

A MULTI-TIERED EUROPE
THE RELATIONSHIP BETWEEN THE EUROPEAN UNION
AND SUBNATIONAL AUTHORITIES

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Foreword

On 4 October 2000 the Minister of Foreign Affairs and the State Secretary for Foreign Affairs asked the Advisory Council on International Affairs (AIV) to produce an advisory report on the relationship between subnational authorities and the European Union. The full text of the request for advice is reproduced in Annexe I.

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: Prof. F.H.J.J. Andriessen (chair), Dr B. Knapen (deputy chair), H.J. Brouwer, W.S.J.M. Buck, A.E.J.M. Cook-Schaapveld, P. Dankert, N. Kroes, H.C. Posthumus Meyjes, Prof. J.Q.T. Rood, P. Scheffer, W.K.N. Schmelzer, Prof. A. Szász, M.G. Wezenbeek-Geuke and Prof. J.W. de Zwaan. In drawing up the report the CEI was assisted by its official advisors R.C.J.M. van Schreven and J.A. Werner (Ministry of Foreign Affairs). The secretary was M.M.J. Louwerens (secretary of the CEI). The staff were assisted in drawing up the report by A.S. Brinks and M. de Lange (AIV trainees). At its meeting on 26 February 2001, the AIV discussed this report and agreed on the procedure leading to its adoption on 19 April 2001.

During the preparation of this report, the following five experts on Europe and subnational authorities shared their knowledge and information with the CEI: Prof. M.C. Brands (Germany Institute, University of Amsterdam), W.T. van Gelder (Queen's Commissioner in the Province of Zeeland and member of the Netherlands delegation to the Committee of the Regions), Prof. B. Hessel (University of Utrecht), Dr B. Hoetjes (University of Maastricht and Clingendael Institute) and Prof. J.T.J. van den Berg of the Association of Netherlands Municipalities (VNG). Further information was obtained from Frank Hilterman of the VNG. The AIV is extremely grateful to all concerned for their willingness to discuss their views and knowledge with the members of the CEI.

H.C. Posthumus Meyjes and the secretary of the CEI attended the five-day conference on 'A Europe of the Regions' held at Wilton Park, Sussex, in 2000.

The AIV considers the relationship between subnational authorities and the European Union (EU) to be a very important issue - firstly because regionalism in a number of Member States has led to institutional changes within the European Union aimed at strengthening the influence and position of subnational authorities, and secondly because the relationship between the various tiers of government is changing as a result of the continuing extension and growing importance of European legislation that affects subnational authorities. It seems likely that subnational authorities will come to play a more significant role within the European Union. Moreover, this issue has been on the EU agenda since the end of the Nice IGC in December 2000. Part of the debate on the final goal and the constitutional arrangements of the European Union concerns the delimitation of powers, and this topic will be on the agenda of the IGC planned for 2004. Finally, the forthcoming enlargement of the European Union will ultimately increase the number of Member States to more than thirty, and this too will affect the relationship between subnational authorities and the EU.

Before the government's questions can be answered, the meaning of the term 'sub-national authorities' needs to be clarified. Attempts can be made to define it from a number of different angles (administrative, sociological, etc.). However, whichever angle is adopted, it is impossible to arrive at an unambiguous definition.

This advisory report concerns the relationship between the European Union, the Member States and subnational authorities. For the purposes of this report, the AIV has therefore opted for the administrative definition - namely, all tiers of government below national level. Though admittedly rather broad, this definition comes closest to the reality of a Europe with a multi-tiered, diverse administrative structure. A term that can be used to describe various tiers of government operating as part of an administrative network is 'multi-level governance'. In terms of 'administrative weight', the German and Austrian states (*Länder*) and the Belgian regions (with powers which in other countries are exercised at national level) are at one end of the spectrum, and subnational authorities with less extensive powers (such as the provinces in the Netherlands, and smaller local authorities in all the Member States) are at the other. Clearly, there is a considerable amount of variation in between these two extremes.

As already mentioned, subnational authorities are increasingly involved in implementing, applying and enforcing EU policy. This occurs at three distinct levels:

1. EU policy that is specifically aimed at 'regions' (regional policy, including structural funds);
2. EU legislation that affects subnational authorities, in such fields as the environment, competition, social affairs and employment, the four freedoms (free movement of persons, goods, services and capital), as well as parts of third-pillar issues which have been transferred to the first pillar (i.e. asylum and migration);
3. future EU policy that will have an impact at subnational level (this mainly concerns third-pillar issues which have not yet been transferred to the first pillar, such as cooperation on criminal law and police matters).

The structure of this advisory report is as follows. Chapter I ('A diverse Europe') outlines how the relationship between subnational authorities, national governments and the European Union has evolved so far. In this chapter the AIV also suggests some possible ways in which the role of subnational authorities could develop. Chapter II ('Institutional basis') describes how the role of subnational authorities is institutionally regulated at both European and national level as of 2001. Developments in this country are set out in Chapter III ('The situation in the Netherlands'). In Chapter IV ('Conclusions and recommendations') the AIV provides an overall appraisal of the questions raised in the original request, and discusses possible ways of strengthening the subnational authorities' institutional basis. The report concludes with Chapter V ('Summary').

In drawing up this advisory report, the AIV has been guided by the following considerations:

- the desired Dutch stance on developments affecting subnational authorities within the European Union;
- the implications of the forthcoming enlargement of the EU.

As far as possible, the AIV has sought to follow on from the principles which it has already formulated on EU issues.¹ These principles are as follows:

- more effective decision-making and strengthening of capacity to implement policy (in this connection, the AIV has looked at the role that subnational authorities can play in improving decision-making and the extent to which decisions can be implemented within the European Union);
- reduction of the democratic deficit and greater involvement of European citizens.

¹ AIV Advisory Report No. 12, January 2000, "The IGC 2000 and beyond: towards a European Union of thirty Member States".

I A diverse Europe

I.1 An increasing role for subnational authorities

The relationship between the European Union, the Member States and subnational authorities must be viewed in the light of developments in the relationship between the European Union and national governments. The following analysis will begin by describing how the role of national governments is changing as a result of globalisation and cooperation at EU level, and will then discuss the changing role of subnational authorities.

The changing role of national governments

The role of national governments is changing. As globalisation and interdependence increase, national governments are sharing more and more of their sovereignty with other authorities and international organisations. This trend has gathered considerable momentum since the 1990s, particularly within the European Union. The principal reason is that economic cooperation at European level has been greatly boosted by such projects as the completion of the internal market and the introduction of monetary union. At the same time, other policy areas are becoming increasingly eligible for the sharing or transfer of powers. This is due to a growing realisation that developments within states may have an impact on other countries, necessitating European coordination or regulation. Examples are taxation, public health and food safety, the environment, social policy and even such traditionally 'domestic' policy areas as justice and police (in connection with international crime and migration, for example). As a result of these developments, domestic and foreign policy are growing closer and in some cases starting to overlap.

The nature of traditional state sovereignty is therefore undergoing drastic changes. It is often claimed that national governments are losing their cohesive power and hence their capacity to act - a view which the AIV does not entirely share. Instead, the AIV believes that national governments have formulated new tasks for themselves and have become just some of the many players in what is now a multi-tiered administrative structure. Power to act at, inter alia, EU level, national sovereignty and an increasing role for subnational authorities are all part of this structure.

The increasing role of subnational authorities

Aside from the question of whether national governments are losing their capacity to act, there are Member States in which the role of subnational authorities is increasing. In a number of Member States there is a trend towards decentralisation.

At the same time, globalisation and increasing European cooperation are creating not only a feeling that the world is becoming smaller and more accessible (through the Internet, for example), but also an increasing sense of alienation: governments are perceived to be increasingly remote from their citizens. Within the European Union, this is reflected in the popular belief that people are being dictated to by 'Brussels'. In response, some seek reassurance by focusing more closely on their immediate environment, often their region, with its familiar language, culture and way of government.

Besides this general explanation for the increasing role of subnational authorities, another more specific explanation can be found at EU level, namely the European

Union's growing influence on subnational authorities. The latter are being required to implement a steadily growing body of EU legislation (and deal with its consequences), and understandably they want to be able to influence the way in which it is drawn up. While some subnational authorities would be satisfied with this, others want to take active steps to prevent what they see as 'leakage' of their powers towards the European Union. Both factors are discussed in more detail below.

1.1.1 Subnational authorities and European legislation

During the first phase of European unification, the only formal relationship was that between the European Union and the Member State, and officially that is still the case. However, as unification has progressed, the role of subnational authorities has become more significant. One important step was taken in 1986 with the adoption of the Single European Act, which determined that regional policy should complement policies aimed at the establishment of the internal market. The internal market would lead to far-reaching liberalisation, with the inherent risk that regional differences in levels of prosperity would increase. The purpose of regional policy was to reduce this risk.

At this point the subnational authorities were quite simply on the 'receiving end' of EU regional policy. Their role in drawing up that policy was minimal. The next step, in 1989, was the introduction of the concept of 'partnership', which allowed interested parties to be involved in drawing up policies on structural funds, an important part of regional policy. Henceforth, the European Commission worked together with national governments and subnational authorities in drawing up and implementing relevant Community aid programmes. This was the first time that subnational authorities were directly involved in policymaking. This was also the point at which they really began to appreciate the value of European cooperation - firstly because of the financial benefits they could derive from the structural funds, and secondly because of their implementing and policymaking powers.

In policy areas that were specifically aimed at them, the subnational authorities now had two functions: an implementing function and, in many cases, a shared policymaking function. They were also coming into increasing contact with the European Union in other policy areas that were not directly aimed at them. In their capacity as implementers of EU legislation - which was gradually being extended to more and more new policy areas - they became increasingly aware of its impact. A turning-point in this process was the Single European Act, which gave a boost to the establishment of the internal market and full implementation of the four freedoms.

In every Member State of the European Union, subnational authorities are on the receiving end of European legislation and accordingly feel its impact. As implementers of that legislation, they feel a need to be more closely involved in drawing it up. The AIV believes that this trend will increase in the future, for it seems likely that more and more legislation affecting subnational authorities will be promulgated by the European Union.

Which policy areas are of relevance to subnational authorities? The main ones are the internal market (the four fundamental freedoms), competition (including public subsidies), regional policy, the environment, asylum and migration, social affairs, employment, and newly emerging policy areas (namely, areas of third-pillar cooperation, for example between police forces). However, this is not an exhaustive list. Subnational authorities are also affected by EU policy in such areas as culture, spatial planning, transport (including port policy) and occupational health and safety.

To take just one example, 70% of Dutch environmental legislation is now European rather than domestic in origin. A good deal of this legislation is implemented by sub-national authorities (provinces and local authorities). Similarly, local authorities are required to comply with European legislation on tenders and the supply of goods or services. For example, the tendering procedure for the construction of a new hospital must be in accordance with EU regulations.

