

**THE IGC 2000 AND BEYOND  
TOWARDS A EUROPEAN UNION OF  
THIRTY MEMBER STATES**

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## Foreword

On 31 May 1999, the Minister of Foreign Affairs and the State Secretary for Foreign Affairs wrote, also on behalf of the Minister of Defence and the Minister for Development Cooperation, to the Advisory Council on International Affairs (AIV) requesting an advisory report on institutional reforms in the European Union. In preparation for the report, the Advisory Council forwarded this request to one of its four permanent committees, the European Integration Committee (CEI). The members of the CEI are: Professor F.H.J.J. Andriessen (chair), Dr B. Knapen (deputy chair), H.J. Brouwer, W.S.J.M. Buck, Professor W.H. Buiters, Ms A.E.J.M. Cook-Schaapveld, Ms N. Kroes, H.C. Posthumus Meyjes, P. Scheffer, W.K.N. Schmelzer, Professor A. Szász and Ms M.G. Wezenbeek-Geuke. In drawing up the report the CEI was assisted by its official advisors C. van Rij and R.C.J.M. van Schreven (Ministry of Foreign Affairs). The secretary was initially G.J. van der Zwan; this work was later taken over by other members of the Advisory Council staff. The staff were assisted in drawing up the report by E.P.M. Schreijen (trainee).

In the opinion of the Advisory Council, the European Union (EU) has entered another crucial phase of its existence. It faces the challenge of a major increase in the number of its Member States. Over the last forty years the Union has expanded from six to 15 Member States. At the Helsinki European Council on 10 and 11 December 1999, the number of applicant countries was raised to 13. It thus seems likely that the number of Member States will increase to about 30 within a relatively short space of time. This will have far-reaching implications for the functioning of the EU and its institutions.

Apart from the imminent accession of new Member States, there has also been progress with the widening and deepening of the Union's tasks. Matters such as the Common Foreign and Security Policy (CFSP), the European Security and Defence Policy (ESDP) and the Justice and Home Affairs policy area are now also beginning to take shape (as witness the Presidency Conclusions of the Cologne, Tampere and Helsinki European Councils).

This advisory report by the AIV looks at institutional reforms in the European Union. Besides mentioning the recommendations on this issue previously made in the reports entitled *An inclusive Europe* and *An inclusive Europe II*, the Advisory Council discusses the agenda of the forthcoming Intergovernmental Conference (IGC). It also looks at the institutional issues which the Union will inevitably have to deal with at some point in the future. In this connection the Advisory Council outlines a future scenario for the EU - what the Union could be like - in the medium term. While the Advisory Council is aware that this issue is not on the agenda of the next IGC, such an outline could be a useful contribution to the debate on the Union's institutional structure, including any discussion on the subject which may take place at the IGC. In presenting such a scenario, the Advisory Council's intention is to contribute to the debate which will eventually have to be conducted on the Union's future.

In the light of the foregoing, this report is structured as follows. It begins with the *Summary and recommendations. The need for further institutional reforms* (Chapter I) looks at the state of preparations for the IGC. *Earlier advisory reports*

*on institutional reforms* (Chapter II) briefly reviews the recommendations on institutional reforms which the Advisory Council made in *An inclusive Europe* and *An inclusive Europe II*. Next, *A future scenario for the European Union* is outlined with reference to a number of long-term benchmarks (Chapter III). Finally, the report examines institutional issues relating to the functioning of *The institutions* (Chapter IV). The recommendations made in the report are printed in italics. The letter requesting the advisory report and a list of terms and abbreviations are contained in the two annexes.

## Summary and recommendations

### *The need for further institutional reforms*

The enlargement of the EU is a political fact. The increase in the number of applicant countries to 13, together with the prospect held out to the Balkan countries of eventual full integration into the structures of the Union, may mean that the Union will eventually comprise about 30 Member States. This enlargement from 15 to 30 Member States will be accomplished in a relatively short space of time. The stages in this process cannot be achieved without far-reaching changes to the Union's institutional arrangements.

In the opinion of the Advisory Council, the EU and the Member States must therefore give careful consideration to the Union's institutional structure for the coming decades. To do this it is necessary to draw up a future scenario for the EU and its institutions which will do justice to the ideals that underpin the process of European integration and will enable the Union to continue functioning with some 30 Member States. The Advisory Council subscribes to the Dutch government's view that, in order to prepare the EU for a rapid increase in the number of Member States, the IGC 2000 must have a broad agenda which covers more than just the 'left-overs' from the negotiations leading to the Treaty of Amsterdam (the composition and size of the European Commission, the weighting of votes in the Council of Ministers, and the extension of qualified majority vote (QMV) decision-making). This would give the IGC 2000 a proper agenda for the future of the EU.

### *A future scenario for the European Union*

The Advisory Council believes that the far-reaching changes to the European Union's institutional structure now required should be part of a long-term scenario. This scenario need not yet provide specific answers to every single one of the many institutional questions that arise. However, it should indicate the general direction to be taken, with reference to a number of benchmarks which must be used to assess any proposed solutions. These benchmarks are:

1. Reducing the democratic deficit and increasing the involvement of European citizens;
2. Effective decision-making;
3. Strengthening implementation capacity (compliance with legislation) and supranational policy implementation.

Re 1. The Advisory Council emphasises the importance of creating truly European political parties. The leaders of such parties should also be eligible for the presidency of the European Commission.

Re 2. In the opinion of the Advisory Council, the rule that decisions by the Council of Ministers must be unanimous should only be applied in an absolute minimum of cases. In addition, there should be a rule that QMV decisions are subject to co-decision by the European Parliament.

Re 3. The functioning of the present Union, let alone a greatly enlarged one, depends entirely on its capacity to implement decisions (whether in the form of legislation, conferred powers or policy) effectively and appropriately. As regards applying EMU legislation, the Advisory Council proposes that the European Commission should be granted powers to forward the opinion it addresses to the Council of Ministers in the event of an existing or imminent excessive budget deficit in a Member State simultaneously to that country's parliament.

As far as the Advisory Council is concerned, a trend towards greater democracy, effectiveness and implementation in the broadest sense is a key element of the future scenario for the EU. In this connection, the Advisory Council also believes that supranational decision-making should not only be maintained in the first pillar, but also that the third pillar should be rapidly incorporated into the first, and that supranational decision-making should be the ultimate goal in the second pillar as well. In the interests of further democratisation of the EU, the Advisory Council advocates a bicameral representative system in which legislative powers are vested in two parliamentary chambers and citizens can be involved in the Union through representation at European level (the European Parliament) and at national level (the Chamber of States).

The Advisory Council feels that the scope for closer cooperation between Member States, as provided for in the Treaty of Amsterdam, should be broadened. In the AIV's opinion, two of the requirements currently laid down in the Treaty need to be modified. First, the requirement that only a majority of Member States can decide to institute such cooperation should be amended so as to permit smaller groups of Member States to cooperate more closely. Second, the treaty requirement that decisions must be unanimous - which effectively gives every Member State a veto - should be scrapped. Where necessary, the European Commission should coordinate closer cooperation of this kind between Member States (or groups of Member States). The question of differentiation must be discussed at the forthcoming IGC.

#### *The institutions*

There is a risk that the bigger the EU gets, the more distant 'Brussels' will become from its citizens. This makes the emergence of political parties at European level and a clearer sense of identification on the part of the general public all the more essential in order for the Union's citizens to develop the necessary minimum of interest in and commitment to the European Parliament. The emphasis here should be on making the Parliament more European in outlook and more result-oriented. The more successfully the European Parliament can exercise control, not only across national borders but also across the boundaries between national political parties, the more relevant it will be. Rather than the need to perfect or change institutions, what matters here is the political behaviour of parliamentarians and parties in expressing the European dimension of the powers conferred on them.

The Advisory Council believes that, in the interests of continuity and efficiency, the Council of Ministers would benefit from a more permanent presidency. This could have a 'depoliticising' effect and alter the whole nature of the presidency. A presidency that focused more closely on technical coordination would in itself be very much in keeping with a greatly enlarged EU; however, it would inevitably have implications for the division of responsibilities between the institutions in the second and third pillars. In view of this, the Advisory Council feels that consideration could be given to the idea of European Commissioners chairing the European Council or meetings of the Council of Ministers.

