Specialist Council meetings and identifying any inconsistencies between policies in order to safeguard the cohesion of overall EU policy;
 - (c) checking the progress of work commissioned by the European Council;
 - (d) checking implementation of the principles of subsidiarity, proportionality and effectiveness;
 - (e) conducting conciliation talks with the European Parliament in the context of codecision.
- decisions on all matters, including financial and budgetary policy, should be taken by qualified majority vote; where matters are decided by qualified majority vote, the European Parliament should also have a right of codecision, in order to strengthen its legislative role. Exceptions to this rule should be limited to constitutional matters such as amendment of the Basic Treaty, admission of new members and the framing of policy for which there is no treaty basis. Also important in this connection are the further communitisation of the Third Pillar and the use in practice of the possibilities created in the Second Pillar.
- the deliberations of the Council on matters involving the exercise of its legislative powers should be held in public in order to ensure transparency for Europe's citizens. Debates with the European Commission on this subject should also be held in public.

The AIV recommends with regard to the rotating Presidency that:

- the system of appointing the Presidency be changed in view of the forthcoming increase in the number of Member States and the fact that most of the new members will be small countries. The Presidency of the European Council and the Specialist Council meetings should be replaced by a system in which the Chairman does not represent a Member State. The relevant Council meetings should elect the Chairman by a qualified majority from among their own number for a two-year term of office. Re-election should not be possible. If a Chairman ceases to hold office at national level, the relevant Council should elect a new Chairman.

The AIV recommends with regard to the European Court of Auditors that:

- the Court of Auditors should have a maximum of five Members.

As regards the subject of differentiation, the AIV is in favour of enhanced cooperation, subject to certain conditions, but would not for the time being recommend the establishment of a permanent 'federalist core group'.

As regards the medium term, the AIV recommends that the Community method should be significantly strengthened. An essential element of this would be a central role for the European Commission, which should be restored to the role of legislator, in cooperation with the European Parliament, as originally envisaged in the Treaties. The Parliament should comprise a Chamber of States, consisting in the rather longer term of directly elected members, and a Peoples' Chamber. At the same time, the Third Pillar should be gradually integrated into the First Pillar and there should be greater coherence between the First and Second Pillars.

As regards diplomacy, the AIV recommends that:

- more use be made in the short term of the scope for majority voting already provided by the Treaties. The 2004 IGC should go further and, against the background of enlargement, introduce qualified majority voting for all Second Pillar decisions taken in both the CFSP Council and the European Council, in so far as the issue under consideration is not the deployment of military or police resources.
- the CFSP Council should determine what is (and is not) a priority, ensure proper coordination with all relevant policy fields and give its conclusions a sound financial basis.
- greater responsibility for preparing and implementing policy should be assigned to groups of Member States which have (or wish to develop) a clear interest in the relevant field, for example because they disburse funds or deploy aid workers or possess specific expertise relevant to the policy fields or the region or country concerned.
- the activities of the diplomatic missions should be coordinated more vigorously than before, and the EU missions too should be involved.

The AIV is not in favour of a 'personal union' between the High Representative and the Commissioner for External Relations and recommends that the greater coherence of the First and Second Pillars should be promoted by other means, namely by:

- giving the High Representative a formal right of initiative, which he would exercise in consultation with the European Commission (i.e. the Commissioner for External Relations). This could result in a joint initiative. If the High Representative were to make proposals in fields for which he has a mandate, the Council could disregard them only by a decision passed by a qualified majority.
- arranging for the European Commission to exercise its right of initiative in the Second Pillar in consultation with the High Representative.
- greatly increasing the funds made available for the CFSP.

The AIV would add that if it is nonetheless decided that the two positions should be held by the same person, it should be stipulated as a condition that the independence of the official concerned as a collegiate member of the European Commission is guaranteed, for example in the job description, and that the position of Secretary General should not be allocated to this official.

As regards action in times of crisis and the deployment of military and/or police resources, the AIV recommends that:

- provision for a 'manifest crisis' procedure under the CFSP be included in the relevant Protocol. This procedure should ensure that a group of Member States can be quickly formed and take rapid and effective action on behalf of the European Union and its Member States, subject to approval or correction by the competent bodies of the European Union in plenary session. The High Representative and the European Commission should be fully involved in the deliberations of this limited group of Member States, which should designate one of their number to be leader. Decisions of this group on matters of a non-military nature would be deemed to have been approved by the Council, unless the Council decides otherwise by qualified majority. However, decisions of a military or defence nature would require confirmation by the Council by unanimous vote (subject to constructive abstention). Where appropriate, the group would make use of the military structures of the ESDP.
- the relevant procedure and action be the responsibility of the CFSP Council, which may call in the Justice and Home Affairs Council where appropriate (for example in cases involving the fight against terrorism).

As regards the Third Pillar, the AIV recommends that:

- the Third Pillar be gradually transferred to the First Pillar. In so far as this cannot be achieved at the 2004 IGC, the IGC should provide that a decision on this transfer may be taken without holding a new IGC, for example by reinforced qualified majority vote and/or the assent of a majority of the national parliaments, as advocated elsewhere in this report for amendments to a Protocol. In this way, the decisions on the remit and powers of Europol and Eurojust could in due course be taken using the Community procedures in the First Pillar. The cooperation would then remain a matter for national authorities, and the role of the Commission would be to facilitate rather than implement.