Admittedly, there are considerable differences in the extent to which EU policy affects subnational authorities in the various Member States. In some countries, certain areas of EU policy do not have any impact on subnational authorities, since the latter do not have any powers in those areas; in other countries, on the other hand, they do. Even where EU policy does affect subnational authorities, in some Member States they only have implementing powers, whereas in others they are also directly involved in policy-making. The extent to which, and the way in which, EU legislation affects subnational authorities therefore greatly depend on the administrative arrangements and the division of powers between the various tiers of government in each Member State. The degree to which subnational authorities are involved in determining their country's position on a given issue also varies considerably. This will be discussed in further detail in Chapter II.

1.1.2 A response to the increasing influence of European policy: Germany and the Länder²

In Germany, the increasing impact of European legislation on subnational authorities has led to a wish not only to acquire greater influence over the European decision-making process, but also to stop what has been termed the 'double leak'. One form of 'leakage' of powers - from national governments to the European Union - can be observed in all the Member States: indeed, this is the very basis for European cooperation. However, in countries with a federal structure (such as Germany, Austria and Belgium) there is a second 'leakage' of powers, namely from subnational authorities to the European Union, through national governments. This has been particularly evident in Germany, and German subnational authorities have responded by attempting to increase their control over this transfer of powers. The German situation will therefore be used here to illustrate the issue.

In many policy areas the German states (*Länder*) have powers of their own or ones which they share with the Federal Government. The Federal Government has sole responsibility for foreign policy. Until 1992 the German constitution authorised the Federal Government to transfer powers to international (including European) institutions. Although this included powers which the *Länder* had hitherto exercised independently or in cooperation with the Federal Government, the consent of the *Länder* was not required. Since *de jure* the European Union can only cooperate with national governments, the Federal Government was Brussels' sole point of contact and hence was authorised to approve decisions on policy areas which were wholly or partly the responsibility of the *Länder*. From the point of view of the *Länder*, this meant that their powers were 'leaking away' towards Brussels through the Federal Government. This phenomenon was reinforced by majority voting, for even if the Federal Government took the wishes of the *Länder* into account when determining its own position, Germany could -

2 Partly based on a lecture by Charlie Jeffery at the conference 'A Europe of the Regions' held in Wilton Park from 13 to 17 November 2000 and his article "Towards a 'Third Level' in Europe? The German Länder in the European Union" in *Political Studies* (1996) XI IV, pp. 253-266.

and can - still be outvoted in Brussels. Particularly during the establishment of the internal market, German positions which had been worked out in close consultation with the *Länder* were regularly rejected by the Council. This confirmed the *Länder* in their view that their powers should be protected against encroachment by the European Union, especially now that the transfer of powers to the European Union has speeded up following the adoption of the Single European Act.

Since the 1980s the *Länder* have been fighting, at both national and European level, to stop this 'double leak' and strengthen the position of subnational authorities within the European Union. In this capacity they have been the driving force behind a structured movement with a clear, coherent agenda of demands for increased rights for subnational authorities or 'regions' within the European Union.

1.1.3 Regionalism in a number of Member States³

The role of the *Länder* in endeavouring to achieve greater powers for subnational authorities is not only of relevance to Germany. In other countries, too, forms of regionalism have affected the relationship between national governments and subnational authorities and have influenced the aforementioned process taking place at European level. By way of example, we will take a brief look at regionalisation in Spain, Italy, France and the United Kingdom.

Spain and Italy

In Spain, the transition to a democratic system has been accompanied by a shift from a highly centralised state to a decentralised one. Many of Spain's regions are historically distinct areas whose language and culture differ from those of the rest of the country. This has encouraged their aspirations towards autonomy of one kind or another. The Catalan authorities, for example, see Brussels differently than the German *Länder*. Catalonia certainly appreciates the economic benefits of Spanish membership of the European Union, but its attitude towards the Union is also determined by a desire to maximise its own autonomy. This is reflected in its contacts with other European regions and its strong involvement in the Committee of the Regions. The Catalan authorities reason that if they can deal directly with Brussels, by-passing the Madrid government, their independence will be greatly increased. Brussels is thus an instrument in Catalonia's efforts to achieve greater autonomy. The picture is similar in Italy, where regions in the prosperous north have begun to turn their backs on what they see as the spendthrift, impoverished south. Unlike in Catalonia, Northern Italy's wish for greater autonomy is based on economic rather than historical grounds.

France

France is a centrally administered state and, unlike Spain, it has no subnational authorities that aspire to autonomy of any kind (with the sole exception of Corsica). Nevertheless, regionalism of a kind has also been taking place in France. The 1980s saw an increase in the economic and hence the political importance of regions such as Rhône-Alpes, Alsace and the Lille area. These regions were quick to appreciate the potential financial benefits of EU membership and - later - the impact of EU legislation. Unlike their Spanish equivalents, the French regions felt no need to by-pass their national government and deal directly with Brussels, but they did want a greater say in their own

3 The following examples are partly based on a memorandum by the Strategic Policy Planning Division of the Netherlands Ministry of Foreign Affairs on the implications of regionalisation for the future development of the European Union.

economic development. In the 1980s, for example, the Lyons/Rhône-Alpes region therefore signed a number of cooperation agreements with other economically flourishing regions, mainly in other countries.

The United Kingdom

In the United Kingdom regionalism centres on devolution. The Blair government has granted a considerable degree of autonomy to the regional authorities in Scotland and Wales. One of the aims of devolution is to defuse rising Scottish nationalism.

Devolution has taken place only recently and has therefore had little impact so far on relations with the European Union. The relationship between London and the regional authorities also differs from that in countries such as Germany. In fact, as a result of devolution, Scotland and Wales appear to be concentrating more closely on their own domestic affairs and paying less attention to European developments than they did before. Furthermore, devolution does not extend to foreign policy, and the UK government has a strong interest in keeping things that way. However, EU policy and legislation will certainly have a considerable impact in many areas which have now become the responsibility of the Scottish and Welsh authorities. The latter have been granted wider powers in these areas: for example, they can assess EU proposals according to whether sufficient account has been taken of Scottish or Welsh interests, and the relevant ministers from Scotland and Wales will be involved directly and as fully as possible in decisions on EU matters that concern them. This may lead to Scottish and Welsh ministers and officials taking part in EU meetings and negotiations with EU partners.

Central and Eastern Europe

Regionalism is also starting to become an issue in Central and Eastern Europe, but in a different way from Western Europe. The countries of Central and Eastern Europe only regained their right to self-determination in the early 1990s, and initially they tended to emphasise their newly won independence through strong central government. In this context, delegation of powers to lower tiers of government did not seem appropriate. However, they now acknowledge that the creation of an additional administrative level may lead to more efficient government. The European Union is encouraging this process during the membership negotiations. Poland, for example, has created regions which may indeed prove to be an effective new level of administration between the central government and the local authorities. On the other hand, smaller countries such as Slovenia and the Baltic states are less likely to benefit from an additional tier of government. Moreover, ever since the end of the Cold War some applicant countries have been fearful of the recurrent threat of particularism and secession. Slovakia and Romania, for example, have areas where Hungarians are in the majority, and Estonia has a sizeable Russian population. In such countries, minority issues may make the central government wary of efforts by subnational authorities to seek greater autonomy.

1.2 Subnational authorities are gaining more influence

As already mentioned, the German *Länder* led efforts by subnational authorities to gain greater influence over the European decision-making process. In the run-up to 'Maastricht', together with other subnational pressure groups such as the Assembly of European Regions, they formulated four demands and, with a high degree of consensus and using a very effective negotiating and lobbying strategy, succeeded in putting them on the political agenda.⁴

4 Charlie Jeffery, "Towards a 'Third Level' in Europe? The German Länder in the European Union", pp. 256-257.

The four demands were:

1. further elaboration of the subsidiarity principle in the Treaty;
2. establishment of a 'regional body' at European level;
3. access to the Council of Ministers by ministers of subnational authorities on matters for which they have full responsibility;
4. establishment of the right of subnational authorities to appeal to the European Court of Justice against infringements of their rights by the Council of Ministers or the European Commission.

The first three of these demands were accepted. The subsidiarity principle, which was originally formulated in the Treaty of Rome, was further elaborated in Article 5, Paragraph 2 of the EC Treaty. A Committee of the Regions was set up to defend the interests of subnational authorities within the European Union. Finally, under Article 203 of the EC Treaty, ministers of subnational authorities were authorised to represent their Member State in the Council of Ministers.⁵ The circumstances in which this third demand was accepted illustrate the strength and lobbying power of the *Länder*. The German Federal Government, feeling that any formal representation of the *Länder* in the Council of Ministers would undermine its own exclusive powers in the field of foreign affairs, had refused to submit this demand to the Maastricht IGC. However, the German *Länder* prevailed on the Belgian delegation to submit the demand on behalf of its own country's regions and communities.

The fourth demand, on the other hand, was strongly opposed by the Member States. The Member States are the members of the European Union, and only the Member States as such can participate in EU activities. The European Union does not concern itself with the division of powers within Member States - that is a purely domestic matter. Disputes about possible infringements of the powers of subnational authorities as a result of EU measures must therefore be settled within the Member State concerned. These are not EU affairs and, accordingly, cannot be considered grounds for an appeal to the European Court of Justice. Nevertheless, subnational authorities do have the right to appeal if they are directly and individually affected by the action of an EU institution.

As a result of 'Maastricht', subnational authorities have become authorised players on the EU stage, and the links between domestic and European/foreign policy are stronger. In Germany, this is reflected in constitutional amendments which mean that the *Länder* now play a major part in setting the Federal Government's priorities at EU level, and that the Federal Government can no longer transfer powers to the European Union without the consent of the *Länder*.

Another noteworthy feature is that many of the *Länder* now have their own 'Minister of European Affairs'. The implications of their powerful position again became apparent during the negotiations on the Treaty of Amsterdam. Chancellor Kohl regularly had to consult with the leaders of the most important *Länder* and had very little latitude to take decisions without their consent. Despite all this, the *Länder* remain fearful that European cooperation may reduce their powers, which is why they continue to press for measures to protect those powers against encroachment.

5 Article 203: 'the Council shall consist of a representative of each Member State at ministerial level, authorised to commit the Government of that Member State'.

I.3 Concluding remarks

The AIV believes that the desire on the part of subnational authorities to influence EU policy will certainly not decrease and may indeed increase. This desire for greater influence, plus the fact that subnational authorities with powers which in other countries are exercised at national level were afraid that their powers might be reduced, were among the factors that led to the emergence in the 1980s and 1990s of a movement of powerful subnational authorities with a coherent agenda and a clear package of demands, including greater autonomy from national governments, a separate voice for subnational authorities within the European Union, and direct access to 'Brussels'. This regionalism has resulted in a number of institutional changes in the European Union, which do not, however, appear to have achieved what the initiators had hoped (see also Chapter II). It may be that their hopes were quite simply too high.

The AIV believes that the nature of regionalism may change and that it may become more diverse. Some subnational authorities will continue to seek direct access to Brussels, while others will focus their efforts on transnational networks. It seems likely that subnational authorities will seek to increase their influence upon national governments, since the idea is gaining ground among them that their voice will carry more weight in Brussels if it is heard in conjunction with their national governments. In particular, subnational authorities with powers which in other countries are exercised at national level will probably continue to press for measures to protect their powers against encroachment by the European Union.

II Institutional basis

As a result of the developments outlined in the previous chapter, an institutional basis for the role of subnational authorities is emerging. This is outlined below.