Since the CFSP appears to be gathering momentum, the Advisory Council feels that the next IGC should clarify the role to be played within it by the various institutions and bodies and should carefully define their powers.

The Advisory Council believes that the position of the European Commission within the Union's institutional structure should be strengthened. The Commission's supranational status does not primarily depend on whether every Member State has a Commis-



sioner, but rather on the position the Commission adopts on legislation and policy implementation. If, following enlargement, the Commission were to have fewer members than there are Member States, this could enhance not only its supranational status, but also its identity as a supranational body. This is unrelated to the other considerations which have previously led the Advisory Council to recommend reducing the size of the Commission. Given the increasingly important role of policy implementation and management in the Commission's work, the Advisory Council urges the government to pay especially close attention to matters concerning the Commission's executive competence.

Following the resignation of the Commission headed by Jacques Santer in March 1999, the subject of European Commissioners' individual accountability to the European Parliament should be discussed at the IGC 2000.

As to the European Council, the Advisory Council makes the following recommendations, which can be implemented without amending the Treaties and which the Dutch government can support through channels other than the IGC 2000:

- there should be more meaningful reporting of Council deliberations to the European Parliament;
- prior to the European Council, the European Parliament should debate both socio-economic guidelines in the context of EMU and matters relating to the CFSP;
- the European Parliament should be entitled to propose agenda items;
- the European Council should discuss the customary statement by the President of the European Parliament;
- the President of the European Parliament should be present when agenda items of relevance to the Parliament are being discussed.

The Advisory Council considers that the functioning of the Court of Justice (working methods, workload, handling of requests for preliminary rulings) should be on the IGC 2000 agenda.

The Advisory Council believes that ways of exerting mutual influence such as peer pressure, benchmarking and peer review can be useful in helping to achieve a consensus among the Member States. However, these can only be complementary to a process of formalised decision-making by the European institutions within the framework of the legal community that is the European Union.

# I The need for further institutional reforms

The enlargement of the European Union is a political fact. At the Helsinki European Council on 10 and 11 December 1999, Romania, Slovakia, Latvia, Lithuania, Bulgaria, Malta and Turkey were officially recognised as applicant countries in addition to Cyprus, Hungary, Poland, Estonia, the Czech Republic and Slovenia. The Kosovo crisis, in particular, has also led to closer relations between the EU and the Balkan countries. Apart from these closer relations, which have mainly taken the form of aid and support, the Cologne European Council held out to the Balkan countries the prospect of full integration into the structures of the European Union.<sup>1</sup> As a result of the increased number of applicant countries and the prospect for the Balkan countries just referred to, the Union may eventually comprise about 30 Member States.

Whereas the increase from six to 15 Member States took 40 years, the enlargement from 15 to 30 Member States seems likely to be more rapid. This raises the question of how the Union will be able to function with this number of members.

What is already clear is that the enlargement from 15 to about 30 Member States will make the EU highly heterogeneous. Today's Member States are all Western European countries and - aside from certain contrasts between the northern and southern countries - are similar in economic structure, governance and culture. The enlarged Union, on the other hand, will include countries which not only are economically less advanced but also have political and social structures that differ considerably from those of the present Member States. It seems likely that applicant status and the prospect of accession to the Union will encourage the countries concerned to reduce these differences.

The term 'European Union' actually means the institutions of which it is composed, namely the European Commission, the Council of Ministers, the European Parliament, the Court of Justice and the Court of Auditors. The European Union's present structure is still largely based on that of the European Coal and Steel Community (ECSC), which was set up by Belgium, France, Germany, Italy, Luxembourg and the Netherlands in 1952. This was followed in 1957 by the creation of the European Economic Community (EEC).<sup>2</sup> In the early years of European integration, when there were just six Member States, there were six members of the Council of Ministers, nine members of the European Commission, and 142 members of the European Parliament (MEPs). Over the years the six-member Community has expanded into today's 15-member European Union. Despite this, the basic structure has remained unchanged. Each new Member State has been allocated its own seat in the Council, its own seats in the European

1 Presidency Conclusions of the Cologne European Council, 3 and 4 June 1999, item 72.

2 In this connection it is worth noting that, in addition to the ECSC Treaty and the EEC Treaty, the governments of the Benelux countries, France, Germany and Italy had also agreed to set up a European Defence Community (EDC). However, when ratifying the establishment of the European Communities in 1954, the French National Assembly decided to leave the EDC off the agenda, and the idea of a European Defence Community was therefore shelved for a long period. The absence of an EDC has grown more and more apparent as time has gone by. This is one reason why there have been increasing efforts in recent years to draw up a European Security and Defence Policy (ESDP).

Parliament, and its own European Commissioner (or, in the case of large countries, two Commissioners).

The justification for this continuing enlargement of the institutions has been that the Member States want them to adequately reflect the Member States and their relative sizes. In the case of the Council of Ministers, an intergovernmental body which represents the Member States, this makes sense. However, the European Commission, that most typically supranational of the Union's institutions, should be different. Yet the principle that there must be at least one Commissioner from each Member State has continued to apply. Accordingly, with each successive enlargement over the past four decades, both the intergovernmental institutions and the supranational ones have greatly increased in size. The Council currently has 15 members, the Commission has 20, the Court of Justice has 15 judges, the Court of Auditors has 15 members, and there are 626 MEPs.

In theory, the method of enlargement applied in the past - which effectively involves extrapolating existing arrangements and customs - could be used again this time round. *However, the Advisory Council considers that, if the institutions continue to expand, they will no longer be able to function properly and further deepening of integration will be hampered as a result. The Advisory Council therefore concludes that the extrapolation method can no longer be used to adapt the institutions of the EU after the forthcoming enlargement. The next enlargement rounds cannot be achieved without far-reaching changes to the Union's institutional arrangements.* In view of this, the forthcoming enlargement of the Union may be deemed unique.

*In the opinion of the Advisory Council, the EU and the Member States must give careful consideration to the Union's institutional structure for the coming decades. To do this it is necessary to draw up a future scenario for the EU and its institutions which will do justice to the ideals that underpin the process of European integration and will enable the Union to continue functioning with some 30 Member States.*

Against this background, an attempt to adapt the EU's institutional structure was in fact made during the negotiations leading up to the Treaty of Amsterdam. However, the Member States failed to agree on a solution on that occasion. In the Treaty of Amsterdam, settlement of the question of institutional reform was deferred to a later date by means of a protocol.<sup>3</sup> It has now been decided to convene an Intergovernmental Conference (IGC), which must be completed by December 2000.<sup>4</sup> Items discussed at the Conference will in any case include the composition and size of the European Commission, the weighting of votes in the Council of Ministers, and the extension of qualified

3 The 'Protocol on the institutions with the prospect of enlargement of the EU' states: 'At least one year before the membership of the EU exceeds twenty, a conference of representatives of the governments of the Member States shall be convened in order to carry out a comprehensive review of the provisions of the Treaties on the composition and functioning of the institutions'.

4 The conclusions of the Cologne European Council of 3 and 4 June 1999 with regard to institutional arrangements state: 'In order to ensure that the EU's institutions can continue to work efficiently after enlargement, the European Council confirms its intention of convening a Conference of the Representatives of the Governments of the Member States early in 2000 to resolve the institutional issues left open in Amsterdam that need to be settled before enlargement. The Conference should be completed and the necessary amendments to the Treaties agreed upon at the end of 2000. *cont. on next page* ➡'

majority vote decision-making. Moreover, the agreements reached at the Cologne and Helsinki European Councils provide an opportunity to discuss more than just these three 'left-overs' from the negotiations that led up to the Treaty of Amsterdam. On the basis of the interim progress report on the IGC, to be submitted by the Portuguese presidency to the Feira European Council (planned for June 2000), a decision can be taken to add items to the IGC agenda.<sup>5</sup> In the light of this, Prime Minister Wim Kok has described the agreements on the items to be discussed at the IGC 2000 as an 'open formula for the agenda'.<sup>6</sup>

In preparation for the IGC, at the suggestion of the European Commission headed by Romano Prodi, a report entitled *The institutional implications of enlargement* was published in October 1999. The report was drafted by a committee chaired by the former Belgian prime minister, Jean-Luc Dehaene. It makes a number of proposals, including a proposal that the legislation governing the EU should be split up into (a) a kind of 'basic treaty' laying down the aims, principles, general policy orientations, citizens' rights, and the institutional framework for cooperation within the EU, and (b) the other clauses of the present Treaties, including those relating to specific policies. Dehaene also advocates the extension of QMV decision-making. *The Advisory Council supports the proposed division into a basic treaty and other texts, but points out that implementing this will raise numerous problems regarding the arrangement of the treaty provisions. The Advisory Council also subscribes to the proposal made in the report to extend qualified majority vote decision-making.* It should be noted that the report deals with neither the weighting of votes in the Council of Ministers nor the composition of the European Commission, both of which are discussed in the present advisory report.