As regards the coordination of economic and monetary policy in the European Union, the AIV recommends that:

- the different coordination procedures be merged and that although the degree of compulsion in the various policy fields may differ it should not be entirely absent even from the weakest form of coordination.
- Member States be obliged to notify the other Member States and the European Commission in good time about economic measures and budgetary developments which may affect the economy of the entire euro area. The Member States should also be obliged to give timely notice to the Commission of the main aspects of their stability programmes.

- the European Commission be given the power to send its advice on the assessment of national budgets to the parliament of the Member State concerned in appropriate cases.

As regards candidate countries and the euro zone the AIV recommends that:

- the broad guidelines for the new Member States should be drawn up as quickly as possible. The primary aim of the broad guidelines that will be drawn up for the new EU Member States (which are not yet EMU members) in the regular course of the policy coordination procedure after accession must also be to achieve real convergence.

As regards the European Central Bank (ECB), the AIV recommends:

- the introduction of a balanced rotation system that not only respects the principle of equality but also reflects the heterogeneity of the Member States represented.

Professor F.H.J.J. Andriessen
Chair of the Advisory Council on International
Affairs
Postbus 20061
2500 EB Den Haag

19 July 2001

Dear Professor Andriessen,

The Declaration on the future of the Union annexed to the Final Act of the IGC (see Annexe IV to the Nice Treaty) calls for a deeper and wider debate on the future of the European Union. This debate was launched officially on 7 March 2001. Attached to the conclusions of the Swedish Presidency (Gothenburg 15-16 June 2001) is a report summarising the initiatives taken since then. The Laeken European Council of 14-15 December 2001 will adopt a declaration on this debate on the European Union's future, mapping out lines for its continuation.

The following problems must be addressed as part of this debate:

- How will it be possible to establish, and subsequently to monitor, a more precise delimitation of powers between the European Union and the member states, reflecting the principle of subsidiarity?
- What will be the status of the Charter of Fundamental Rights of the European Union, proclaimed at Nice in accordance with the conclusions of the Cologne European Council?
- How can the treaties be simplified to make them clearer and easier to understand, without changing their meaning?
- What is the role of national parliaments in the European architecture?

The Government requests the Advisory Council on International Affairs to prepare an advisory report on these matters, taking into account the memorandum that the State Secretary for Foreign Affairs and I sent to the House of the Representatives on 8 June 2001. That memorandum on the future of the European Union (Parliamentary Papers 2000-2001, 27 407, no. 9) is hereby enclosed for your information.

The question of which issues should ultimately be dealt with in any forum that may be set up will certainly be discussed at the Laeken European Council, and possibly beforehand at the informal European Council at Ghent on 19 October 2001. The Government can well imagine that the Advisory Council may not have time to deal with all the issues enumerated above in detail before then.

For the record, I should add that the Government is of course acquainted with the Advisory Council's earlier report, "A European Charter of Fundamental Rights?" (Advisory Report no 15, May 2000), so that there is no need for the Council to discuss the Charter's status at length.

I hope that the Advisory Council will be able to issue its report, or at least part of it, in time for the Government to draw on it when determining its position for the European Councils mentioned above.

Yours sincerely,

[signed]

Jozias van Aartsen

Minister of Foreign Affairs

Interim report of 9 November 2001

Mr J. J. van Aartsen
Minister of Foreign Affairs
Postbus 20061
2500 EB Den Haag

9 November 2001

AIV-214/01

Re: Interim report

Dear Mr Van Aartsen,

On 19 July 2001 the government asked the Advisory Council on International Affairs (AIV) to issue an advisory report on the issues listed in the Declaration on the Future of the European Union annexed to the Final Act (annexe IV to the Treaty of Nice). The government also asked what issues should be dealt with by a Convention and should be on the agenda for the Laeken European Council on 14 and 15 December 2001. The government further expressed the hope that the AIV could produce its report in good time for use by the government as it was preparing its position for the European Council.

To meet the government's second request, the AIV has decided to split its report on the future of the European Union into two parts. The interim report below indicates which subjects the AIV believes must receive due attention in drawing up the agenda for the forthcoming debate. In bringing its interim report out now, the AIV hopes that the points listed can be considered when the Dutch government prepares for the mid-December Laeken decision on the issues for the Convention to deal with. The AIV points out that the conciseness of this list means it cannot be exhaustive. The AIV also refers to its earlier report on how the 2004 IGC should proceed, which suggests that the Convention preparing the IGC need not confine itself to the four topics in the Declaration of Nice plus any other topics added by ministers.⁴¹ The AIV will provide you with a further report in 2002, considering the further development of the European Union in more detail and focusing on the four topics from the Final Act together with the issues raised by the AIV itself.