II.1 European level

II.1.1 *The Committee of the Regions*

The main institutional basis for the role of subnational authorities at European level was laid down in the Treaty of Maastricht, with the formal elaboration of the subsidiarity principle and the establishment of the Committee of the Regions.⁶ The Committee, which has been operating since 1994, has purely advisory powers. Through it, regions, cities, communities and other tiers of European government can advise other EU institutions. The policy areas on which the Committee of the Regions can submit advice, either on request or on its own initiative, are listed in the box below. Annexe II contains a description of the Committee's internal structure.

Field of activity of the Committee of the Regions

The Council of Ministers is required to seek advice from the Committee on structural and cohesion policy, which in practice means structural funds, trans-European networks (infrastructure, traffic, telecommunications and energy), cultural, youth and educational policy, the environment, traffic and transport, employment, and social policy. The Committee can advise on various topics at the request of the Council or the Commission (particularly as regards cross-border cooperation). It can also give advice whenever it considers that specific regional interests are at stake.

Furthermore, the Committee can give advice on its own initiative as and when it sees fit. In such cases it does not wait for policy proposals or requests for advice, but (for example) examines the Commission's and the Council's programme of work to identify issues that affect local or regional government. It can thus keep a close eye on how EU legislation of relevance to regions and local authorities is converted into ordinary legislation. Finally, the European Parliament can consult the Committee on matters of common interest.

In the Committee's first few years its main goals were to make a name for itself and to make clear just how much subnational authorities and the European Union affect one another. In order to do so, the Committee took full advantage of its power to submit advice without a prior request. In 1994 it produced 27 advisory reports, six of them on its own initiative. Since then the number of advisory reports has risen steadily to its current average of 50 a year.

How successful is the Committee?

What influence does the Committee have, and how effective has its advice been? A key factor in this connection is its relationship with the European Parliament and the Euro-

⁶ The Committee's main goals are to reduce the widening gulf between the European Union and its citizens and to act as a forum for local and regional authorities.

pean Commission. The Committee has close relations with the European Parliament, and seeks to complement the latter's tasks and activities. However, the relationship is not without its tensions. Given the role that the Parliament plays in the institutional structure of the European Union, it sees the Committee of the Regions not only as an ally but also as a rival. Firstly, the European Parliament represents the entire European electorate, and therefore considers the Committee's claim to representation superfluous. Secondly, the Parliament sees the Committee as an additional, complicating link in the EU's decision-making chain.

There are fewer built-in tensions in the relationship between the Committee and the European Commission. The European Commission sees the Committee as a body that can act as a counterweight to the Council of Ministers. The Committee and its advisory reports are therefore probably most effective when it acts in conjunction with the European Commission, particularly in cases where the Commission takes the lead (i.e. the preparation of policy proposals and the drafting and elaboration of EU programmes and initiatives).⁷

It should also be remembered that the members of the Committee are formally required to perform their duties in the general interests of the European Union and must not act to defend the interests of their own particular region, local authority or even Member State.⁸ However, the members of the Committee are as diverse as the subnational authorities they represent, ranging from local authorities, cities, departments and provinces to states with powers which in other countries are exercised at national level. This diversity makes it difficult to combine the various interests. Moreover, the interests of the subnational authorities within the Committee may conflict, particularly when it comes to structural funding. The influence of the Committee and its advisory reports is difficult to measure, but for this and other reasons it is probably rather small.

At the Nice IGC it was agreed that members of the Committee should be either democratically elected or politically accountable to an elected assembly. The purpose of this 'democratic guarantee' is to underpin the members' twofold task, which is (a) to ensure that European citizens' direct interests are taken into account when details of EU policy are being worked out, and (b) to keep citizens informed of what is going on within the European Union. So far, however, this dual information function has failed to materialise properly.

II.1.2 Subsidiarity

The establishment of the Committee was a step towards implementing the resolution *'to continue the process of creating an ever closer union between the peoples of Europe, in which decisions are reached as close to citizens as possible in accordance*

7 Dr B.J.S. Hoetjes, 'Een Europees-bestuurlijke verdieping? De Nederlandse provincies en de Europese Unie sinds het Verdrag van Maastricht', *Internationale Spectator*, September 1999.

8 Article 263 of the EC Treaty: 'The members of the Committee may not be bound by any mandatory instructions. They shall be completely independent in the performance of their duties, in the general interest of the Community.'

*with the subsidiarity principle.*⁹ There is thus a link with the subsidiarity principle, which is defined as follows: 'Community action shall only be justified if both aspects of the subsidiarity principle are satisfied: the goals of the contemplated action cannot be adequately attained through action by the Member States under their national constitutional systems, and can therefore be attained more effectively by Community action.'¹⁰

The question that the subsidiarity principle attempts to answer is this: at what level should policymaking and decision-making take place? The intention is also that, as a result of subsidiarity, more decisions will in principle be reached at the lowest possible level. This will supposedly increase European citizens' sense of involvement in the decision-making process and hence in European cooperation. However, it is not clear to what extent the introduction of the principle has actually achieved this.

It was the governments of Germany and the United Kingdom, the German *Länder* and other subnational authorities with a substantial voice (such as the Belgian and Spanish regions) that insisted most strongly on further elaboration of the subsidiarity principle within the European Union. However, their motives for doing so differed. The German government saw the subsidiarity principle as one of the basic components for a federally structured Europe on the German model. This was also one of the reasons why the *Länder* called for a *Kompetenzkatalog*, or 'catalogue of competences'. The British government, on the other hand, saw subsidiarity as a way of curbing what it considered the excessive powers of the European Commission.

Differing interpretations

The subsidiarity principle, as laid down in the EC Treaty and the Treaty of Maastricht, has been interpreted in differing ways. Member States such as Spain, the Netherlands, Belgium, Luxembourg and Ireland believe that any interpretation which would limit the European Commission's scope for taking initiatives (as advocated by the United Kingdom) should be resisted, as this could hamper further integration.

For the purposes of this advisory report the AIV has interpreted the subsidiarity principle as follows. The European Union can act only by virtue of powers that it has been expressly granted.¹¹ In policy areas in which both the Member States and the European Union have powers, the European Union can act only in cases where such action is deemed to be more effective than if action were left to the Member States.¹² Moreover, if the European Union does act, it must do so in accordance with the proportionality principle.¹³ Nevertheless, if EU action is deemed necessary in order to attain one of

9 Article 1 of the EU Treaty: 'This Treaty marks a new stage in the process of creating an ever closer union among the peoples of Europe, in which decisions are taken as openly as possible, as closely as possible to the citizen.'

10 Article 5, second paragraph of the EC Treaty: 'In areas that do not fall within its exclusive competence, the Community shall take action, in accordance with the principle of subsidiarity, only if and insofar as the objectives of the proposed action cannot be sufficiently achieved by the Member States. Any action by the Community shall not go beyond what is necessary to attain the objectives of this Treaty.'

11 Article 5, first paragraph of the EC Treaty.

12 Article 5, second paragraph of the EC Treaty.

13 Article 5, third paragraph of the EC Treaty.

the goals of the Treaty but the European Union does not have expressly granted powers in the policy area concerned, the Council may, at the proposal of the European Commission, take appropriate measures, provided that these are unanimously agreed and that the European Parliament has been consulted.¹⁴

The subsidiarity principle was discussed in the run-up to the Treaty of Amsterdam. The German and Austrian governments and the Committee of the Regions were in favour of extending the principle to subnational authorities. The Belgian position was that subsidiarity should inform the relationship between the European Union, national governments and subnational authorities, but that the proposal formally to extend the principle to subnational authorities was unacceptable, as this could inhibit the dynamic and evolutionary process of European integration. The Spanish government also took the view that subsidiarity should not be used as an instrument to recover powers which had already been transferred to the European Union. Since most Member States were not in favour of making further changes to the subsidiarity principle, the idea of extending it to subnational authorities was shelved.

How has subsidiarity worked so far?

It should be noted that the subsidiarity principle, as currently applied within the European Union, only concerns the division of powers between the European Union and Member States, not between Member States and subnational authorities. The latter is a matter for the Member States themselves. Application of the principle within Member States depends on the constitutional and administrative arrangements in the country in question.

It has proved difficult to apply the principle within the European Union, for there is still no generally accepted notion of what subsidiarity means. No agreement has been reached as to which policy areas are the sole responsibility of the European Union, and the European Court of Justice has not let itself be tempted into making fundamental pronouncements on the application of the subsidiarity principle. This indicates that it is mainly seen as a political principle. It has proved difficult to delimit the powers of the various tiers of government, a problem which is acknowledged even by the advocates of a *Kompetenzkatalog*. Powers may shift or be shared between subnational authorities, Member States and European Union bodies, reflecting the dynamic nature of European integration.

Moreover, it is not always possible to tell with any certainty whether action by the Member States or by the European Union would be more effective. Subsidiarity is therefore seen as a dynamic principle which may result in either more or less EU action, according to the circumstances.¹⁵ In this connection it should be noted that the subsidiarity principle, as currently applied within the European Union, requires the European Commission to indicate, whenever it makes a proposal, why it is doing so and what the advantages of its action are in comparison with possible action by the Member States. The purpose of this requirement is to show Euro-sceptics that the European Commission is not extending its range of tasks needlessly. It can also be concluded that, if the principle were to be strictly applied, the European Commission could find itself obliged to limit its own initiatives.

¹⁴ Article 308 of the EC Treaty.

¹⁵ See paragraph 3 of Protocol no. 30 to the Treaty of Amsterdam on the application of the principles of subsidiarity and proportionality.

II.1.3 Greater access to European decision-making

Another way in which subnational authorities have attempted to increase their influence on the European decision-making process is by setting up information or lobbying bureaus in Brussels. There are currently 150 of these, and their number is increasing. They have also set up international collaborative networks. The role of the information bureaus is to gather information which, among other things, can be used by the authorities they represent to influence policy decisions back home. At the same time, the bureaus attempt to exert direct influence on policy decisions in Brussels. Information-gathering is probably their most important activity. Subnational authorities must always work harder to obtain information than national governments. The establishment of these lobbying bureaus in Brussels is a first step towards closing the 'information gap'. A list of the types and numbers of lobbying bureaus is given in Annexe III; it should be added that a number of national associations of local authorities and regions, particularly from Northern European countries, now also have their own bureaus in Brussels.

II.2 National level

What kinds of institutional basis in the Member States have the developments described in Chapter I led to? First of all, the general tendency is that Member States are increasingly willing to involve subnational authorities in determining national positions on European decisions that will affect those authorities. This is because national governments are increasingly aware that the quality of European decision-making will benefit from timely involvement of subnational authorities, which are well-informed and experienced when it comes to implementing policy. At the same time, Member States are coming to realise that a purely negative approach to subnational authorities, in their capacity as implementers of EU policy, may prove counterproductive. A positive approach whereby subnational authorities are involved in the process at an early stage is more effective than penalising them for failing to implement policy properly.