Like a number of other Member States, the Netherlands has from the outset been in favour of a broad agenda for the IGC 2000. The Dutch government has indicated that it also wishes to discuss the following at the conference:

- ➔ In accordance with the Amsterdam Protocol on the institutions with the prospect of enlargement of the EU and the declarations made with regard to it, the brief of the IGC will cover the following topics:
  - size and composition of the Commission;
  - weighting of votes in the Council (re-weighting, introduction of a dual majority and threshold of qualified majority vote decision-making);
  - possible extension of qualified-majority voting in the Council.

Other necessary amendments to the Treaties arising as regards the European institutions in connection with the above issues and in implementing the Treaty of Amsterdam could also be discussed.'

5 With regard to the IGC 2000 agenda, the conclusions of the Helsinki European Council on 10 and 11 December 1999 state: 'Following the Cologne Conclusions and in the light of the Presidency's report, the Conference will examine the size and composition of the Commission, the weighting of votes in the Council and the possible extension of qualified majority voting in the Council, as well as other necessary amendments to the Treaties arising as regards the European institutions in connection with the above issues and in implementing the Treaty of Amsterdam. The incoming Presidency will report to the European Council on progress made in the Conference and may propose additional issues to be taken on the agenda of the Conference'.

6 The Prime Minister used this expression during the Lower House debate on the IGC on 16 December 1999 (*Parliamentary Proceedings*, 16 December 1999, pp. 36-2816).

- matters relating to the aforementioned topics, such as the right of co-decision and European Commissioners' individual accountability;
- matters relevant to the smooth functioning of the Union in the light of the Treaty of Amsterdam, such as the working methods of the Court of Justice and proper financial control and management;
- the conditions for differentiated cooperation between Member States within the framework of the EU;
- the institutional and legal arrangements associated with the ESDP.<sup>7</sup>

In this connection, one should also note the development of the European Security and Defence Policy, including the integration of the Western European Union into the European Union (planned for the end of 2000) and efforts to draw up a Charter of Fundamental Rights of the European Union. Although it has been decided not to include these topics on the IGC 2000 agenda, at least for the time being, decisions taken about this may necessitate treaty amendments at the end of 2000. At the same time, it should be noted that the significant political progress made regarding the ESDP raises the question of whether the EU as such will need to start developing a single defence industry policy and appropriate instruments.<sup>8</sup>

If efforts to discuss differentiated cooperation produce results, the Dutch government takes the view that these should also be embodied in treaty amendments.

*The Advisory Council shares the government's view that these topics will have to be discussed within the EU at some point. The topics referred to should be included on the IGC 2000 agenda. This would give the conference a proper agenda for the future of the EU. The issues raised by the government with regard to the Union's effectiveness will be discussed in further detail in this advisory report.*

7 Government policy paper entitled *The IGC 2000: an agenda for internal reforms in the European Union*, pp. 4 and 5.

8 The government has since added this topic to the Advisory Council's programme of work for the year 2000.

## II Earlier advisory reports on institutional reforms

The Advisory Council has already produced two advisory reports, entitled *An inclusive Europe* (October 1997) and *An inclusive Europe II* (November 1998), on the reform of the European Commission, the Council of Ministers, the European Parliament and the presidency. While *An inclusive Europe* mainly emphasises the need for institutional reforms in the light of the enlargement of the Union, *An inclusive Europe II* makes specific recommendations on the subject. Since the ideas expressed earlier have been pursued and are developed in further detail in the present advisory report, the main conclusions and recommendations of the two reports are summarised below.

### *The European Commission*

In *An inclusive Europe II* the Advisory Council expressed the view that the number of Commissioners should be limited to between 10 and 15.<sup>9</sup> This will mean that in future it will no longer be possible for each nationality to be permanently represented on the Commission. The Advisory Council stated that this should also apply to the large Member States. These countries must not be guaranteed a permanent seat on the Commission, as this would make it even more difficult for nationals of small Member States to become Commissioners.

In *An inclusive Europe II* the AIV indicated that, while developments within the EU are having an increasingly profound impact on the daily lives of its citizens, the distance between the Union and its citizens appears to be getting greater rather than smaller, as manifested in an increasing 'democratic deficit' within the Union. The proposal made by 'Notre Europe' (an institute headed by Jacques Delors) for the President of the European Commission to be appointed on a more political basis would help the Union to achieve its goal of strengthening its democratic legitimacy and turning remoteness into familiarity.<sup>10</sup>

### *The Council of Ministers*

In *An inclusive Europe II*, in the light of the provisions of the Treaty of Amsterdam, the Advisory Council advocated retaining the present system of weighting of votes in the Council of Ministers, whereby the Member States are divided into six clusters. This will allow the stable relations which the Member States have enjoyed over the past few decades to continue. In order to prevent the smaller Member States from being over-represented in the decision-making process (given the increase in their number), the

<sup>9</sup> *An inclusive Europe II*, p. 27.

<sup>10</sup> See *An inclusive Europe II*, p. 27. Under this proposal (made in 1998 prior to the elections to the European Parliament), each of the European political parties (or groups of such parties) would designate one of the candidates on its list for the European elections as being its preferred candidate for the presidency of the European Commission. This would allow voters to express a preference for the presidency of the Commission. The assumption is that the European Council, when appointing the President of the Commission, would be unable to ignore the candidate who had amassed the greatest support in the EP elections, particularly since the President of the Commission also needs to have the confidence of the majority of members of the EP. This proposal could be implemented without any treaty amendments, and would represent the first step on the road to an elected President of the European Commission.

large Member States could be allotted a larger number of votes. This would enable the current 'blocking minority' system to be retained, and hence guarantee stable relations between the Member States. There would then be no need to introduce a formula based, for example, on population size.<sup>11</sup>

#### *The European Parliament*

The Treaty of Amsterdam imposes a ceiling of 700 on the number of MEPs, in order to prevent the Parliament from growing too big and hence becoming ineffective. If, for example, five new Member States joined the EU and the present method of extrapolation were applied, the number of MEPs would increase to around 760. As a result, the number of MEPs would have to be reduced by about 60. This raises the question of how such a restriction on the number of MEPs is to be implemented in practice. This is discussed in greater detail in Section IV.1 below.

No Community-wide system has so far been introduced for elections to the European Parliament. The way in which MEPs are elected varies from country to country and is based on national electoral systems. The Parliament has itself come to the conclusion that the elections should be held in a more uniform manner, and has therefore proposed using a system of proportional representation linked to a quota scheme as the basis for the 2004 elections.<sup>12</sup> The Parliament has suggested going one step further at the 2009 elections by introducing a system of European voting lists for a certain percentage of MEPs. The Advisory Council stated in *An inclusive Europe II* that the European Parliament's proposals were praiseworthy and that the Dutch government should do its utmost to ensure that they were adopted. As well as advocating the extension of decision-making based on co-decision and a uniform legal status for MEPs, the AIV also stated in *An inclusive Europe II* that the question of how the number of MEPs should be proportionally reduced must be viewed in the context of these changes.<sup>13</sup>

#### *The Presidency*

The Presidency of the EU is held by each Member State in turn for a period of six months. The present situation, with a 15-member Union, is that each Member State holds the Presidency every seven and a half years. As the number of Member States increases, the gap between each country's successive Presidencies will get longer and longer. Together with the relative brevity of each Member State's Presidency, this led

11 See *An inclusive Europe II*, pp. 27-28.

In 1999 the scale of weightings is as follows:

10 votes: France, Germany, Italy and the UK;

8 votes: Spain;

5 votes: Belgium, Greece, the Netherlands and Portugal;

4 votes: Austria and Sweden;

3 votes: Denmark, Finland and Ireland;

2 votes: Luxembourg.