The AIV has sought to tie its interim report in with statements already made in the State of the European Union, where the government indicates 14 substantive priority issues which can eventually be anchored in a European Constitution.⁴² The government's main priorities are shown to be **legitimacy and democracy and a coherent external presence for the European Union**. The AIV agrees with this choice: these issues lie at the heart of the European Union's operations. However, the debate on the future of Europe will not be wholly dictated by the European Union's internal and external operations, but will also be influenced by

41 See AIV report no. 24 of November 2001, entitled *A convention, or conventional preparations?* The European Union and the IGC 2004, p.16. In this report the AIV considers the mandate to be given to the Convention preparing the 2004 IGC.

42 The State of the European Union; the European Agenda from a Dutch perspective, 2002.

current events. For example, the events of 11 September 2001 will undoubtedly put the issue of **terrorism and security** onto the agenda. The AIV invites the government to ensure that attention for topical issues does not prevent proper attention being given to the way the European Union operates.

The AIV recommends putting the following topics onto the agenda for the debate under the heading **legitimacy and democracy**. Some of them feature in the government's list of priorities.⁴³ The AIV points out that it has already addressed the underlying issues in earlier reports.

Topics concerning the Council:

1. how the European Council operates;
2. extending the presidency of the Council of Ministers beyond the current term;
3. public access to Council meetings when it is in session as a legislative body;
4. codecision as the rule for majority voting. This issue is connected to item 8 below, concerning the European Commission.

Topics concerning the European Parliament:

5. individual members of the European Commission to be accountable for their portfolios to the European Parliament;
6. abolishing the difference between compulsory and non-compulsory expenditure for the European Parliament. The current situation is that for non-compulsory expenditure the European Parliament has the right to make amendments but for compulsory expenditure it can only propose amendments. Abolishing the difference between compulsory and non-compulsory expenditure would thus give the European Parliament the right to make amendments to the entire EU budget;
7. introducing a second chamber.

Topics concerning the European Commission:

8. strengthening the European Commission, firstly through significantly simplified comitology, secondly by granting the European Commission clear executive and supervisory powers and thirdly through more devolved implementation;
9. a directly elected president and a new system for appointing the whole Commission.

Under the heading **coherent external presence**, attention should be given to how the European Union can present a coherent, uniform front in political, economic and monetary matters and in the international bodies dealing with these issues. Examples include the UN Security Council, the International Monetary Fund, the World Trade Organisation and the G8.

The AIV also supports the government's view that the Common Foreign and Security Policy (CFSP) needs attention. It operates along intergovernmental lines in concert with a High Representative, a structure that is gradually becoming unworkable. The AIV feels the matter merits attention for the following reasons.

A lack of coherence in the CFSP is dangerous for world stability. This is illustrated by the reaction to 11 September, when the various European countries declared their solidarity with the United States separately and made commitments, expressed reservations and responded to the military action in Afghanistan separately. The aftermath of the attacks on

⁴³ The government also mentions items 4, 5 and 9 in the State of the Union.

the WTC and Pentagon emphasises that Europe does not speak with one voice: the rotating EU presidency, the president of the European Commission and the High Representative all lack the status, legitimacy and profile to speak for the entire European Union. Furthermore, after enlargement the European Union will have a long territorial border with potentially unstable areas. This means a unified policy will be needed to help the new member states to the east achieve security and stability and to protect them from any divisions within the European Union regarding, say, policy towards Russia or Ukraine. Finally, the monetary stability of the euro zone will be at real risk while there is so little pressure to coordinate foreign and security policy. For example, security policy and crises might lead to military action which would have an impact on an individual member state's budget and thus its monetary position. A stronger external presence thus calls for a firmer basis for monetary solidarity and solidity. The question of how to finance the European Union's external activities will therefore need thorough scrutiny.

As regards **terrorism and security**, too, there is a need to consider how to take coherent and effective action. Here, the AIV would point out that this issue impinges on all three pillars of the European Union: the first pillar through economic sanctions, the second as part of the CFSP and the third as part of actions against terrorism. The AIV would also advise looking at the further communitisation of parts of the third pillar, another matter that the government gives as a priority in the 2002 State of the Union paper.

Yours sincerely,

[signed]

Professor F. H. J. J. Andriessen
Acting chair

List of abbreviations

AIV	Advisory Council on International Affairs
CEI	European Integration Committee (of the AIV)
CFSP	Common Foreign and Security Policy of the European Union
CMR	Human Rights Committee (of the AIV)
COPS	Security and Politics Committee
CVV	Peace and Security Committee (of the AIV)
ECB	European Central Bank
ECHR	European Convention for the Protection of Human Rights and Fundamental Freedoms
ECOFIN	Economic and Financial Affairs Council
EMU	European Monetary Union
EPC	European Political Cooperation
ERM II	Exchange Rate Mechanism II
ESC	European Social Charter
ESCB	European System of Central Banks
ESDP	European Security and Defence Policy
EU	European Union
GNP	Gross National Product
ILO	International Labour Organisation
IMF	International Monetary Fund
NCB	National Central Bank
UN	United Nations
UNSC	United Nations Security Council
WEU	Western European Union
WTO	World Trade Organisation

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