Subnational authorities' domestic status largely determines the extent to which they succeed in influencing the national decision-making process. First there is the constitutional factor: the greater their domestic powers, the more they will be - and will want to be - involved in national decisions, and the firmer will be their basis for pressing home this demand in the domestic political arena. In general, it can also be said that subnational authorities with powers which in other countries are exercised at national level (as in Germany, Belgium and Austria) can gain greater influence over the national decision-making process than ones which do not have such powers.

Another important aspect is the quality of the relationship between the national government and the subnational authorities. The more formally structured this relationship is, the more effectively influence can be exerted.

A final important factor is the degree of centralisation or decentralisation. As already mentioned, the extent to which subnational authorities have come to influence national policy on, and input into, the EU varies from one country, subnational authority and policy area to the next.¹⁶

16 Charlie Jeffery, 'Sub-National Mobilization and European Integration: Does It Make Any Difference?', in *Journal of Common Market Studies*, Vol. 38, No. 1, March 2000, pp. 1-23.

For example, even in the case of regional policy which is specifically aimed at subnational authorities, the great diversity of subnational authorities, with their differing powers and domestic administrative status, leads to considerable differences in the contribution they make to EU policymaking in the various Member States. In some Member States they play an important part in determining the national position on the development of EU regional policy, but in others (such as France) the influence of the national government is paramount and the role of the subnational authorities is simply to implement policy. In this connection it should also be mentioned that subnational authorities can in general increase their influence, for instance by using the structural funds to increase their autonomy from central government.

Another example of differing levels of involvement in policymaking can be found in the field of environmental policy. In Germany and the Netherlands, subnational authorities (*Länder* in Germany and provinces and local authorities in the Netherlands), in their capacity as implementers of EU policy, very much feel the impact of European environmental policy. The German *Länder* have powers of their own in this area and help to determine policy. In the Netherlands, on the other hand, the provinces and local authorities do not generally have much influence on the Dutch government's position on EU policy. An exception is their role in helping to determine the national position on the structural funds.

How, then, are subnational authorities involved in national policymaking on, and input into, the European Union?¹⁷ Below are some examples of different approaches in a number of Member States.

*Belgium: the federal approach*¹⁸

Belgium is an example of a Member State in which subnational authorities have a considerable say in determining the national position. Belgium's communities and regions have legislative and implementing powers equal to those of its federal institutions, within their respective areas and taking due account of their respective powers. Since they have full, integrated powers, they are also responsible for the entire policymaking process, from formulation to implementation. In this capacity they are involved in administering EU policy in the areas for which they are responsible. This means that officials from the communities and regions participate directly in Commission groups of experts that draw up EU initiatives, are on the staff of Belgium's Permanent Representation to the European Union, and take part in COREPER. Relevant ministers of subnational authorities also attend the European Council of Ministers. Here, depending on what is being discussed, Belgium is represented by a federal minister if the matter is purely federal, by a federal minister plus a representative of the relevant subnational authority if powers on the matter in question are shared, or even by one or two ministers from subnational authorities if the matter falls entirely within the latter's jurisdiction. In Belgium, the federal government, the communities and the regions are statutorily obliged to reach agreement on the arrangements for this 'variable' representation.

¹⁶ Examples from 'The Intermediate Level of Government in European States', EIPA.

¹⁷ From Robert Polet, "Intermediate Level in Belgium? The Participation of Communities and Regions in State Power" in "The Intermediate Level of Government in European States", EIPA, pp. 21-48.

¹⁸ 'Régions, Départements, Préfets, Intercommunalité: The French-Style Territorial Government Network', Franck Petiteville, *ibid.*, pp. 175-197.

In addition, the communities and regions sit on EU executive (advisory, regulatory or management) committees and are responsible for converting EU directives into Belgian legislation in the areas that affect them. Such explicit involvement of subnational authorities may cause problems if the authorities fail to implement European legislation properly. In 1993, the Belgian constitution was therefore amended to restore to the federal government the power to intervene in cases where subnational authorities default on their responsibilities, even in policy areas for which the subnational authorities have sole responsibility.

*France: the centralist approach*¹⁹

In France, subnational authorities have relatively little influence on national policy regarding European decisions. France's EU policy is determined by the national government. This can be illustrated with reference to structural fund policy. In many countries, this policy (which is specifically aimed at subnational authorities) has led to a change of thinking about the involvement of subnational authorities not only in implementing policy, but also in formulating it. France, however, is not such a country. The French subnational authorities are merely one link in the chain of negotiation on the structural funds, in which the national government has a decisive say. Furthermore, it is the prefects, as representatives of the national government at regional level, who are responsible for implementing the EU's socioeconomic and regional development policy. More generally, the prefects are responsible for ensuring that subnational authorities comply with EU legislation. The latter have no option but to implement EU policy in areas which broadly affect them - without their being involved in drawing up that policy - and to accept supervision by the prefects.

*Ireland: the functional approach*²⁰

Like France, Ireland is a highly centralised country. The local authorities have little autonomy. The emergence of subnational authorities in Ireland is due to EU influence, particularly the structural funds. When Ireland first joined the European Union, its government's first priority was to obtain as much funding as possible. With this aim in mind, the Irish government set up an advisory regional infrastructure known as the Regional Authorities. These play an important part in allocating structural funds.

II.3 Conclusion

The above examples show that some Member States - such as Belgium, Germany and Austria - have constitutionally established means of access to the European decision-making process (the situation in the Netherlands will be discussed in Chapter III). In Spain and Italy, subnational authorities have succeeded in obtaining the formal (though not yet constitutionally acknowledged) right to be involved in EU policymaking. In France, subnational authorities play only a subordinate role, while in other Member States - such as Ireland - their position is largely functional. All this highlights once again the great differences between subnational authorities and their degree of involvement.

19 'Régions, Départements, Préfets, Intercommunalité: The French-Style Territorial Government Network', Franck Petiteville, *ibid.*, pp. 175-197.

20 'The Intermediate Level of Government in Ireland: Local Government with a Regional Overlay', Michael Kelly, *ibid.*, pp. 197-210.

The conclusion is that, in some Member States at least, subnational authorities have succeeded in establishing a place for themselves - alongside the Member States and EU institutions - in the European policymaking process. In the 1980s two important institutional changes were made at European level which helped promote the interests of the subnational authorities: the establishment of the Committee of the Regions, and the formal elaboration of the subsidiarity principle.

However, more radical demands by some subnational authorities for greater influence and even mandatory involvement of their representatives in the EU decision-making process failed to be accepted during the 1980s and 1990s. The reasons for this have already been mentioned:

1. officially, the European Union only acknowledges Member States as its members, and does not interfere in their domestic affairs;
2. the great differences between the various subnational authorities and their powers have made it difficult to find a uniform way of promoting their involvement in EU policymaking;
3. while many Member States are willing to involve subnational authorities in determining the national position on EU decisions, they are not willing to give them a formal say in the decision-making process.

Are the initiators - particularly the German *Länder* - satisfied with the results achieved at Maastricht? It seems not: in their view, the political impact of the Committee of the Regions and the subsidiarity principle has been disappointing. The Committee of the Regions includes a great variety of subnational authorities with widely differing powers and potentially conflicting interests. At the same time, the subsidiarity principle has not led to the desired protection of subnational authorities' powers against encroachment: consistent application of the principle has been hampered by differences in the way it is interpreted. Moreover, the *Länder* remain fearful that European cooperation may reduce their powers, even though constitutional amendments have enabled them to more or less stop the 'leakage' of those powers.

III The situation in the Netherlands

III.1 Introduction

The Dutch system of government

Before examining the situation in the Netherlands, the aspects of the Dutch system of government that are of most relevance to this advisory report will be reviewed.²¹

The Netherlands is a decentralised unitary state. In addition to the central government, the constitution acknowledges various subnational authorities, including the provinces, the local authorities and the district water boards. Dutch citizens are subject to regulations laid down by three different tiers of government: national, provincial and local. Regulations laid down by subnational authorities must not conflict with those of a higher authority. Two forms of decentralisation from national government to subnational authorities are autonomy and joint authority. Autonomy means that provincial and local authorities have powers to act independently within their respective areas of jurisdiction and that they bear administrative responsibility for the citizens in their area. Joint authority generally means that a higher authority can lay down regulations compelling a lower authority to cooperate with it. There are numerous laws in which tasks are assigned to subnational authorities. An extensive system of consultation between the subnational authorities and the national government is part of this joint authority. However, this does not mean that there is always a clearly delimited division of powers between the various tiers of government. In the Netherlands, the public interest is defended jointly by the national government and the subnational authorities.

Mutual awareness

To what extent are Dutch subnational authorities aware of the European Union and is the Dutch national government aware of them? Before answering this question, it should be noted that subnational authorities are as diverse in the Netherlands as they are elsewhere. Besides constitutionally acknowledged subnational authorities such as provinces and local authorities - which are heterogeneous if only by virtue of their differing size - there are other forms of shared administration and/or cooperation which are relevant in this context, examples being the Euregions, conurbations such as the Randstad (in the west of the Netherlands), and cross-border partnerships between cities such as Rotterdam and Antwerp or Heerlen and Aachen.

Dutch subnational authorities are increasingly aware of the European Union. At first they were mainly interested in the European Union as a potential source of structural funding. They were relatively late in recognising the impact of EU decisions, because a great deal of European legislation had already been adopted by the Dutch government at national level. It was only later that European legislation which was 'new' to the Netherlands began to be introduced. However, it is difficult to recognise it as specifically European, for all EU directives are converted into national legislation. In recent years, Dutch subnational authorities have become increasingly aware of the importance of the EU legislation they are required to implement and, as a corollary of this, they have felt a growing need to be involved in determining the Netherlands' national position before the legislation is finally adopted in Brussels. There is often also a negative reason for this growing awareness on the part of the subnational authorities - namely, a fear that they may be confronted with legislation they are unable to cope with and, at worst, be fined for failing to implement it properly.

21 'De staatsinrichting', H.A.H. Toornvliet, 2nd revised edition, 1992, pp. 279-282.

The Dutch central government is likewise increasingly aware of the role that can be played by subnational authorities in drawing up and implementing European decisions, but so far this awareness has been largely formal. As the body with final responsibility towards the European Union, the national government has so far mainly focused its attention on possible failure by subnational authorities to implement EU policy correctly. On the other hand, it is increasingly conscious that the quality of decision-making may be enhanced if subnational authorities are involved in determining the Netherlands' national position at an earlier stage in the proceedings.

III.2 Institutional basis for the involvement of subnational authorities in the Netherlands

Following the publication of a report by the Public Administration Council (ROB) entitled 'Wijken of herijken. Nationaal bestuur en recht onder Europese invloed' (September 1998), steps have been taken to involve subnational authorities more closely in determining national positions on EU policy proposals. The regular consultations that were already taking place between the national government and subnational authorities have been given formal status, and EU policy proposals with major implications for subnational authorities are discussed with the Association of Provincial Authorities (IPO) and the Association of Netherlands Municipalities (VNG). Both IPO and VNG have become more closely involved in the activities of the Working Group for the Assessment of New Commission Proposals (BNC). Consultations between the Ministry of the Interior and Kingdom Relations, the Ministry of Foreign Affairs, VNG and IPO have been given formal status, and rules concerning dealings between national governments and subnational authorities in the context of the European Union have been incorporated into the New-Style Administrative Agreement between the Ministry of the Interior and Kingdom Relations, IPO and VNG (March 1999).