12 Simple proportional representation would result in the smaller Member States (given their relatively small share of the European population compared with the large Member States) having a far smaller number of seats in the Parliament than they have at present. In order to prevent this, the proposed system of proportional representation is linked to a quota scheme.

13 *An inclusive Europe II*, p. 29.

the Advisory Council to conclude in *An inclusive Europe II* that the system of rotating the Presidency will no longer be effective in a Union of more than 15 Member States. The AIV therefore advocated abandoning the present rotation system in favour of a system whereby the President is appointed for a longer period (at least two years).<sup>14</sup> This is discussed in greater detail in Section IV.2 below.

The conclusions and recommendations from *An inclusive Europe* and *An inclusive Europe II* that are quoted here were drawn up in 1997 and 1998. In the light of recent developments and the resulting new insights, the Advisory Council will return in Chapter IV to the question of how the institutions function and will make new recommendations on the subject.

<sup>14</sup> *An inclusive Europe II*, p. 30.



## **III A future scenario for the European Union**

### **III.1 Benchmarks**

The European Union is due to be enlarged on a scale and at a speed which are unprecedented in the process of European integration. It is obvious that this will necessitate far-reaching changes. In a Union comprising some 30 Member States, not only will the Union's decisiveness and effectiveness be threatened, but the implications of the democratic deficit will also be more apparent. The institutions must therefore be adapted. In the past, changes to the Union's institutional arrangements have been few and far between, and have usually been made on an ad hoc basis. This is discussed in detail in Chapter IV. More drastic changes are now needed, although in all probability they will be carried out in stages.

*The Advisory Council feels that, particularly in view of the institutional imbalance caused by changes in the past, the more drastic adjustments now required should be part of a long-term scenario for institutional development. Such a scenario need not yet provide specific answers to every single one of the many institutional questions that arise. However, it should indicate the general direction to be taken, with reference to a number of benchmarks which must be used to assess any proposed solutions.*

*These benchmarks are:*

- 1. Reducing the democratic deficit and greater involvement of European citizens;*
- 2. Effective decision-making;*
- 3. Strengthening implementation capacity (compliance with legislation) and supra-national policy implementation.*

Each of these benchmarks is discussed below, and a number of possible components for a future institutional structure are identified. These are discussed in further detail later on in this report.

#### **III.1.1. Reducing the democratic deficit and increasing the involvement of European citizens**

Although the EU is entirely made up of Member States with a democratic structure, it is not itself a democracy in the usual sense of the term. The prospect of an extension of the Parliament's powers held out to the Union's citizens by direct elections to the EP has so far materialised to only a limited extent. Elections to the European Parliament, intended to be European elections, have so far retained extremely national characteristics, without giving the citizens of the individual nations any greater sense of identifying with the Parliament, let alone of being European citizens. The low turnout for the 1999 elections to the EP is generally seen as a reflection of this.

The Treaty of Amsterdam was right to set a ceiling of 700 on the number of Members of the European Parliament (MEPs). The number of MEPs is not in itself any guarantee that people will be able to identify with the Parliament, whether as citizens of the various nations or of Europe. Greater involvement of ordinary citizens will depend on the extent to which the Parliament's status can be enhanced. This will depend in turn on (a) the composition of the Parliament, (b) its powers in relation to the European Commission and the Council, and (c) its functioning. If its status can be enhanced in all three of these areas, the European Parliament will become more visible. Increasing the Parliament's role in the legislative process is an essential part of this. The Advisory

Council will examine in further detail how citizens can be more closely involved, among other things by advocating a bicameral system of representation and individual accountability for European Commissioners.

*The status of the European Parliament can be enhanced to some extent by efforts to encourage the emergence of truly European political parties which are more than just associations of national parties. With the entry into force of the Treaty of Maastricht, provision has been made for financial support for European parties under the terms of the Treaties. Use should be made of this facility, particularly in view of the impending enlargement, which - given the increasingly heterogeneous Parliament that this will produce - will tend to undermine rather than strengthen the basis for the emergence of European parties. In this connection, the proposal (made in An inclusive Europe II and reiterated in Chapter II of this advisory report) that European political parties should designate political leaders who would also be their parties' candidates for the presidency of the European Commission needs to be emphasised. It should be added that a better, more regular supply of information on European politics and policy is essential for Europe's citizens. Media initiatives should be encouraged by ensuring that the European institutions do more to coordinate and support one another with regard to the supply of information. None of this will involve any treaty amendments.*

### **III.1.2. Effective decision-making**

Many of the decisions taken by the Council of Ministers still have to be unanimous. This requirement conflicts with the need for effective decision-making, and this can only get worse in a Union of 30 Member States. *The Advisory Council therefore takes the view that, at the present stage of integration, the unanimity rule should only be applied in an absolute minimum of cases, namely matters concerning the fundamental principles of the Union, institutional issues, policy-making for which there is not yet any basis in the Treaties, treaty amendments and so forth. However, even now that the principle of decision-making by qualified majority vote has been accepted, there is still a tendency to make exceptions, for example on fiscal and budgetary matters. This tendency should be resisted. At the same time, there should be a rule that QMV decisions are subject to co-decision by the European Parliament.*

The decision-making process in the second and third pillars has special characteristics of its own. It concerns areas in which potential powers are conferred in principle and can only be exercised after specific decisions have been taken. The pillar structure itself is the result of the Member States' reluctance to relinquish specific powers. As long as this reluctance prevails, the decision-making process within these two pillars will continue to be problematic. If the Member States have unanimously agreed to grant specific powers, it may be assumed that they wish to promote decisiveness and effectiveness in the sector or sectors concerned. In principle, this should not require any treaty amendments.<sup>15</sup>

Within the QMV decision-making process, the emphasis has increasingly shifted towards the weighting of votes. In *An inclusive Europe II*, the Advisory Council recommended that the larger Member States should be allocated more votes, in order to maintain the existing ratio between the large and small Member States. *Further consideration has convinced the Advisory Council that, while the position of the large Member States needs to be improved, this must not be done in such a way as to maintain*

<sup>15</sup> The possibility of 'constructive abstention' in the second pillar will be discussed in greater detail later on.

*unchanged their relatively strong position in terms of the weighting of votes, for that would greatly reduce the influence of the small Member States. All the Member States will therefore have to accept that, in a EU comprising some 30 countries, they will all play a less prominent role.* The question of the weighting of votes must be resolved at the IGC. Although, in practice, there is hardly ever a clear division between the large and the small countries when decisions are reached, continuing disagreement on this issue (which is often seen as a bone of contention) could adversely affect relations between Member States and even be an obstacle to enlargement.

### **III.1.3. Strengthening implementation capacity**

In previous efforts to integrate the Member States, the emphasis was on legislation. Yet the decision-making process concerns not only legislation, but also policy implementation. The European Commission and the Member States share responsibility for implementing the Union's policy. This has to do with the nature of the EU, which is not merely supranational, but also provides for intergovernmental cooperation in significant areas.

What is involved here is the implementation of policies in which the European Commission has (or should have) an essential part to play. Also involved is the exercise of powers conferred on the Community (in particular), for example with regard to trade policy and related instruments (anti-dumping measures, disputes within the World Trade Organisation, coordination of budgetary policy, employment policy, etc.), agricultural policy (pricing, etc.), competition policy, and coordination of policy among the Member States, taking account of the powers conferred on the Community.

Although the above examples are all taken from the first pillar, problems of implementation also arise in the other pillars, such as the CFSP (second pillar) or asylum and immigration policy (third pillar).

The functioning of the present EU, let alone a greatly enlarged one, depends entirely on its capacity to implement decisions (whether in the form of legislation, conferred powers, or policy) effectively and appropriately. A few examples will serve to clarify this statement:

- The application of the EMU legislation has shown how difficult the practical application of criteria laid down in treaties can be. This is also true of the rules on excessive deficits, which are set out in detail in the Stability and Growth Pact. If EMU is to function properly, it is essential for obligations, once agreed, to be fulfilled. The procedures laid down to this end (which ultimately include the power to impose sanctions) mainly depend for their effectiveness on their preventive effect. This can be enhanced by strengthening the role of the European Commission, in particular by granting it the power to express its concern to a Member State at an early stage. Article 104 (formerly Article 104C) of the Treaty requires the European Commission to address an opinion to the Council if it believes that an excessive budget deficit exists, or may occur, in a Member State. The Council then decides whether or not an excessive deficit exists and what further action should be taken. *The Advisory Council proposes that the European Commission should be granted powers to forward the opinion it addresses to the Council of Ministers in the event of an existing or imminent excessive budget deficit in a Member State simultaneously to that country's parliament.*<sup>16</sup>

<sup>16</sup> A proposal for more stringent coordination, with a special role for the European Commission, was made by the Spierenburg Committee back in 1975 (*Europese Unie*, report by the Advisory Committee on the EU, The Hague 1975, p. 40).

- Asylum policy is a major political and social issue in all the countries of the present EU. For very good reasons, the Member States have attempted, at the highest political level, to devise a European policy with which Europe's citizens can identify. The immediate relevance of asylum policy to citizens will greatly increase in an expanding EU. Differences in levels of prosperity and also employment could attract large numbers of immigrants. Possible border control problems on the external frontiers of new Member States could also have a considerable impact on this. An effective European policy is therefore needed. In 1999, the Tampere European Council took an important step in this area by officially declaring that supranational legislation must eventually lead to a common asylum procedure and a uniform status (valid throughout the EU) for persons who have been granted asylum. This decision appears to have brought a supranational approach to asylum policy within reach and will make asylum policy considerably more effective.<sup>17</sup>
- The Convention on Climate Change and its follow-up in Kyoto have generated great public interest in recent years. All that the Member States of the EU are currently doing is coordinating their efforts in the field of climate policy. In the interests of effectiveness and in order to prevent unfair competition, CO<sub>2</sub> policy instruments (including tradable rights and CO<sub>2</sub> taxes) must be developed at European level. The European Commission must therefore be given powers to initiate policy on climate change and CO<sub>2</sub>. At the same time, the EU must determine its standpoints on CO<sub>2</sub> policy in relation to the applicant countries and other countries with which it has association agreements. *The Advisory Council therefore believes that it is necessary to draw up a European policy on climate change and CO<sub>2</sub>, with the European Commission being empowered to initiate policy and decisions being reached by a majority in the Council of Ministers.*
- If decisions to take joint action under the CFSP are reached in accordance with the complicated procedures that currently prevail, there is a risk that implementation will prove difficult. The European Union's performance in the Balkans in general, and in Kosovo in particular, is a good example. Together with budgetary problems, inadequate demarcation of the respective responsibilities of the Union and its various institutions has hampered implementation and has often made the Union's actions seem unclear and unconvincing in the eyes of both the media and the general public. While the Union's ability to act in such circumstances is in itself a good thing, it is the manner in which it is done that will ultimately determine how convincing such action is. This is especially true now that the EU has decided (at the Cologne and Helsinki European Councils) to develop a European Security and Defence Policy. *In view of this intensification and acceleration in the development of the Union's foreign, security and defence policy (for the institutional arrangements, see Section IV.2 below), the Advisory Council recommends that the scope for developing a European defence industry policy be investigated. One instrument that can be used for this purpose is co-financing by the European Union.*

### **III.2 Promoting European integration: towards a new institutional structure**

The European Union is, and will continue to be, a unique construct. It has both supranational and intergovernmental features, and its institutions are fashioned along these

<sup>17</sup> For more details, see 'Asylum information and the European Union', Advisory Report No. 8 by the Advisory Council on International Affairs, July 1999.

lines. Any attempt to reform the Union must take these unique arrangements into account. To varying extents, the Member States want to be part of a greater (supranational) whole, but at the same time, and again to a greater or lesser extent, they want to maintain their sovereignty and authority in numerous areas. It is therefore not surprising that the Union's institutional structure is unique. The supranational element is particularly evident in the European Commission, the Court of Justice and increasingly the European Parliament, when it comes to legislative initiatives, co-decision on legislation, appointment and oversight of the Commission, and partial authority over the budget. The intergovernmental element is apparent in the Council of Ministers, which takes key decisions, particularly at intergovernmental conferences which appoint the members of the Commission and decide on further integration. The Council of Ministers is not accountable to any supranational body. The intergovernmental side of the EU is most evident in the European Council, which has evolved into the Union's main policy-making body.

*The Advisory Council takes the view that future proposals regarding the further integration of the EU (in the sense of strengthening its institutional structure) should be based on this profile of the Union, particularly - but by no means solely - with a view to enlargement. The structure of the Union offers sufficient scope for proper account to be taken of the requirements and wishes indicated in Sections III.1.1, III.1.2 and III.1.3. Success will depend on drawing up a future scenario for the Union's institutional structure with which such a large majority of both old and new Member States can identify that the remainder will also be induced to accept it. Any scenario for the future must take this as its starting point.*

*At the same time, as already indicated, it is urgently necessary for recommendations for fundamental changes to the Union's institutional structure to be presented as part of such a future scenario. In the AIV's view, a trend towards greater democracy, effectiveness and Community-level implementation in the broadest sense is essential here. In this connection, the Advisory Council also believes that supranational decision-making should not only be maintained in the first pillar, but also that the third pillar should be rapidly incorporated into the first, and that supranational decision-making should be the ultimate goal in the second pillar as well.*

*In the light of all this, the main focus should be on the further democratisation of the EU. The need for visibility and a sense of identification in a Union of European citizens and European countries (the emphasis is still on the latter) is paramount. It would therefore be advisable to give citizens greater control over the EU through two channels: (1) a directly elected parliament (as referred to in Section III.1.1.) and (2) a chamber composed of representatives of the Member States (a Chamber of States). The latter would represent the Member States in such a way that the citizens of the various nations could identify with it. The present Council of Ministers, which is intended to represent the Member States, does not fulfil this role adequately, since Europe's citizens have no direct control over it and its deliberations take place behind closed doors. This line of thinking, which has been formulated with the long-term development of the EU in mind, ought eventually to lead to a bicameral system of representation in which legislative powers are vested in the two chambers of parliament and citizens are involved in the EU through representation at European level (the European Parliament) and at national level (the Chamber of States). The European Parliament would represent the people of Europe by means of a system of proportional representation, in principle through European parties, while the Chamber of States would represent the Member States, details of its size and how many members each Member State would*

have being determined at a later stage. This idea, which has also been proposed by others, can naturally be put into practice in various ways. In the initial phase, for example, the national parliaments could be involved in designating or electing the members. Direct elections to the Chamber of States are also a possibility, and may well be desirable in the long run. Decisions on this should be left to the Member States for the time being, but the long-term aim should be uniform elections.

Given the institutional structure described earlier, the Council of Ministers would continue to have an essential function - that of coordinating inter-state policy in cases where the implementation of legislation has not (or not yet) been delegated to the European Commission or the relevant powers have yet to be conferred. Legislative powers, on the other hand, could gradually be transferred to the two chambers of parliament, since both citizens and Member States would be able to express their views there through elected representatives.

The European Commission would act as an initiator, mediator and executor. The jurisdiction of the European Court of Justice would gradually be extended over the various pillars. In the long run, the Council of Ministers and the European Council would have a less prominent part to play. This is eminently defensible, for legislative activities would largely be in the hands of the Commission and the two chambers of parliament. However, the European Council would still be responsible for guiding the integration process in general terms.

A scenario of the kind outlined here, which is in keeping with the present institutional structure, can only be achieved in the long term. Meanwhile, however, it can serve as a guide for short-term developments and the proposals made by the Advisory Council in this advisory report.

Anything which helps to:

- strengthen the initiating and executive role of the European Commission;
- strengthen the supervisory and co-legislative role of the European Parliament; and
- generally shift the focus of the Council's activities towards general coordination of policy (with simpler procedures and a smaller number of formations<sup>18</sup>) is in line with the future scenario outlined here and should therefore be supported.