Although IPO and VNG have not been granted the observer status they sought within BNC, the Ministry of the Interior and Kingdom Relations and the Ministry of Foreign Affairs do keep them informed of European proposals that are of relevance to them. In addition, the responsible ministries hold bilateral discussions with IPO and VNG on proposals that affect subnational authorities. Finally, the 'BNC fiche' (a proposal-specific questionnaire sent to the responsible ministry which provides a framework for formulating policy) now includes a section indicating how IPO and VNG are involved in drawing up the fiche. Once adopted, the fiche is forwarded to Parliament, IPO and VNG. Another important aspect is that applications for structural funding by the regions are coordinated by the State Secretary for Economic Affairs.

Finally, an Interministerial Committee on European Law (ICER) was set up in December 1997. This body is responsible for coordinating the conversion of European law into national law, systematically monitoring developments in European law and identifying their implications for Dutch law. ICER is also responsible for coordinating the substantively, organisationally and procedurally correct conversion of European law into Dutch policy, legislation, jurisprudence and legal practice. Subnational authorities are not represented in ICER.

VNG and IPO would like to see an even firmer institutional basis for the involvement of subnational authorities in relevant areas of the decision-making process. In particular, they have called for adoption of the recommendation by ROB that subnational authorities should be granted formal status within the national administrative and political bodies that determine the Netherlands' position on European policy, for example by granting them formal observer status within BNC.

IV Conclusions and recommendations

This chapter will start with a general appraisal of the questions raised in the request for advice. Various possible ways to increase the involvement of subnational authorities will then be examined.

IV.1 General appraisal

As indicated in the foreword, this report has sought to follow on from the principles which the AIV has formulated on earlier occasions with regard to EU issues. These principles are recapitulated here:

- more effective decision-making and strengthening capacity to implement policy (in this connection, the AIV has looked at the role that subnational authorities can play in improving decision-making and the implementation of decisions within the European Union);
- reduction of the democratic deficit and greater involvement of European citizens.

From the outset, the AIV has been aware of the importance of subnational authorities from both a democratic and an administrative point of view. It is convinced that these authorities, being so much closer to citizens and to regional and local interests and views, offer benefits which merit the fullest possible attention.

The same holds good in an integrating Europe. Even though it is national governments that have signed the treaties on which European unification is based and are chiefly responsible for the adoption and proper implementation of EU decisions, subnational authorities are also involved - indeed, increasingly involved - in this process and must be given an opportunity to perform their assigned role.

The fact that this role has received so much more attention in recent decades - particularly since the adoption of the Single European Act - is seen by the AIV both as proof of the subnational authorities' vitality and as a measure of the development and depth of European integration, which began in a limited number of policy areas but has since evolved into a comprehensive whole that embraces virtually every aspect of government policy. The impact of this on subnational authorities is only too clear. Since they are responsible for implementing policy that originates at EU level and for fulfilling EU obligations, they are increasingly confronted with the fact that they are part of the European Union. It is therefore only natural that they should want to influence the decision-making process. Those who are affected by a policy will want, if possible, to have a say in that policy. The AIV sees all this as an essentially positive phenomenon.

It should also be noted that phenomena such as decentralisation, regionalism and devolution can be observed in some - though not all - EU Member States. Aspirations by subnational authorities to achieve greater autonomy from the national government are basically a separate phenomenon. However, these aspirations may influence and possibly strengthen the growing involvement of subnational authorities in the workings of the European Union, and vice versa.

In the light of all this, the AIV believes that subnational authorities should - if this has not already happened - be granted a policymaking role in areas in which European decisions affect them. This can be done by letting subnational authorities take part in

official consultations to draw up national positions on EU legislation. Subnational authorities can also be offered direct access to policymaking and decision-making processes in Brussels wherever their interests are affected. Such involvement should be encouraged, and can only enhance the quality of national decision-making in the areas concerned. At first this will slow down the decision-making process, since participation by subnational authorities will require more time. In the medium term, however, their involvement will lead to more efficient decision-making and more effective implementation, application and enforcement of EU legislation. Subnational authorities' knowledge and experience of implementing EU legislation will encourage the emergence of policies that are more capable of being implemented properly. At the same time, greater involvement of subnational authorities in drawing up legislation will enhance their knowledge of, and sense of responsibility for, the implementation of EU legislation. Such involvement of subnational authorities in national policymaking processes is, moreover, in keeping with administrative practice in Member States and in the European Union, in which ways of exerting mutual influence are seen as valuable aids to the emergence of well-balanced policies. Such a role is complementary to the formalised decision-making processes in the Member States and in the European Union.²²

Each Member State will need to devise its own optimum formula for involving subnational authorities. The AIV believes that this should, where at all possible, take place at national level, in accordance with each Member State's specific constitutional arrangements. Since constitutional and political conditions vary greatly from one Member State to the next, it is impossible to lay down uniform rules on the subject.

At the same time, the AIV has looked at whether the position of subnational authorities also needs to be improved at EU level and, if so, whether a workable formula can be devised for this. In general, the AIV's answer to both questions is no. This does not mean that (for example) the AIV believes the Committee of the Regions is achieving all that was expected of it; however, it does not see any justification for making drastic changes to the EU's decision-making structure. There are three reasons for this. Firstly, the subnational authorities in the EU are quite clearly too diverse to be treated identically. Their status, powers and interests are so different that no basis can be found for giving them a more prominent role in the EU's decision-making process than they have at present. The differences between countries with and without a federal structure are already so great that the idea of treating subnational authorities identically can be dismissed on those grounds alone. Secondly, given the general concern that already exists about the EU's capacity to act, the AIV believes it would be wrong to burden the system any further. Smoothly running EU institutions and transparent, efficient decision-making are essential to successful European integration. With the prospect of further enlargement, the EU's decision-making process needs to become simpler and less cumbersome. Any changes which might produce the opposite effect are therefore inadvisable. An institutionalised role for subnational authorities could slow down and hamper the decision-making process. Thirdly, the AIV has borne in mind that the progress of European unification ultimately depends on the existence of administratively strong, effective national governments. It is not in the EU's interests to weaken the position of the Member States - unless a radically different approach to the Union is envisaged. The AIV does not believe that this is the case.

²² In this connection, readers are referred to the AIV's earlier report entitled 'The IGC 2000 and beyond: towards a European Union of thirty Member States', where it expresses the view that ways of exerting mutual influence can only be complementary to a process of formalised decision-making by the European institutions within the framework of a European Union based on the rule of law.

For these reasons, the AIV feels it must confine itself to a number of less radical suggestions for structural reforms aimed at strengthening the position of subnational authorities at EU level.

Finally, there is the question of legitimacy or greater involvement of citizens in the EU. It is frequently claimed that European citizens' sense of involvement and the democratic content of the Union would increase if decisions were taken at the lowest possible level. Here the AIV makes a distinction between policymaking and implementation of policy at national level. The AIV is not in favour of policymaking at the lowest possible administrative level, but does believe that subnational authorities should have a say in drawing up policies that will affect them. On the other hand, the AIV is in favour of policy being implemented at the lowest possible administrative level. This can increase European citizens' sense of involvement because (a) implementation of policy by subnational authorities can lead to more effective democratic control, provided the authorities in question are publicly accountable to citizens, and (b) the subnational authorities can inform citizens about the EU and what its policies will mean for them.

The Committee of the Regions bases its claim that it helps to reduce the democratic deficit on the selfsame argument that the lower down decisions are taken, the more democratic they are. However, it should be remembered that the Committee represents subnational authorities whose powers and administrative weight differ considerably, and that it is therefore not completely representative in European terms. Moreover, unlike the European Parliament, the Committee does not serve a general interest within the EU, but partial interests.

The AIV believes that the European Parliament has a crucial part to play in reducing the democratic deficit. The Parliament should have ultimate political control over EU policymaking. This conclusion is in line with earlier reports by the AIV in which it recommends that the role of the European Parliament be strengthened as a key component of the democratisation process. More specifically, the AIV refers here to its proposal for the establishment of a bicameral system in which legislative powers are vested in two chambers of parliament and citizens are involved in the European Union through representation at European level (the European Parliament) and national level (the Chamber of States).²³

Specific ways to increase the involvement of subnational authorities

On the basis of the foregoing general appraisal and the basic assumptions made therein, the AIV has looked at various ways to increase the involvement of subnational authorities in the European decision-making process. In each case the benefits and drawbacks are assessed and the AIV indicates whether or not the approach in question should be recommended. The arguments set out in the foregoing general appraisal are not repeated each time.

The various approaches are grouped as follows:

IV.2 Ways to increase involvement at EU level;

IV.3 A way to increase involvement which can be implemented at national level.

²³ See the AIV report entitled 'The IGC 2000 and beyond: towards a European Union of thirty Member States'.

IV.2 Ways to increase involvement at EU level

IV.2.1 Strengthening of the Committee of the Regions

- A number of institutional changes have been called for by the Committee itself:
 - (a) acknowledgement of its status as an EU institution in Article 7, paragraph 1 of the Treaty;
 - (b) whenever the Commission and the Council decide not to act on recommendations made by the Committee on the basis of mandatory consultation, they should be required to substantiate that decision. The European Parliament could provide such substantiation on a voluntary basis;
 - (c) formal power to appeal to the European Court of Justice against infringements of its rights. Regions with powers which in other countries are exercised at national level should also be granted the right of appeal.
- Another way to strengthen the Committee would be to limit the diversity of the sub-national authorities represented within it.

Appraisal

The AIV does not believe that the Committee should be incorporated into the institutional structure of the EU as an *institution*. At present - see the list in Article 7, paragraph 1 of the EC Treaty - the following are recognised as institutions: (a) bodies which play an important part in EU *decision-making* (the European Parliament, the Council and the Commission) and, in the case of the European Commission and the European Parliament, are accountable for their decisions, and (b) bodies which play an important part in *supervising* decision-making (the European Court of Justice and the European Court of Auditors). In this context, the proposed acknowledgement of the Committee as an institution would result in its having a *substantial policymaking* role - something the AIV is not in favour of. Furthermore, EU institutions are supposed to serve the interests of the European Union as a whole; the Committee, however, serves only partial interests, since it is not completely representative in European terms. It may be added that the importance of a body depends on the tasks that are assigned to it in the Treaty, rather than its formal acknowledgement as an institution.

The AIV does recommend that action be taken to strengthen the Committee in its performance of the advisory tasks laid down in the Treaty, for example - as proposed by the Committee itself - by requiring institutions to indicate the extent to which they have taken account of the Committee's advice. Under the cooperation principle, as set out in Article 10 of the EC Treaty, institutions and bodies are already required to take the necessary care in their relations with one another. The implication of this principle is that, whenever the Committee submits advice, the institution to which the advice is directed must take the fullest possible account of the contents. This applies all the more if the advice has been submitted at the request of the Council, the Commission or the European Parliament (a possibility which is specifically mentioned in Article 265, paragraph 4 of the EC Treaty). Finally, the AIV can accept the idea that the Committee should be entitled to appeal to the European Court of Justice if its prerogatives are infringed by the actions of other institutions or bodies. The AIV sees a parallel here with the treatment of the European Parliament in the days when it still essentially had only advisory powers.