### **III.3 Differentiation**

*An inclusive Europe* and *An inclusive Europe II* included a number of observations on the subject of differentiation. The AIV took a guarded position on the desirability of this. Nevertheless, a closer look at the history of European integration (even in a considerably more homogeneous EU) shows that integration has always been accompanied by some form of differentiation. A distinction must be made here between differentiation within and outside the terms of the Treaty. Examples of differentiation within the terms of the Treaty are relatively long transition periods or authorised derogations from certain elements of the single market or competition policy. Differentiation outside the terms of the Treaty includes the various systems of monetary coordination which have finally been incorporated into the Treaty without all the Member States

18 The Guidelines for reform and Operational Recommendations drawn up by the Helsinki European Council on 10 and 11 December 1999 provide a useful basis for developments in this direction (Annex III to the Presidency Conclusions).

being required to participate in them. The same applies to the Schengen agreement, which has likewise been incorporated into the Treaty in a differentiated form. In fact, the oldest instance of differentiation is the Benelux Union; the former Article 233 of the Treaty explicitly states that the provisions of the Treaty shall not preclude the existence or completion of this regional union. The Treaty of Amsterdam contains an important innovation, in that it allows room for forms of closer cooperation which have not been specified in advance. However, careful examination of the wording of the Treaty makes it clear that it was only possible to reach a consensus on this by setting a number of highly restrictive conditions. The Treaty of Amsterdam also allows a form of differentiation in the second pillar - constructive abstention - whereby Member States can develop policy within the CFSP framework without all of them being required to participate in it.

If these conditions are taken into account, it may be concluded that Member States will be able to avail themselves of this opportunity for differentiation only in highly unusual circumstances and, in all probability, only on an exceptional basis. Meanwhile, there is a renewed public debate as to the desirability of differentiation. Both the President of the new Commission, Romano Prodi, and Jean-Luc Dehaene, in his capacity as advisor for the next IGC, have publicly drawn attention to the differentiation option in connection with enlargement. The Advisory Council also cautiously hinted at this in *An inclusive Europe II*. The current pressure to agree on a more definitive, shorter timetable for the accession of at least some of the applicant countries inevitably means that account will have to be taken of even greater diversity in the initial phase of enlargement.

*In view of all this, the Advisory Council believes that the scope for closer cooperation between Member States, as provided for in the Treaty of Amsterdam, should be broadened. In the AIV's opinion, two of the requirements currently laid down in the Treaty need to be modified. First, the requirement that only a majority of Member States can decide to institute such cooperation should be amended so as to permit smaller groups of Member States to cooperate more closely. Second, the Treaty requirement that decisions must be unanimous - which effectively gives every Member State a veto - should be scrapped.*

Abandonment of the first requirement, as recommended here, would allow the emergence of various groups of Member States which could work closely together and thus form a number of 'leading groups'. *The Advisory Council believes that the European Commission should play a coordinating role in such situations and, in the case of a first-pillar policy, examine such cooperation in accordance with Article 11 (new) of the EC Treaty. The question of differentiation must be discussed at the forthcoming IGC.*

## IV The institutions

The request made to the Advisory Council to submit an advisory report on the functioning of the institutions is formulated in such broad terms that the AIV felt it must impose some restrictions of its own. The EU's language regime will therefore not be discussed, nor will the functioning of the European Court of Auditors, the Economic and Social Committee or the Committee of the Regions. This is not to say that the expected significant increase in numbers (in the Court of Auditors and the Economic and Social Committee) and regions (in the Committee of the Regions) will not affect the functioning of these bodies. However, they appear to be less relevant to the key issues relating to the European Union's institutional structure. What will be discussed here is the functioning of the European Parliament, the Council of Ministers, the European Commission, the European Council and the Court of Justice.

As already mentioned, the accession of a large number of new Member States has major institutional implications. It will also profoundly affect the functioning of the institutions.

### IV.1 The European Parliament

The Treaties of Maastricht and Amsterdam significantly extended the powers of the European Parliament. In particular, the considerable extension of the co-decision procedure, which is starting to become the rule rather than the exception in the legislative process, has affected the functioning of the Parliament. The need not only to achieve compromises with the Council of Ministers but also to forge parliamentary majorities in order that the Parliament can exert influence has greatly increased the amount of discipline shown by MEPs. Deliberations in the European Parliament are increasingly result-oriented. If a considerably greater diversity of political groupings and national or regional interests has to be taken into account in the future, the need for parliamentary discipline will be even greater. *The emergence of political parties at European level and a clearer sense of identification on the part of the general public are essential in order for the Union's citizens to develop the necessary minimum of interest in and commitment to the Parliament. Otherwise there is a risk that the bigger the EU gets, the more distant 'Brussels' will become from its citizens.*

As regards the functioning of the European Parliament in relation to the European Commission, there is now some experience of the new powers conferred on the Parliament by the Treaty of Amsterdam. Two issues are involved here: (a) the way in which the Parliament itself handles these powers, and (b) the way in which the exercise of these powers affects the functioning of the European Commission and interaction between the Parliament and the Commission. *The emergence of European political parties will help to make the Parliament more European in outlook and more result-oriented. The more successfully the European Parliament can exercise control over the composition of the European Commission and the quality of its members in European terms, not only across national borders but also across the boundaries between national political parties, the more relevant it will be. Rather than the need to perfect or change institutions, what matters here is the political behaviour of parliamentarians and parties in expressing the European dimension of the powers conferred on them.*



As regards the second issue (the impact of the exercise of the Parliament's new powers), the question arises as to whether the Parliament's greater political awareness and prestige following the resignation of the European Commission headed by Jacques Santer in March 1999 will make it more self-confident and assertive in its dealings with the Council of Ministers, and especially with the European Commission. The way in which the approval of the new Commission was implemented does seem to suggest that no substantial changes in behaviour are likely in this area. However, it is not inconceivable that the Parliament's newly acquired power over the Commission will enable it to develop a higher profile by insisting that the Commission should adopt or implement certain policies. The Parliament's right under the terms of the Treaty of Maastricht to request proposals from the Commission is an extension of this, although little use has been made of it so far.<sup>19</sup>

It seems likely - particularly if there is little change in the relationship between the Parliament and the Council - that the activities of the Commission will be the Parliament's main area of concern. In this connection, the undertaking given by the President of the Commission regarding the importance he will attach to political assessments of individual Commissioners by the Parliament is surely significant. It implies that he will take negative assessments of individual members of the Commission very seriously, as part of his agreement with the Commissioners that he can require them to give up their seats if they fail to function adequately. Opinions differ as to the formal status of this undertaking, given that the Treaty makes no provision for individual accountability of Commissioners; however, it is already playing a part in the debate on the subject and is accordingly becoming part of institutional practice. The undertaking will certainly affect the relationship between the Commission and the Parliament, and may well help to speed up the adoption of new treaty provisions on individual accountability. *In the opinion of the Advisory Council, the events that took place between the European Commission and the European Parliament in 1999, culminating in the Commission's resignation, make it clear that this subject must be discussed at the forthcoming IGC, with a view to establishing the principle of individual accountability as soon as possible.*

#### **IV.2 The Council of Ministers**

From an institutional point of view, the Council of Ministers has been largely unaffected by the drastic changes made to the Treaties, except as regards its influence on legislation in the co-decision procedure and its increasing influence over the functioning of the European Council. At the same time, of course, the functioning of the Council of Ministers will be affected by the increase in the number of Member States, since the number of its own members will increase accordingly. Now that the number of Member States appears set to double, the implications for the functioning of the Council of Ministers will be all the greater. In this connection one can point to a shift in the centre of gravity of the decision-making process from the European Commission to the Council of Ministers, which share the right of initiative regarding legislation and implementation. Particularly significant in this context are the appointment of a High Representative for foreign and security policy, the apparent acceleration in the development of a European Security and Defence Policy, and the increasing focus on policy-making in the second and third pillars. In practice, the European Commission seldom makes use of its right of initiative in the second and third pillars. At the same time, the enhanced quality of the Council's secretariat, which now effectively has two secretaries-general plus staff

19 This right is enshrined in the new Article 192 of the Treaty.

to draft Europe's foreign policy and later also its security policy, will increase its influence in the inter-institutional arena. *The Advisory Council is aware that its earlier recommendation to replace the rotating presidency with a more permanent arrangement could reinforce this trend. However, this recommendation remains essential in the interests of continuity and efficiency, which are of paramount importance for the presidency of the EU. A more permanent presidency could have a 'depoliticising' effect and alter the whole nature of the presidency. A presidency that focused more closely on technical coordination would in itself be very much in keeping with a greatly enlarged EU; however, it would inevitably have implications for the division of responsibilities between the institutions in the second and third pillars. In view of this, the Advisory Council believes that consideration could be given to the idea of European Commissioners chairing the European Council or meetings of the Council of Ministers.*

For the time being, however, it appears more realistic to assume that the Council of Ministers and its secretariat will play a more dominant part in the integration process. *The Advisory Council feels that such a shift in the institutional balance of power at the expense of the European Commission is undesirable, and therefore takes the view that countervailing forces should be developed. In particular, this means strengthening the position of the European Commission (see also Section IV.3).* Another reason why this is important is that the growing interlinkage between the legislative powers of the Council of Ministers and the European Parliament will result in a different, more supra-national balance of institutional power in the EU, especially if Parliament's influence on legislation can be further increased in the future.

The desirability of strengthening the CFSP is discussed in an advisory report entitled *Developments in the international security situation in the 1990s: from unsafe security to insecure safety*.<sup>20</sup> The AIV can therefore confine itself here to a discussion of its institutional structure. First, it should be noted that the importance of developing the CFSP lies in the connection between first-pillar policy and policy that should be developed in the second pillar. Second, it is in the interests of the Member States for the EU to speak with one voice on international affairs. *Now that the development of the CFSP is gathering momentum and Javier Solana has been appointed as High Representative, the Advisory Council recommends that the IGC 2000 should also clarify the roles of the various institutions and bodies - particularly the High Representative, the European Council, the General Affairs Council and the European Commission - within the CFSP and should carefully specify their powers in this regard. The AIV emphasises the need to safeguard the role of the European Commission as the institution responsible for guaranteeing coherence in the EU's policy. In this connection, the Commission should be granted more powers than it currently has under the terms of the Treaty. However, the Advisory Council also feels that the Commission should make greater use of the powers it already has.*

### **IV.3 The European Commission**

In Section IV.2 it was suggested that members of the European Commission could chair the European Council or the Council of Ministers. It can also be said that the position and functioning of the European Commission have recently been subject to

20 See 'Developments in the international security situation in the 1990s: from unsafe security to insecure safety', Advisory Report No. 10 by the Advisory Council on International Affairs, September 1999.

erosion. Examination of three fundamental treaty amendments (leaving aside the important amendment to European budget law) leads inescapably to the conclusion that the institutional system has frequently been modified on an ad hoc basis, without regard for its overall coherence. To the extent that the changes have involved extending the powers of the European Parliament, they are undoubtedly based on an intrinsically laudable desire to remedy the democratic deficit. The relative strengthening of the position of the Council of Ministers has already been mentioned. However, all this has meant a relative weakening in the position of the European Commission. *Since the Commission, as one of the EU's most typically supranational institutions, has the task of monitoring and where possible strengthening integration, as well as encouraging more supranational policy-making, it is vital that its position should be strengthened in such a way as to correct the existing imbalance. In this connection, attention must be paid, on the basis of the present institutional structure, to the supranational status of the Commission. This does not primarily depend on whether every Member State has a Commissioner, but rather on the position the Commission adopts on legislation and policy implementation. If, following enlargement, the Commission were to have fewer members than there are Member States, this could enhance not only its supranational status, but also its identity as a supranational body. This is unrelated to the other considerations which have led the Advisory Council on earlier occasions to recommend reducing the size of the Commission.*<sup>21</sup>

Apart from the aforementioned modifications to the institutional system, the fact that the Commission's legislative activity has been considerably reduced is also of relevance to its position. This particularly applies to the first pillar. In the future, legislative initiatives in the second and third pillars may generate more legislative activity for the Commission. For the time being, however, such activity is more the preserve of the Council of Ministers. On the other hand, the Commission is playing an increasingly important role in policy implementation and management. This includes monitoring of compliance with what is often complicated legislation, as well as management of the greatly increased flows of funds for Community and Union purposes. It is hardly surprising that the tension which built up as a result recently came to a head with the resignation of the European Commission headed by Jacques Santer in March 1999.

Management of the EU has become one of the Commission's most important tasks. Unfortunately it must be concluded that the Commission is not adequately equipped for this, either institutionally or in terms of staffing. Moreover, as far back as the Treaty of Luxembourg it was expressly agreed that greater executive powers would be conferred on the European Commission. The involved debate that has taken place over the past few decades on the range of the committees' powers has never succeeded in producing a satisfactory solution to this serious problem in EU management. *In the opinion of the Advisory Council, the present committee procedure should be considerably simplified, such that the Commission can carry out its executive tasks properly. The decision by the Council of Ministers in July 1999 to simplify procedures and clarify the selection of committees is undoubtedly an improvement, but it remains to be seen in practice whether this will be sufficient to enable the Commission to exercise its executive powers adequately.*<sup>22</sup>

21 *An inclusive Europe II*, pp. 26-27.

22 OJ no. L 184, 17 July 1999, pp. 23-26 (<http://europa.eu.int/celex/cgi/>).

The European Commission and the Member States share responsibility for carrying out supranational tasks. There is no clear demarcation of powers, and the arrangements for supervision and monitoring remain inadequate. Enlargement will render the issues of supervision and monitoring even more pressing, particularly owing to the introduction of European legislation in the new Member States. If the respective rights and obligations of the European Commission and the Member States with regard to the implementation of EU policy remain unclarified, internal management reports on the optimum functioning of the EU will largely remain a dead letter. Substantial progress will have to be made here; indeed, this can already be said of the present situation. *The Advisory Council therefore urges the government to pay especially close attention to matters concerning the Commission's executive competence. The proposals on this subject in the Treaty of Luxembourg have so far yielded insufficient results.*

#### **IV.4 The European Council**

The Treaty of Maastricht assigns a prominent role to the European Council. While the Council's general brief is to create impetus and issue political guidelines, it also has specific tasks in all three pillars, such as laying down socioeconomic guidelines for EMU or general foreign policy guidelines for the second pillar. Although the European Commission was initially the only institution of the EU that was entitled to set agendas, and still has a substantial entitlement to propose items for the European Council's agenda, the latter is set according to a separate, largely autonomous procedure. The fact that the President of the European Commission is *ex officio* a member of the European Council does not detract from this.

The problems of coordination that will arise in the Council of Ministers as a result of the enlargement of the Union will, of course, also occur in the European Council (and in the preparations for it). These problems will become more serious if the present tendency to convene the European Council more frequently persists. Given the scale and the seriousness of the problems now facing the EU, particularly in the context of enlargement, this seems a likely scenario. The question therefore arises as to whether the highly informal process of setting agendas and preparing decisions can be maintained in the long run, and whether rather more formal procedures for preparing decisions and legislating is not inevitable. This is surely also important from the point of view of the European Council's legitimacy. Admittedly, all the members of the Council enjoy a democratic legitimacy of their own in their respective Member States, but this does not extend to the European Council as a body. Greater participation by the Parliament in the European Council's activities would improve this situation. *In this connection, the Advisory Council makes the following recommendations, which can be implemented without amending the Treaties and which the Dutch government can support through channels other than the IGC 2000:*

- *there should be more meaningful reporting of Council deliberations to the European Parliament;*
- *prior to the European Council, the European Parliament should debate both socioeconomic guidelines in the context of EMU and matters relating to the CFSP;*
- *the European Parliament should be entitled to propose agenda items;*
- *the European Council should discuss the customary statement by the President of the European Parliament;*
- *the President of the European Parliament should be present when agenda items of relevance to the Parliament are being discussed.*

#### IV.5 The Court of Justice

In the opinion of the Advisory Council, the criticisms recently voiced by some Member States regarding the functioning of the Court of Justice and the way in which it exercises its powers are not sufficiently well-founded to warrant making any changes to the Court's powers. Furthermore, the Court has recently exercised a measure of self-restraint in its interpretation of the powers conferred on the Union or Community by the Treaty. It thus appears to have retreated to some extent from what some critics consider a tendency to interpret the Treaty according to the spirit rather than the letter of its provisions.

The proposed enlargement of the EU, as well as the entry into force of the Treaty of Amsterdam, will have major implications for the functioning of the Court of Justice of the European Communities and the Court of First Instance. The main implications for the Court of Justice will be the expected increase in the number of preliminary ruling references (whereby national courts can seek preliminary rulings from the Court of Justice) as a result of the entry into force of Title IV of the EC Treaty (on visas, asylum and immigration), the entry into force of legislation on the third phase of the EMU (particularly the introduction of the euro), and the entry into force of Title VI of the Treaty on EU (on police and judicial cooperation).