The AIV does not believe that regions with powers which in other countries are exercised at national level should be entitled to appeal to the European Court of Justice if their rights are infringed. The same demand was made by the *Länder* in the run-up to

the 1993 IGC (see I.2). The AIV takes the view that such matters should be dealt with at Member State level.

The idea of increasing the Committee's effectiveness by limiting the diversity of the subnational authorities represented within it is at first sight an attractive one. In practice, however, it raises difficulties. If, for example, the requirement were introduced that each Member State may only be represented by a single tier of government, the question of which tier this should be immediately arises. Furthermore, even then the subnational authorities would still be too diverse to make any appreciable difference to the Committee's status. Finally, Member States are free to determine the composition of their own delegations to the Committee, and it is neither feasible nor desirable for the European Union to involve itself directly in national choices of this kind.

IV.2.2 Kompetenzkatalog

In December 2000, the Nice IGC adopted the following declaration: 'The Conference calls for a deeper and wider debate about the future of the European Union... at a meeting in Laeken in December 2001 the European Council will agree on a declaration containing appropriate initiatives for the continuation of this process. The process should address amongst others the following question: *how to establish and monitor a more precise delimitation of powers between the European Union and the Member States, reflecting the principle of subsidiarity[...]* After these preparatory steps the Conference agrees that a new Conference of the Representatives of the Governments of the Member States will be convened in 2004 to address the abovementioned items with a view to making corresponding changes to the Treaties.'²⁴

This indicates that the discussion on a more precise delimitation of powers will be part of an in-depth debate on the future of the EU, and that the topic will be on the agenda of an IGC to be held in 2004. The idea that powers should be precisely delimited comes from the German *Länder*. Their aim is to draw up a *Kompetenzkatalog* which would define powers in such a way as to divide up not only existing powers, but also future ones.

Those who advocate a *Kompetenzkatalog* believe that the powers of the European Union should be identifiable, predictable and circumscribed. They also propose that the Treaty should specify what the exclusive powers of the EU are, in order to reinforce the subsidiarity principle. The idea is that decisions should be taken as close to citizens as possible. This division of powers should be monitored by the European Court of Justice. A *Kompetenzkatalog* would also, claim its advocates, make clearer which tier of government is responsible for specific decisions, and would hence increase transparency and democratic content. From this point of view, the European Union should, when exercising its powers, take account of the interests and internal structure of the Member States and avoid encroaching on their powers. Furthermore, the advocates of a *Kompetenzkatalog* consider it important that the general goals of the European Union, particularly those regarding the free movement of goods and services, should not be used as a justification for extending the EU's powers. All this is part of efforts by the *Länder* to bring about a federally structured European Union in which subnational authorities are acknowledged as a separate tier of government in addition to the European Union and the Member States and are entitled to take a direct part in EU affairs. The *Länder* believe that subnational authorities should be able to exercise their

²⁴ Treaty of Nice, Declaration on the future of the Union, pp. 83-84, 22 December 2000.

powers exclusively and directly - i.e. without their national governments being involved - and that those powers should be protected by the subsidiarity principle.²⁵

Accordingly, the aims of the *Kompetenzkatalog* can be summed up as follows:

1. clarity as to which tiers of government are responsible for what, leading to more transparent decision-making;
2. decision-making at the lowest possible level and as close to citizens as possible, thus reducing the democratic deficit;
3. probably the most important goal: definition of powers, especially before they are assigned, so that both national governments and subnational authorities can maintain (and in some cases recover) their freedom of manoeuvre. Underlying this goal is a tacit fear that, unless powers are clearly defined, the European Union will 'sur-reptitiously' arrogate new powers to itself at the expense of the Member States and subnational authorities.

Appraisal

Obviously, powers have already been assigned at various administrative levels within the European Union. Indeed, this is the basic assumption underlying European integration.

The question of the division and definition of powers will therefore be a central part of any debate on the future (particularly the institutional future) of the European Union. However, as long as no detailed proposals have been made on the subject, in the form of a *Kompetenzkatalog*, it is difficult to make substantive comments. Nevertheless, it is important to start preparing for the debate. The issue cannot simply be ignored. Arguments must be developed and political priorities set. The AIV advises the Dutch government to pursue this course further, and offers the following appraisal as a possible basis. It should be emphasised that this appraisal is based on currently available data and on what now appear to be the aims of the initiators.

The AIV has three comments to make regarding the introduction of a *Kompetenzkatalog*:

1. The arguments put forward by advocates of a *Kompetenzkatalog* are based on a misconception as to the dynamics of European integration.

The idea of a *Kompetenzkatalog* in its current form ignores the dynamics of the process of European integration and shifts in power between the various tiers of government. A *Kompetenzkatalog* would not be *a posteriori* - as has hitherto been customary in the European Union - but *a priori*. The current basis for the dynamics of European integration is that, in the interests of further integration, no policy area is excluded *in advance*. A *Kompetenzkatalog* would stand this principle on its head by denying the European Union powers over certain policy areas *a priori*. This would reverse the burden of proof regarding the need for European integration and would preserve the existing status quo, making it more difficult to change things than if powers were less rigidly delimited. This is very probably what the advocates of a *Kompetenzkatalog* are out to achieve, and is the very reason why the AIV is opposed to the idea.

The fact that the dynamics of European integration are based on *a posteriori* rather than *a priori* developments is apparent from the history of European integration so

²⁵ Charlie Jeffery, "Towards a 'Third Level' in Europe? The German Länder in the European Union", p. 261.

far. The integration process has followed two main axes: (a) political decisions on the interpretation of the *acquis communautaire* and its further development, and (b) the jurisprudence of the European Court of Justice. Ultimately, this can result in Article 308 of the EC Treaty being applied in order to reach unanimous agreement on the assignment of additional powers.²⁶ An example of this is the decision - which is not devoid of interest in the context of this advisory report - to set up the Regional Fund. In other words, in the interests of further European integration, no policy area is excluded *in advance*.

The AIV takes the view that the dynamics described here, based on a combination of political decision-making and jurisprudence, should be preserved in the first pillar as well as in the other two. Moreover, there are now hardly any policy areas left which are not subject to European legislation and in which the assignment of powers is not a matter of contention between the various tiers of government.

2. The advocates of a *Kompetenzkatalog* have chiefly focused on preserving their own national and subnational powers.

The advocates of a *Kompetenzkatalog* appear to see further European integration as a threat, rather than as a broadening of opportunities for cross-border cooperation between the Member States. The notion that the European Union may 'surreptitiously arrogate new powers to itself' has played an important part in efforts to delimit powers. In this connection, it should be mentioned that, in the opinion of the *Länder*, the European Court of Justice interprets the powers of the European Union broadly, not to say too broadly. Yet the idea that the European Union is surreptitiously arrogating new powers to itself is a misconception, for the following reasons. Firstly, new powers can only be assigned to the European Union by amending the Treaty or invoking Article 308 of the EC Treaty.²⁷ Secondly, whenever new powers are assigned, it is possible to limit them or make them subject to conditions. An example is policy on the environment, which according to the Single European Act is the responsibility of the European Union, but subject to certain conditions.²⁸ Finally, application of the subsidiarity principle provides an additional 'test' when assigning new powers to the European Union. According to this principle, EU action is only justified if the goals of the contemplated action cannot be adequately attained by the Member States under their national constitutional arrangements, and if action at EU level presents clear advantages over action at national level. A further test is the proportionality principle, which prescribes that EU action must not go beyond what is necessary in order to attain the goals of the Treaty.

26 Former Article 235.

27 '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.'

28 See Article 130R of the Single European Act and also a series of articles in the Treaty in which other powers in a number of policy areas are transferred to the European Union subject to certain conditions. Examples are Article 149 of the EC Treaty on education, vocational training and youth and Article 151 of the Treaty on culture.

3. It is impossible to assign powers in perpetuity.

A final comment is that it is difficult and inadvisable to assign powers to particular tiers of government in perpetuity. Not only do powers shift in the course of time, but they are increasingly shared within the network-like system of government that is evolving in the Member States and between the Member States and the European Union. Another problem is the great diversity of state institutions, which makes it difficult to achieve a uniform division of powers within the European Union.

It follows from this that the introduction of a *Kompetenzkatalog* - however unspecific at present - could end up undermining and paralysing a dynamic process which is essential to further European integration. At the same time, it may have incalculable implications for the forthcoming enlargement of the European Union. For these reasons, the AIV has very serious doubts as to whether a *Kompetenzkatalog* based on the principles and goals now proposed by the initiators should be introduced.

The AIV does, however, recognise that this issue is part of a broader debate on the future of Europe, and that a full discussion of it is beyond the scope of an advisory report on the relationship between the European Union and subnational authorities.

IV.2.3 Delegation of powers to subnational authorities in cases where EU policy affects them

In the opinion of the AIV, there is some confusion in the use of the term 'delegation'. Delegation should not be confused with assignment. Assignment involves new powers being granted to a particular tier of government. This is a key feature of the *Kompetenzkatalog*. Delegation involves powers that have already been assigned to a particular tier of government being transferred to a different tier (in the context of this report, a lower one).

Appraisal

The AIV believes that delegation is not a matter for the European Union. The Union cannot and should not delegate *regulatory* powers. This follows from application of the subsidiarity principle as set out in Article 5 of the EC Treaty, which prescribes that the EU is, in general, only competent to act when it is *obliged* to do so. The European Union cannot subsequently delegate these exclusive regulatory powers. The most it can do is delegate the implementation of EU legislation to the Member States. Nor can the European Union delegate powers to subnational authorities, since it does not have any direct relationship with them.

The AIV considers delegation a matter for the Member States, which can transfer powers to subnational authorities in accordance with their own national constitutional arrangements. In this connection, the AIV would add that it does not recommend the delegation of *policymaking* powers to subnational authorities by Member States, as this could render decision-making less effective. *However, the AIV does recommend that subnational authorities should be given a say in determining the national position on policies that will affect them. While the AIV is aware that this recommendation does not fall within the definition of delegation, it nevertheless wishes to draw attention to it.*

In contrast, delegation of policy implementation may help to reduce the democratic deficit.

IV.2.4 Application of the subsidiarity principle down to subnational level

The purpose of the principle, as already outlined in II.1.2, is to ensure that powers are assigned to the European Union only where necessary and useful, and to increase the democratic content of the European Union by having decisions taken as close to citizens as possible.

Appraisal

The principle, as applied in the European Union on the basis of the Treaty, *cannot* be applicable to subnational authorities, since the European Union has no direct relationship with them. There are no powers that are shared between subnational authorities and the EU, and subnational authorities cannot transfer powers to the European Union or vice versa.

Accordingly, any recommendation that subsidiarity be applied down to subnational level can only involve the *general* subsidiarity principle. The general principle is designed to answer the following question: at what level should powers be assigned in order for policy to be as effective as possible? Powers should preferably be assigned at the lowest possible administrative level, in order to increase citizens' sense of involvement and reduce the democratic deficit. In practice, this leads to the same conclusion as in IV.2.3 (delegation of powers): the AIV does not recommend that *policymaking* powers should be assigned at the lowest possible subnational level, as this could render decision-making less effective. *On the other hand, it does recommend that policy should be implemented at the lowest possible level, as this may help to reduce the democratic deficit.*

IV.3 A way to increase involvement at national level: involvement of subnational authorities in determining the national position on EU policies that will affect them

There are two possible approaches:

1. Inclusion of a representative of subnational authorities in the official consultation structure (in those Member States where this is not already the case) when determining the national position on EU legislation that affects subnational authorities. In the context of preparation and coordination of EU policy by the Netherlands, this would mean that, wherever relevant, a representative of subnational authorities would be involved in the official preparatory procedure, from BNC right through to the Coordinating Committee on Problems of European Integration and Association (CoCo). It would also make sense for subnational authorities to be involved in the section of ICER that deals with policy implementation.
2. Creation of opportunities for more direct access by subnational authorities to policy-making and decision-making in Brussels in policy areas that affect them, for example by including a representative of subnational authorities on the staff of the Permanent Representation to the European Union in Brussels.

Appraisal

In general, the AIV wishes to emphasise the importance of more effective exchange of knowledge on EU legislation, both between the national and the subnational level and between the European and the subnational level. Stronger contacts between subnational authorities and central governments may result in sounder, better-informed policy-making and implementation. In this connection, it should be mentioned that the Netherlands has decided to set up an information bureau on EU legislation for the benefit of subnational authorities. The AIV greatly welcomes this initiative.

The AIV recommends the approaches set out in IV.3 (paragraphs 1 and 2), for it believes they will allow a proper balance to be struck between effective, workable decision-making and involvement of subnational authorities. The same model can also be used by the candidates for EU membership, which could adopt approaches used by the national governments of the current Member States in order to involve subnational authorities in determining national positions on EU policy.

The AIV recommends that a representative of subnational authorities be included on the staff of the Permanent Representation, since the latter has extremely broad, general responsibilities which are not confined to participation in Council negotiations. The Permanent Representation also functions as an information post. Subnational authorities could benefit from the opportunity to influence policy and, more generally, to develop their own networks of contacts. The specific implications of this recommendation could be left to work themselves out in practice.

Perhaps needless to say, the approaches set out in IV.3 concern policy that affects subnational authorities. In this connection, the situation concerning structural funding is untypical, since subnational authorities are competing with one another and the above approaches are therefore not workable.

IV.4 Concluding remarks

The AIV is aware that this report can do no more than reflect the present situation. The accession of new Member States may give a new boost to regionalism, and this in turn may affect the position of subnational authorities in the European Union. The increasing heterogeneity that will result from the enlargement of the EU could trigger off new regional developments. In any event, direct regional policy will become more important, with inevitable implications for subnational authorities. The AIV does not feel it is possible, let alone opportune, to make predictions about such developments at this juncture.

It is also conceivable that, as a result of developments within Member States (or a majority of them), subnational authorities may acquire such prominence that they will have to be given a greater say in EU decision-making. However, things have not yet reached this stage. Subnational authorities should primarily make their contribution - whose value is not in doubt - at national level. Full advantage must, of course, be taken of the available scope for such involvement.

The AIV hopes that its suggestions will be echoed in discussions on the European Commission's White Paper on good governance, which appeared on 25 July 2001 and which examines, among other things, how subnational authorities can be more effectively involved in EU policymaking. This may result in EU institutions taking greater account of the role of subnational authorities, a development which the AIV welcomes. At the same time, however, it emphasises the importance of ensuring that the decision-making process remains transparent and effective.

Finally, it should be mentioned that the AIV was not asked to look at the issue of cross-border cooperation in this report. Nevertheless, the AIV wishes to note the growing trend towards such cooperation between subnational authorities. It believes that citizens see effective cross-border cooperation as a vivid, tangible example of the significance and benefits of European integration. For this and other reasons, cross-border cooperation is of increasing importance to EU integration and deserves to be encouraged by the European Union and the Member States, which should do whatever they can to remove any obstacles to it.

V Summary

This advisory report concerns the desired relationship between the European Union, Member States and subnational authorities (all tiers of government below national level), which are extremely diverse.

The relationship between the various tiers of government is constantly changing. National governments have become just some of the many players in a multi-tiered structure in which EU, national and subnational powers coexist.

The importance of subnational authorities is increasing (a) because of the trend towards decentralisation in a number of Member States, and (b) as a response to globalisation and Europeanisation. Another important factor is 'regionalism': the call by subnational authorities for a stronger and possibly more autonomous position in relation to their national governments.

The much more prominent role of subnational authorities within the European Union is also due to the fact that they are required to implement the growing body of EU legislation and are therefore increasingly affected by it. The increase has been particularly rapid since the adoption of the Single European Act, and EU policy now plays a part in almost every area of government.

Subnational authorities have responded to this in two ways. The general response has been that subnational authorities, which are responsible for implementing EU policy and for fulfilling direct and indirect EU obligations, also want to be involved in drawing up EU policy which affects them. In addition, some subnational authorities - particularly those with powers which in other countries are exercised at national level - believe that their autonomous powers are being eroded by the increasing influence of EU legislation. As a result, they are often concerned to protect their own powers.

In the 1980s and early 1990s this fear of relinquishing their powers was one of the factors that sparked a structured regionalist movement aimed at strengthening the institutional position of subnational authorities in the European Union. In general it may be said that trends such as decentralisation and regionalism are basically separate phenomena, but that they can reinforce one another if they happen to coincide.

This pressure for greater influence for subnational authorities in the European Union led to the establishment of the Committee of the Regions and the formal definition of the subsidiarity principle. However, the initiators do not appear satisfied with the results of these institutional changes. As far as can be judged at the moment, the Committee of the Regions and its advisory reports have had little impact on the European Union, mainly because the subnational authorities represented on the Committee are too diverse in terms of their powers, administrative weight and interests. In this connection, it should also be noted that the Committee's advisory reports do not always receive the attention they deserve. Nor, in the initiators' opinion, has the subsidiarity principle had the desired effect, namely that decisions are taken at the most appropriate - i.e. lowest - level, as close as possible to citizens. In general it may be said that differing interpretations of the principle have limited its applicability.

For this and other reasons, the nature of the regionalism that sprang up in the 1980s and 1990s may well change, and it may become more diverse. For example, subnational authorities may focus on strengthening their position in the domestic political arena and/or on increasing cross-border cooperation. Some subnational authorities will continue to focus on protecting their autonomous powers.

The AIV also believes that the desire on the part of subnational authorities to influence EU policy will certainly not decrease and may indeed increase. As the amount of EU legislation that subnational authorities are required to implement and are affected by continues to grow, they will understandably want to be more and more closely involved in drawing up that legislation.

In the Netherlands, as elsewhere, the central government and subnational authorities are increasingly aware of the importance of the part that subnational authorities play. In recent years, subnational authorities in the Netherlands have become more closely involved in national decision-making in areas of EU legislation that affect them.

The key question is whether the subnational authorities' oft-expressed wish to be more closely involved in drawing up EU policy should be granted and, if so, how this is to be achieved. In answering this question the AIV has adopted the following principles, which were also used in the earlier AIV report entitled 'The IGC 2000 and beyond: towards a European Union of thirty Member States':

- more effective decision-making and strengthening of capacity to implement policy;
 - reduction (of the democratic deficit) and greater involvement of European citizens.
- The subject has also been examined in the context of the forthcoming enlargement of the European Union.

The AIV concludes that those Member States that have not already done so should give subnational authorities a greater say at the formative stage of the national decision-making process in policy areas that affect them, since their knowledge and expertise will result in better policy which can be implemented more effectively.

At the same time, the AIV has looked at whether the position of subnational authorities also requires structural improvement at EU level and, if so, whether a workable formula can be devised for this. In general, the AIV's answer to both questions is no. Firstly, subnational authorities are too diverse in structure, powers, capabilities and interests to be treated identically. Secondly, the AIV considers smoothly operating EU institutions and a transparent, efficient decision-making process of vital importance to the smooth running of the European Union. An institutionalised role for extremely diverse subnational authorities could slow down and hamper this decision-making process. With the prospect of further enlargement, the EU's decision-making process needs to become simpler and less cumbersome. Thirdly, the AIV believes that the progress of European integration depends on having administratively strong, effective national governments. Any weakening in the position of the Member States would not, in the AIV's opinion, be in the interest of further European integration.

Turning to reduction of the democratic deficit, the AIV distinguishes between policymaking and policy implementation. The AIV is in favour of policy being implemented at the lowest possible administrative level. This is because subnational authorities provide opportunities for greater democratic control of policy implementation, provided they are publicly accountable to citizens. Nevertheless, appropriate supervision of implementation is still needed at European level.

The AIV believes that the European Parliament has a key part to play in reducing the democratic deficit. The Parliament should have ultimate political control over EU policy-making. This is in line with earlier reports by the AIV in which it recommends strengthening of the European Parliament as a key component of the democratisation process.

The AIV has examined a number of ways of increasing the involvement of subnational authorities at (1) EU level and (2) national level. In the light of, *inter alia*, the foregoing general appraisal, the AIV has indicated in each case whether or not it recommends the approach in question.

1. The AIV feels it must confine itself to a number of less radical suggestions for structural reforms at EU level. It has examined four alternatives:

(a) As regards *the Committee of the Regions*, the AIV recommends that action be taken to strengthen the Committee in its performance of the advisory tasks laid down in the Treaty, by requiring institutions to indicate to what extent the Committee's advice has been taken into account, particularly in cases where the advice has been requested by the institution in question. The AIV also recommends that the Committee be granted the right to appeal to the European Court of Justice if its prerogatives are at stake. As regards the Committee's claim that it helps to reduce the democratic deficit, the AIV feels that the Committee is not fully representative in European terms, owing to the diversity of the subnational authorities that are represented within it. The AIV believes that the European Parliament should be primarily responsible for democratic control within the European Union and should play a key part in reducing the democratic deficit. Finally, the idea of strengthening the Committee's position by limiting the diversity of the subnational authorities represented within it raises institutional and practical problems.

(b) The structure of the European Union is such that powers are assigned at various administrative levels. Indeed, this is the basic assumption underlying European integration. The question of the division of powers will be a central part of the debate on the future of the EU following the Nice IGC. However, the AIV is not in favour of a *Kompetenzkatalog* if it produces the results intended by the initiators, who seem mainly to want to protect their own national and subnational policymaking powers. In order to achieve this, they want the level at which powers are assigned to be determined in advance, and even want this to apply to powers that have yet to be assigned. This rigid delimitation is also intended to prevent the EU from surreptitiously arrogating new powers to itself. The AIV believes that the dynamics of European integration are based on the principle that no policy area should be excluded from EU influence *in advance*. Advocates of a *Kompetenzkatalog* would reverse this principle by denying the European Union powers over certain policy areas *a priori*. This could paralyse the dynamics of integration. The AIV considers the fear that the European Union may 'surreptitiously arrogate new powers to itself' unfounded, since the Treaty allows conditions to be attached when new powers are assigned to the European Union. The AIV also believes that any *a priori* assignment of powers to specific tiers of government may prove inconvenient, since powers shift over time and from one tier of government to another. Finally, the great diversity of constitutional arrangements would make it difficult to assign European powers in such a uniform manner.