The Court of Justice has recently analysed the problems that are expected to arise as a result of this increase in its workload.<sup>23</sup> In addition, the question that immediately arises as regards the actual organisation of the Court of Justice and the Court of First Instance is whether the existing relationship between the number of judges and the number of Member States should be maintained after enlargement. As long ago as 1995, the Court of Justice indicated that a significant increase in the number of judges could mean that a full session of the Court would involve crossing the invisible boundary between a meeting of a court of justice and a consultative assembly. On the other hand, the presence of one judge from each Member State in both courts enhances the legitimacy of the courts' decisions. As it had already done in the case of the European Commission, the AIV originally considered recommending a reduction in the number of judges following enlargement, so that each nationality would no longer be represented. In the end, however, it decided not to do so, for the following reasons: (1) the Court of Justice can divide itself up into various Chambers, each with a limited number of judges; (2) the presence of judges who are nationals of new Member States can help such countries to identify with EU law enforcement procedures. *Particularly with regard to the fundamental and organisational aspects of this issue, the Advisory Council subscribes to the Dutch government's view that the future of the Court of Justice must be on the agenda of the forthcoming IGC.*

In its analysis, the Court of Justice makes various proposals of its own on how to reduce the existing and expected workload. These range from proposals which can be implemented simply by altering procedures, to ones which would require a treaty amendment. *The Advisory Council subscribes to the Court's basic principle that all proposals concerning the future of the European Union's judicial system must satisfy the following fundamental criteria:*

<sup>23</sup> This analysis 'The future of the judicial system of the European Union: proposals and reflections', was published in Strasbourg on 28 May 1999.

- *the need to safeguard the unity of European law through a supreme judicial body;*
- *the need to ensure that the legal system is transparent, comprehensible and accessible to the general public; and*
- *the need for decisions to be handed down without unacceptable delays.*

*The Advisory Council shares the government's view that (as proposed by the Court of Justice) the Court of Justice and the Court of First Instance should be empowered to amend the Rules of Procedure; any more stringent provisions can be incorporated into the Court's statutes.*

*In the light of the aforementioned criteria, however, some of the changes proposed by the Court of Justice appear more questionable, such as the suggestion that preliminary ruling references to the Court by national courts should always be accompanied by a proposed reply. Such a change would increase national courts' workload and in many cases would not substantially reduce that of the Court of Justice. In the interests of keeping the judicial system accessible to the general public, the pros and cons of proposals must also be thoroughly weighed up, such as the proposal to introduce a selection mechanism for 'meaningful' preliminary ruling references and 'meaningful' appeals to the Court of Justice from the Court of First Instance. *In order to reduce the Court of Justice's workload, consideration could be given to the proposal - which is already backed by the Dutch government - that the Court of First Instance be empowered to deal with preliminary ruling references at first instance. Especially if the number of judges in the Court of First Instance were also increased, this could substantially reduce the Court of Justice's workload. At the same time, the Advisory Council suggests that the possibility of appealing to the Court of Justice against preliminary decisions by the Court of First Instance could be opened up to ordinary citizens. The Advisory Council is aware that this would increase the workload. However, it is citizens who have the most direct interest in the outcome of cases and, more than the Member States, they have proved themselves an effective catalyst for the judicial enforcement of agreements in the field of European integration.**

*In the opinion of the Advisory Council, however, the Court's proposals need to be considered in their entirety and be discussed with a view to a possible treaty amendment as well as possible procedural and organisational changes. These issues must be examined thoroughly, and the Advisory Council will be glad to offer further advice on the subject if so required.*

#### **IV.6 A new basis for dealings between Member States?**

The importance of the functioning of the institutions for the functioning of the EU as a whole was indicated above. Recently, ways of exerting mutual influence which are process-based rather than based on the functioning of (organised) institutions have become an increasingly prevalent part of administrative practice, including that of the EU. Examples include peer pressure, benchmarking and peer review. *The Advisory Council believes that these can be useful in helping to achieve a consensus among Member States. However, they can only be complementary to a process of formalised decision-making by the European institutions within the framework of the legal community that is the EU.*

## **Annexes**





Professor R.F.M. Lubbers  
Chair, Advisory Council on International Affairs  
P.O. Box 20061  
2500 EB The Hague

Date: 31 May 1999  
Ref.: SBO 592/99  
Page: 1/3  
Annex(es):  
Re: Request for advice on institutional reforms in the European Union

Dear Professor Lubbers,

The Treaty of Amsterdam, which entered into force on 1 May 1999, includes a Protocol on the institutions with the prospect of enlargement of the European Union. Before the Union is next enlarged, the Member States will review the provisions concerning the institutions. The number of countries that accede to the Union will determine whether only the composition of the Commission and the weighting of votes in the Council must be adjusted (Article 1 of the Protocol) or a comprehensive review of the composition and functioning of the institutions is necessary.

The Cologne European Council will reach further decisions regarding the approach to, and the timetable for, the institutional reforms which were left open in Amsterdam. When should the Intergovernmental Conference begin, and when should it be completed? The Presidency, supported by various Member States, takes the view that the IGC should be completed by the end of 2000. Among other things, the question of the approach to be taken concerns the preparation of the conference and the way in which the negotiations will be conducted. Should the foreign ministers be responsible for the IGC, and will they again designate personal representatives to take part in the negotiations? A third general issue which is likely to be raised in Cologne is the conference agenda.

In view of the aforementioned Protocol, defining the limits of the agenda is a difficult matter. The government takes the view that the IGC should not merely discuss the composition of the Commission and the weighting of votes in the Council. Since it can be safely assumed that the European Union will have more than 20 members within a few years, the functioning of the other institutions and the way in which they cooperate should also be discussed. Furthermore, the government believes that the IGC should be used to further strengthen the effectiveness of the European Union and the democratic controls that operate within it.

The government has read the Advisory Council's reports 'An inclusive Europe' and 'An inclusive Europe II' with great interest. The chapters on the need for more extensive institutional reforms than those agreed in Amsterdam offer useful material for determining the government's goals at the forthcoming IGC. The government will shortly submit to the Lower and Upper Houses an initial memorandum on the timetable for the IGC, the approach

to be taken, and the agenda. A second, more substantive memorandum on Dutch policy goals with regard to institutional reforms will be drawn up in the autumn.

The government would appreciate receiving from the Advisory Council, before the IGC begins and if possible in the autumn, an advisory report on the institutional reforms that are relevant to the future of the European Union.

In particular, the government requests the Advisory Council to examine the following issues:

- the composition, powers and functioning of each of the institutions;
- the way in which the institutions cooperate;
- the respective roles of the institutions and the Member States in representing the European Union (Communities) externally;
- possible improvements in the governance of the European Union (implementation of European legislation and monitoring of compliance, legal instruments, public access to information, etc.).

In examining these various aspects of institutional reform, the Advisory Council could take account of the government's wish to make the European Union more effective and democratic. The government would also appreciate an assessment by the Advisory Council of Dutch interests in the institutional reforms.

We look, also on behalf of the Minister of Defence and the Minister for Development Cooperation, forward to receiving your report.

(Signed)

J.J. van Aartsen  
Minister of Foreign Affairs

(Signed)

D. Benschop  
State Secretary for Foreign Affairs

**List of terms and abbreviations**

<b>Advisory Council (AIV)</b>	Advisory Council on International Affairs
<b>CEI</b>	European Integration Committee
<b>CFSP</b>	Common Foreign and Security Policy
<b>Commission</b>	European Commission
<b>Community</b>	European Community (Communities)
<b>Council</b>	Council of Ministers/European Council of heads of state and heads of government
<b>EDC</b>	European Defence Community
<b>EEC</b>	European Economic Community
<b>ECSC</b>	European Coal and Steel Community
<b>EMU</b>	Economic and Monetary Union
<b>ESDP</b>	European Security and Defence Policy
<b>IGC</b>	Intergovernmental Conference
<b>Parliament</b>	European Parliament
<b>Treaty</b>	Treaty of Amsterdam
<b>Union</b>	European Union

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