(c) *Delegation of powers to subnational authorities in cases where EU policy affects them is not, in the opinion of the AIV, a matter for the European Union, but for the Member States, which can transfer powers to subnational authorities in accordance with their own national constitutional arrangements.*

(d) *The subsidiarity principle, as formulated in the Treaty of Rome and further elaborated in the Maastricht Treaty, cannot be applicable to subnational authorities, since the European Union has no direct relationship with them. As regards the general subsidiarity principle, however, the AIV recommends that policy be implemented at the lowest possible administrative level in order to increase citizens' sense of involvement and reduce the democratic deficit.*

2. *At national level, the AIV recommends that those Member States which have not already done so give subnational authorities a greater say at the formative stage of the national decision-making process in policy areas that affect them. Specifically, the AIV recommends that:*

(a) *representatives of subnational authorities be included in the official consultation structure when determining the national position on EU legislation that affects subnational authorities. In the Dutch context this would mean that, wherever relevant, they would be involved throughout the decision-making process, from BNC right through to the Coordinating Committee on Problems of European Integration and Association (CoCo).*

(b) *opportunities be created for subnational authorities to have more direct access to policymaking and decision-making in Brussels, for example by including a representative of subnational authorities on the staff of the Permanent Representations to the European Union in Brussels.*

It does not seem likely that the enlargement of the European Union will have any fundamental new implications for the relationship between subnational authorities, national governments and the European Union, as outlined above. However, the forthcoming enlargement of the European Union will certainly have an impact on decision-making and implementation of policy. Clearly, the arguments which have led the AIV to conclude that an institutionalised role for subnational authorities in the EU's decision-making process should not be recommended will carry even more weight in an enlarged Union.

At the same time, the accession of new Member States may give a new boost to regionalism, and this in turn may affect developments in the position of subnational authorities throughout the European Union. It is difficult to foresee at this stage what developments will occur in this area. The AIV does not feel it is possible, let alone opportune, to make predictions about such developments at this juncture; however, it may be mentioned that the position of minority groups is a key aspect of the regionalism issue in many Central and Eastern European countries.

Annexes

Dear Mr Lubbers,

The European Union seeks to accomplish the close integration of the Member States – initially at economic, political and administrative level. Within the Member States, subnational authorities too are increasingly coming to recognise the importance of the EU's decision-making and policies. In *The State of the European Union: The European Agenda 1999-2000 from a Dutch perspective* the government noted that the European Union is having an increasing impact on Dutch municipalities and provinces, a trend also visible in other EU Member States. The further deepening of European integration in the 1990s has brought the subnational level of the Member States within the reach of 'Brussels'. This includes regions, provinces, *Länder* (Germany), counties (UK) and communities (Belgium) as well as city twinning agreements and regional cross-border frameworks.

The European Union is developing a layered structure, within which subnational authorities have a place alongside Brussels and the Member States. The sheer diversity of subnational authorities makes this process hard to follow. Yet its impact will be felt not only by national states but also by the European Union itself.

This request for the AIV's advice seeks to chart the role of subnational authorities in the process of European integration to help the Dutch government determine its policy.

Trends

In the Netherlands, subnational authorities bear responsibility for complying with Community obligations. However, they cannot be called to account directly by the European Commission, which must always address itself to the national government. This is partly why the national authorities have built up so many consultative structures (many of them informal) with municipalities and provinces. Examples include the monthly consultations between the Ministry of the Interior, the Ministry of Foreign Affairs, the Association of Netherlands Municipalities and the Association of Provincial Authorities, and the six-monthly consultations between various layers of administration based on the 'New-style Administration Agreement'. In 1998 the Public Administration Council studied the domestic aspects of the problem in its advisory report 'Yield or revise: National administration and law under European influence' ('Wijken of herijken: Nationaal bestuur en recht onder Europese invloed').

The European Union respects the administrative structures of Member States. The way in which national authorities arrange relations and powers between layers of administration is their own affair. Nonetheless, the EU's policy is increasingly affecting the work of subnational authorities, largely through the knock-on effect of European regulations at subnational level and through EU funds. In this sense, the ongoing integration of Europe does have repercussions for the administrative relations within Member States. Tension may arise between decentralisation and/or regionalisation processes in certain Member States (notably Belgium and the United Kingdom) and the political decision-making in the European Union, where the players, as a rule, are national governments. It should be added that the European Commission's policy explicitly focuses on the regional level in its efforts to reduce economic inequalities between regions. Regional authorities in their turn (particularly in federal States such as Germany and Belgium, but also in Spain and the United Kingdom) exploit this in their efforts to strengthen their hand vis-à-vis national government. They do so by increasingly adopting a more international orientation and seeking to influence European decision-making.

Questions

If the above trends continue, European integration will increasingly make itself felt at sub-national level. Conversely, as integration becomes closer, the EU and/or national governments will increasingly have to take questions involving subnational authorities into account. The AIV is therefore requested to give a general analysis of the role of subnational authorities in the ongoing process of European integration, and to address the following specific points.

The Treaty of Maastricht provides that subnational authorities must have formal channels for making their voice heard at European level. One such channel is the Committee of the Regions. However, the institutional shaping of the European Union is still primarily attuned to Member States and consultations between Member States.

This raises the following questions:

- Does the AIV consider it necessary or desirable, in order to improve the way the Union functions, to anchor the involvement of subnational authorities more firmly at institutional level?
- Does the Protocol on the application of the principles of subsidiarity and proportionality in the Treaty of Amsterdam, in particular article 9, provide sufficient guarantees, in the AIV's view, that European decision-making will take account of the position of subnational authorities?
- Should the position of subnational authorities be strengthened further with a view to their growing significance to continuing cooperation within the European Union?
- Do the existing Charters of local/regional authorities (e.g. in administrative matters and on industrial sites) provide sufficient basis for this?
- What advantages and disadvantages are attached, in the AIV's view, to the other means that have been suggested up to now for giving subnational authorities a place within European cooperation (a 'Good Governance Charter'; the German proposal for a *Kompetenzkatalog*)?

Besides these issues, which should take up the lion's share of the report, the government would like the AIV to consider the following questions:

- One of the challenges facing the European Union and its Member States is how to involve the EU's citizens more closely in the process of European integration. This goes to the heart of the legitimacy of the cooperation within the Union. Does the AIV consider that involving subnational authorities more closely in EU cooperation is another way – alongside those already suggested in 'The IGC 2000 and beyond: towards a European Union of thirty Member States' – of bringing Europe closer to its citizens?
- From the perspective of subnational authorities, increased involvement in the EU is seen as a means of keeping their distance from central government. For instance, in Spain the structural funds have acted as a catalyst for the federalisation of the political system. Some Flemish nationalists see anchoring Flanders in Europe as an attractive alternative to remaining part of a federal state of Belgium. In Germany, the *Länder* have

been in the vanguard of lobbying for the interests of European regions. Given the position of the *Länder* in the Bundestag, they are highly influential in determining Germany's position on EU decision-making that will eventually work its way into national legislation. Some see this trend as overblown regionalism. What is the AIV's view of this growing importance of the regions? What pitfalls does it foresee for the smooth running of the European Union in general and of the first pillar in particular?

- The issue of subnational authorities can also be viewed in the light of the accession of new Member States to the European Union. Within the applicant countries there are numerous regions, most of them in border territories, that have ethnic minorities who are in the majority in a neighbouring country. This includes the Hungarians of western Romania and southern Slovakia, the Germans of western Poland (Silesia), the Turks of eastern Bulgaria and so forth.

Furthermore, many regions and urban areas in the applicant countries have structural disadvantages, both social and economic, that qualify them for aid from the structural funds. How would the AIV suggest approaching regional issues in the light of the forthcoming enlargement?

Yours sincerely,

Dick Benschop
State Secretary for Foreign Affairs

Internal structure of the Committee of the Regions

The Committee of the Regions meets at a General Assembly. It is divided into eight commissions. These draw up advisory reports which are submitted to the General Assembly by rapporteurs. After approving them, the Committee forwards these reports to the Council, the Commission and the European Parliament.

The Committee has 222 members and an equal number of deputy members, who are proposed by the Member States and appointed by the Council for a period of four years. They can be reappointed. The Member States have the following numbers of members:

France, Germany, Italy, United Kingdom	24 members each
Spain	21 members
Austria, Belgium, Greece, Netherlands, Portugal, Sweden	12 members each
Denmark, Finland, Ireland	9 members each
Luxembourg	6 members

Types and numbers of lobbying or information bureaus

There is a wide variety of types of bureau. They can be divided into six categories:

- bureaus that represent only one region or local authority;
- bureaus that represent groups of regional or local authorities, such as the Liaison Bureau for the Eastern Dutch Provinces;
- bodies that represent all the subnational authorities in a Member State, such as the Association of Danish Councils;
- bureaus that represent subnational authorities from more than one Member State, i.e. cross-border associations such as the Austrian-Italian EU Liaison Bureau of Tyrol or the Anglo-French Office of the County of Essex and the Region of Picardy;
- umbrella organisations whose bureau provides services for both the public and the private sector, for example Scotland Europe;
- partnership bureaus in which subnational authorities cooperate on a number of topics with a European dimension. These usually have no formal or institutionalised status within their country's administrative structures. An example is the Randstad Region, representing the conurbation of the Western Netherlands.

Bureaus that represent a region of a federal state often have the most funds and staff. In that respect, some Spanish or German bureaus resemble 'mini-embassies'. Another striking feature is that economically powerful regions are well represented, for example the Blue Banana zone (London - Rhine/Rhône - Lombardy) or the Sunbelt (Valencia - Barcelona - Bilbao - Lyons - Nice).

Numbers of information or lobbying bureaus in Brussels²⁹

EU Member State	Number of bureaus
1. United Kingdom	26
2. France	22
3. Germany	18
4. Spain	16
5. Italy	15
6. Austria	11
7. Denmark	10
8. Sweden	9
9. Finland	6
10. Netherlands	4
11. Ireland	3
12. Belgium	3
13. Greece	1

Portugal and Luxembourg have no regional bureaus in Brussels. A number of candidates for EU membership also have regional bureaus there.

²⁹ It should be noted that more subnational authorities are represented in Brussels than this table suggests, since many offices also house lobbyists for other subnational authorities.

List of terms and abbreviations

AIV	Advisory Council on International Affairs
BNC	Working Group for the Assessment of New Commission Proposals
CEI	European Integration Committee
CoCo	Coordinating Committee on Problems of European Integration and Association
Commission	European Commission
Committee	Committee of the Regions
COREPER	Comité des Représentants Permanents
Council	Council of Ministers/European Council of Heads of State and Heads of Government
EC	European Community
EU	European Union
ICER	Interministerial Committee on European Law
IGC	Intergovernmental Conference
IPO	Association of Provincial Authorities
Parliament	European Parliament
ROB	Public Administration Council
VNG	Association of Netherlands Municipalities

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